

Kitchen Services Terms and Conditions

These Kitchen Services Terms and Conditions (“**Terms and Conditions**”), taken together with an executed order form for Kitchen Services that references these Terms and Conditions (“**Order Form**”), form an agreement between the Licensor and Customer designated in the Order Form (the “**Kitchen Services Agreement**” or “**Agreement**”). If there is any conflict between these Terms and Conditions and an applicable Order Form, the Order Form shall prevail. If the same parties enter into multiple Order Forms, each Order Form shall be treated as a standalone agreement. Capitalized terms not defined in these Terms and Conditions shall be as defined in the applicable Order Form. You agree that the Order Form and the Terms and Conditions constitute our Confidential Information and shall not be disclosed to any third party.

1. Kitchen Services

- a) **Access and Use.** Subject to your compliance with the terms of the Agreement, we grant you and your employees a limited, non-transferable, non-exclusive, fee-bearing license, commencing on the Access Date and for the remainder of the Term, to access the Licensed Space identified in the applicable Order Form only for the Permitted Use. You agree that you are only receiving a limited license to access the Licensed Space and that you are not signing a lease for the Licensed Space nor are you receiving any ownership, leasehold estate, leasehold interest, or tenancy rights in the Licensed Space. You are not permitted to exclude us or our invitees, from the Licensed Space, and we may enter at any time, with or without notice to you, for any reasonable purpose, including for the purpose of inspecting, cleaning and maintaining the Licensed Space. You also agree that the Delivery Hub and the Licensed Space may be subject to inspections by food, fire and health and safety officials, all having the power to regulate your access and use of the Licensed Space, and you agree to promptly pay any fines or penalties imposed by such inspections against you or resulting from your acts or omissions.
- i) **Initial Access.** We strive to enable your access to the Licensed Space on the Access Date. You acknowledge, however, that the Licensed Space may not be available on the Access Date due to inspection, construction, cleaning or various other delays. In such an event, we will notify you of your adjusted Access Date, and the Term and your License Fee and other monthly fee payment obligations will be based upon the new Access Date. You agree that an adjustment of your Access Date as provided herein does not constitute a breach of the Agreement, and you agree that we shall have no liability to you whatsoever for the Licensed Space not being available by the Access Date, including for any staff or supply costs you may incur. You also agree that you are solely responsible for ensuring you have sufficient permits and licenses to prepare food within your Kitchen (and your Access Date will not be delayed if you have not obtained your required permits or licenses). We will be responsible for any facility-wide permits required by Applicable Law.
- ii) **Changes.** You agree to not make any Changes to the Licensed Space (including installing any signage or other branding inside or outside the Kitchen) without our prior written consent. If we agree to let you make a Change or if we make a Change at your request, you will be solely responsible for the costs for such Change. Third party contractors or subcontractors may not be used for Changes without our prior written consent. Your approved contractors shall be properly licensed and insured as required in the applicable jurisdiction. You and your contractors shall abide by any rules we set on how, when and where Changes can be made to minimize disruption to the overall Delivery Hub. If you or your contractors fail to do so, we retain the right to prevent your contractors from finishing the work, and you agree to pay us for the costs to finish or remove the Changes. You must ensure that any Changes made by you or your contractors comply with applicable laws, including required inspections and permits. You acknowledge that you must still pay the License Fee and other applicable fees starting on the License Fee Start Date even if your approved Changes are pending, in process or not complete. You are solely responsible for all restoration costs to revert your Changes to the standard “as is” build similar to other Kitchens in the Delivery Hub.
- b) **Processing.**
- i) **Processing Services.** You agree to use our order processing services to facilitate the fulfillment of your Orders to your customers using Third Party Vendors (“**Processing Services**”), which Processing Services may include, among other things, order verification, final packaging and labeling, Delivery Hub runner personnel or Third Party Vendors courier distribution. You may not use the Licensed Space to prepare food and beverage product orders that do not utilize our Processing Services. You understand that the Processing Services will be provided to you in exchange for your payment of the Processing Services Fee, which is in addition to the License Fee. You also agree to use the Kitchen Tech, provided by our partner subject to separate terms available at <https://www.tryotter.com/documents/legal/us/tou/kl-073120> (by signing this Agreement you are agreeing to the separate Kitchen Tech terms). The use of the Kitchen Tech is required in order to provide you with the Processing Services and to ensure efficient operations at the Delivery Hub. The Processing Services Fee is calculated based on information from Third Party Vendors. The Processing Services Fee shall be calculated as follows: the percentage listed in the Order Form multiplied by the total order amount charged by Customer, excluding sales tax, promotions, and other discounts (“**Total Order**”). Licensor may modify the Processing Services Fee by providing you with 30 days email notice.
- ii) **Limitations.** You understand that the services of Third Party Vendors and the Kitchen Tech are provided by third parties and as such, Licensor has no responsibility for the Third Party Vendors, Kitchen Tech, or the technology or services they provide. You agree that Licensor will not be liable to you or to any third party for any modification, suspensions, or discontinuance of the Kitchen Tech. Notwithstanding anything to the contrary, if you materially breach the Kitchen Tech terms of use and such terms of use are terminated in accordance therein, we may also immediately terminate this Agreement or suspend your access to the Kitchen Tech without any further obligation or liability.

iii) **Storage.** If you elect to license storage racks in dry, refrigerated and/or frozen storage in the Delivery Hub, we will make such storage racks available to you in exchange for your payment of the applicable Storage Services Fee (as communicated to you via email or the Kitchen Rules), which is in addition to the License Fee. You may increase your use of storage racks on a month to month basis by submitting a written request to us, and we will attempt to accommodate your storage needs subject to availability. You may decrease your use of storage racks or terminate your right to use some or all of your storage racks by providing at least 30 days' prior notice (email sufficient). You agree that we may update your Storage Services Fee to reflect your then-current use of storage racks.

2. Operational Terms

- a) **Rules and Restrictions.** You acknowledge that each Delivery Hub is subject to a set of rules established by Licensor that govern the use of the Delivery Hub and the Licensed Space ("**Kitchen Rules**"), and you agree to abide by the Kitchen Rules. You agree that we may unilaterally modify the Kitchen Rules at our discretion at any time upon notice to you; provided such modifications will be reasonable, non-discriminatory and will not conflict with this Agreement. You are required to keep your Kitchen(s) in a sanitary, clean and usable condition and in first class order, repair and appearance as required by the Kitchen Rules and Applicable Law. You agree to only use the Licensed Space for the Permitted Use and no other purpose. Only you and your employees may access the Delivery Hub. All other persons or entities must receive our prior written approval prior to access any portion of the Delivery Hub. You agree to not use the Licensed Space in a way that may be dangerous or a nuisance to other licensees in the Delivery Hub. You agree that we may move you to a different Kitchen within the same Delivery Hub with at least 30 days' prior notice (email sufficient) at our sole expense. We will apply the Kitchen Rules in a nondiscriminatory manner.
- b) **Compliance.** You agree to comply with all Applicable Laws applicable to the operation of your business and use of the Licensed Space. In addition, you agree all finished Orders and all raw materials, ingredients, processing aids, and packaging material (i) will be stored and shipped under sanitary conditions, in strict compliance with all Applicable Laws, (ii) will be manufactured, labeled, and packaged in strict compliance with all Applicable Laws, as well as current good manufacturing and other industry practices, and (iii) will be wholesome, merchantable, fit for their intended purpose, and fit for human consumption, consistent with current good manufacturing and other industry practices, and Applicable Laws.
- c) **Monitoring.** You agree to not take, and not let any third party take, any pictures, videos or other representations of the Licensed Space or other materials that you receive or have access to in the course of performance of the Agreement. We may utilize video and audio recording devices to monitor portions of the Delivery Hub, including in your Kitchen(s) and the common areas. This technology may also include temperature and air flow sensors, electrical use meters, facial recognition software and other technology. You agree to notify your employees and your other approved visitors, in writing (e.g. through an employee handbook), of the existence of these devices and shall indemnify us for any claims, losses or expenses incurred by us for your failure to do so.
- d) **Vacating the Licensed Space.** At the end of the Term, we will perform a deep clean of your Kitchen(s) and deduct the cost from the Refundable One-Time Fee (approximately \$250 per Kitchen). Notwithstanding the foregoing, you agree to ensure the Licensed Space is cleaned and in good order, repair and condition on your last day of access. You also agree to remove all of your furniture, equipment, personal property and trade fixtures from the Licensed Space ("**Remove**") not installed or provided by us (unless we otherwise agree in writing) prior to your last day of access. If you fail to do so, you agree (i) we have the right, at your expense, to keep, sell, or otherwise dispose of your furniture, equipment, personal property or trade fixtures that you did not remove by your last date of access, and (ii) you are required to pay us for any costs or losses incurred to get the Licensed Space ready for the next customer, including the costs of any deep cleaning or repairs and our lost revenue from the inability to license the space to the next customer due to your failure to Remove.

3. Fees and Payment Terms

- a) **Fees.** You agree to pay us the fees for our services as specified in the Order Form, without setoff or deduction, in accordance with the terms of this Agreement. Operating Expenses and Storage Services Fees begin on your Access Date and may be prorated for partial months. License Fee payment obligations commence on the License Fee Start Date and may be prorated for partial months. You agree that any fees owed to us are non-refundable (except for the Refundable One-Time Fee). All fees due to us must be paid by the Payment Method indicated on the Order Form and by the due date indicated on the invoice (and if no date is given or specified in this Agreement, within thirty days of the invoice date). We reserve the right to require you to provide a credit card as a backup Payment Method. You agree to use our specified third party payment platform to facilitate your payments to us, and you acknowledge and agree to the payment platform terms available at <https://www.cloudkitchens.com/documents/legal/us/ksa/ppt072720.pdf> which are hereby incorporated by reference. If you fail to pay us on time, we have the right to collect interest on such sum equal to the lesser of 1.5% monthly or the highest rate permitted by law. You are also responsible for our costs in collecting unpaid fees, including any attorneys' fees and costs. During a Continuing Term (defined below), we may increase or decrease the License Fee, Processing Services Fee or Storage Services Fee upon sixty (60) days' notice.
- b) **Refundable One-Time Fee.** On the Effective Date, you agree to pay us the Refundable One-Time Fee. Within 60 days of the expiration of the Agreement, we agree to return the Refundable One-Time Fee, excluding the cost to perform the deep clean (as outlined in Section 2(d)), subject first to the satisfaction of outstanding amounts owed to us. We may use the Refundable One-Time Fee to satisfy outstanding amounts owed by you or charges incurred by you, including penalty amounts or unforeseen amounts related to Changes or otherwise. Additionally, in the event you breach the Agreement without cure, you forfeit the Refundable One-Time Fee, and we reserve the right to pursue additional legal remedies for your breach. If we apply your Refundable One-Time Fee towards anything in accordance with the Agreement, you agree to immediately pay us an additional Refundable One-Time Fee (or pay an amount sufficient to restore the Refundable One-Time Fee to its original balance).

- c) **Treatment of Operating Expenses.** You shall be responsible for all costs and fees we incur for utilities and other shared services applicable to the Licensed Space from and after the Access Date (collectively, “**Operating Expenses**”). Our reasonable estimate of your monthly Operating Expenses shall be billed to you each month. Such estimate shall be based on (i) metering and other reasonable methods of monitoring which are used to calculate a reasonable approximation and apportionment of your actual consumption of utilities, (ii) an equitable apportionment of all kitchens in the Delivery Hub that use such utilities and shared services; or (iii) a combination of (i) and (ii). On an annual basis (or more frequently if we elect), we may reasonably determine if the Operating Expenses incurred prior to the date of determination were more or less than the Operating Expenses payments you actually made prior to the date of such determination. If your payments exceed the actual Operating Expenses, then you will receive a credit towards your future Operating Expenses until reimbursed in full, and if your payments are less than the actual Operating Expenses, then you shall pay us the difference within 30 days following receipt of our invoice. Additionally, we may change your estimated monthly Operating Expenses (with email notice) if, in our reasonable discretion, we believe your actual Operating Expenses will exceed your estimated payments. If you fail to timely pay your estimated Operating Expenses or any reconciliation payments due hereunder, we may discontinue providing some or all such services hereunder, and you agree we are not liable for damages or losses resulting from such discontinuance. You agree that we are not responsible or liable for ensuring uninterrupted availability of any utilities or other services provided by or for you under the Agreement, except to the extent caused by our gross negligence. You are required to use our existing internet network, provided, you may use your own firewall, subject to our approval (which cannot be unreasonably withheld). You are solely responsible for all costs for maintaining, installing and testing your own firewall.
- d) **Taxes.** The fees you owe to us do not include any Taxes. You are responsible for paying all Taxes associated with the Agreement and the services we provide except for Taxes assessable on our income or employees. Without limiting the foregoing, you agree to be the seller with respect to the sale of any food or products sold or distributed out of the Licensed Space and as such, you also agree to be responsible for the payment of any Taxes for such food or products. If you don’t pay your Taxes (or the government alleges you haven’t done so), we have the right to immediately terminate the Agreement. You are liable for, and must pay before delinquency, Taxes levied against any personal facility or trade fixtures placed by you in the Kitchen.
4. **Insurance.** We shall maintain commercial general liability insurance and property insurance for the Delivery Hub. You agree to maintain, during the Term: (a) a commercial general liability insurance policy, in accordance with Insurance Services Office Form CG 00 01, on an occurrence basis, including protection for your operations, completed operations and personal and advertising injury, covering the Kitchen and insuring use thereof against claims for injuries, death and property damage occurring on or about the Kitchen, with limits no less than two million dollars per occurrence; (b) workers’ compensation insurance (with statutory limits if applicable) and Employer’s Liability Insurance with limits no less than one million dollars per occurrence; (c) food borne illness insurance (with industry standard limits); (d) property insurance in amounts not less than full replacement cost value of your property and providing such form of protection against risk consistent with prevailing industry standards for property insurance (with no coinsurance penalty provision), covering the personal property (including any fixtures or equipment) located within the Delivery Hub (policy must also include loss of business income and extra expense for a minimum of twelve months); (e) business automobile liability insurance for all owned, non-owned and hired vehicles, including loss of property of others in your care, as well as the loss of use your property and property of others in your care with limits no less than one million dollars per occurrence and two million dollars general aggregate; and (f) if we approve for you to sell alcohol out of our space (in writing) and you are legally permitted to do so, Liquor Liability insurance, of at least one million dollars per occurrence and general aggregate limits of at least two million dollars. You agree to furnish a certificate of insurance evidencing the above policy limits. All liability insurance maintained by you must (i) name Licensor, its affiliates and their respective members, officers, directors, officials, employees, contractors, and volunteers (and its mortgagee, if applicable) as additional insured under such policy; (ii) be in a form reasonably satisfactory to us, with an insurance carrier reasonably satisfactory to us; and (iii) be primary insurance (at least as broad as ISO CG 20 01 04 13). Any insurance or self-insurance maintained by Licensor, its affiliates and their respective members, officers, directors, officials, employees, contractors, and volunteers, shall be excess of your insurance and shall not contribute with it. All such insurance is subject to modification or cancellation only upon ten (10) days’ written notice to each certificate holder. The issuance of any insurance policy required under the Agreement, or the minimum limits specified in the Agreement with respect to your insurance coverage, will not be deemed to limit or restrict in any way your liability arising under or with respect to the Agreement. You hereby grant to Licensor a waiver of any right to subrogation which any of your insurers may acquire against the Licensor by virtue of the payment of any loss under such insurance. You agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Licensor has received a waiver of subrogation endorsement from the insurer.
5. **Confidentiality.** Each party agrees to not use the other party’s Confidential Information except as necessary for the performance of the Agreement and will not disclose the other party’s Confidential Information to any third party except to those of the receiving party’s employees and contractors who have a need to know such Confidential Information for the performance of the Agreement, provided that each such employee or contractor is bound by a written agreement that contains use and nondisclosure restrictions consistent with the terms set forth in the Agreement. You agree that the fact you have entered into the Agreement and are licensing space from us, and the terms of the Agreement, constitute our Confidential Information. Each party will employ all reasonable steps to protect the other party’s Confidential Information from unauthorized use or disclosure, including the steps you take to protect its own Confidential Information. The foregoing obligations will not restrict the receiving party from disclosing the other party’s Confidential Information: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the receiving party give reasonable notice to the disclosing party to contest such order or requirement; and (b) to receiving party’s legal or financial advisors, provided the receiving party is responsible for ensuring such information remains confidential. The receiving party is liable for any breaches of confidentiality by its employees, contractors, legal or financial advisors.
6. **Representations and Warranties.** Each party represents and warrants as to itself that (a) it has the right to enter into and perform the Agreement and that the individual signing the Order Form has the right to bind their respective company, and (b) it will not violate any

Applicable Law or obligations to any third party by entering into and performing under the Agreement. You represent and warrant that you have all permits and licenses required to prepare and sell food and beverage products out of the Licensed Space (including any permits required for you to prepare food in the Kitchen).

7. **Disclaimers; Limits of Liability**

- a) **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (i) WE DO NOT MAKE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, REGARDING THE SUBJECT MATTER OF THE AGREEMENT, AND ALL WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, CARE, NON-INFRINGEMENT, PERFORMANCE, SUITABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY DISCLAIMED, AND (ii) THE LICENSED SPACE AND RELATED SERVICES, THE TECHNOLOGY AND RELATED HARDWARE, AND ANY OTHER GOODS, SERVICES, OR TECHNOLOGY THAT MAY BE PROVIDED BY US OR OUR PARTNERS HEREUNDER ARE PROVIDED "AS IS" AND "AS AVAILABLE." YOU BEAR ALL RISK OF LOSS OR DAMAGE TO YOUR FOOD AND BEVERAGE PRODUCTS. YOU AGREE THAT NEITHER WE, NOR ANY OF OUR AGENTS, HAVE MADE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE LICENSED SPACE, THE DELIVERY HUB OR THE TECHNOLOGY, OR WITH RESPECT TO THEIR SUITABILITY FOR THE CONDUCT OF YOUR BUSINESS, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.
- b) **Limits of Liability.** TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, WE SHALL NOT, AND OUR AFFILIATES SHALL NOT, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR SIMILAR DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, REGARDLESS OF THE CAUSE OF ACTION UPON WHICH THEY ARE BASED, INCLUDING CLAIMS FOR LOSS OF GOODWILL OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WE BE LIABLE TO YOU OR TO ANY OTHER PARTY FOR ANY LOSS, COST, DAMAGE OR OTHER LIABILITY THAT RESULTS FROM ANY SCHEDULED OR UNSCHEDULED DOWNTIME OF THE KITCHEN TECH OR YOUR INABILITY TO ACCESS YOUR KITCHEN. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THE AGREEMENT, OUR TOTAL AGGREGATE LIABILITY TO YOU IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE MONTHLY LICENSE FEES PAID BY YOU IN THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM. NOTHING IN THIS SECTION SHALL LIMIT A PARTY'S LIABILITY FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR UNLAWFUL ACTIVITY.

8. **Indemnification.** You agree, at your sole expense, to indemnify, hold harmless and, at our election, defend Indemnitees from and against any and all losses, costs and expenses of any kind, including reasonable attorneys' fees, claim, demand or action, incurred by any Indemnitee arising from or related to: (a) your business, your food and beverage products or your use of Third Party Vendors; (b) your negligence or willful misconduct; (c) risks against which you are insured or required to be insured against as specified in the Agreement; (d) acts or omissions of your employees, contractors or any other of your invitees to the Licensed Space; or (e) a breach or alleged breach of the Agreement by you or your employees. You agree to not settle or otherwise dispose of any third party claim, demand or action against an Indemnitee without our prior written approval, which shall not be unreasonably withheld.

9. **Term and Termination**

- a) **Term.** The Agreement will begin as of the Effective Date and remain in effect until the end of the later of the Initial Term, Renewal Term or Continuing Term. Either party may terminate this Agreement by providing a written notice of non-renewal no later than 60 days prior ("**Notice**") to the end of the applicable Initial Term or Renewal Term. If neither party has provided Notice, at the end of the later of the (i) Initial Term or (ii) Renewal Term (if any), this Agreement shall continue until either party terminates this Agreement by providing at least sixty (60) notice ("**Continuing Term**"). For example, if the last day of the Initial Term is July 17 (and there is no Renewal Term) and you provide 60 days notice on August 1, then the Continuing Term will continue until (and the Agreement will terminate on) September 30.
- b) **Termination.** A party may terminate the Agreement in the event of a material breach by the other party, provided, such other party is provided with written notice of such breach and at least 30 days to cure the breach after receipt of such notice. Notwithstanding the foregoing, in addition, we may terminate the Agreement (including your right to access the Licensed Space) immediately upon written notice to you if any of the following occur: (i) you fail to make any payments owed to us and fail to cure within 7 days, (ii) you breach Sections 1(b) or 5 of this Agreement, (iii) you fail to use the Licensed Space within 15 days of the Access Date or communicate that you do not intend to use the Licensed Space, (iv) you breach the Agreement and the breach involves an illegal, hazardous or dangerous condition, including your failure (or an allegation that you have failed) to comply with all Applicable Laws, (v) you file for bankruptcy, have an administrator appointed over your business or assets, pursue a corporate reorganization, corporate voluntary arrangement, or similar, you make an assignment for the benefit of creditors, are insolvent, or admit you won't be able to meet your debts as they mature, or (vi) if any part of the Licensed Space is taken by the exercise of the power of eminent domain.
- c) **Effect of Termination.** Upon termination or expiration of this Agreement you may no longer access the Licensed Space. Outstanding payment obligations and Sections 5-13 will survive any termination or expiration of the Agreement. Without limiting our other rights or remedies, in the event the Agreement is terminated (except for our breach), you forfeit the Refundable One-Time Fee and you will owe the License Fees for the remainder of the Term.

10. **Force Majeure.** A "**Force Majeure Event**" means an event beyond the reasonable control of a party, which prevents the party from complying with its obligations under the Agreement, including an act of God (fire, earthquake, flood, drought, epidemic, pandemic, etc.), war or other hostilities, acts or threats of terrorism, strikes or acts of civil disturbance, utility outages, and shortages of materials or labor. In no event shall either party be considered in breach of this Agreement to the extent its obligations are prevented or delayed, directly or indirectly, by a Force Majeure Event, and the period of time for performance shall be extended until such event has ended. Notwithstanding anything to the contrary, obligations to pay fees owed hereunder shall not be delayed, waived, canceled, or otherwise affected by a Force Majeure Event, even if you cannot use the Licensed Space due to the Force Majeure Event.

11. **Arbitration.** BY ENTERING INTO THE AGREEMENT, EACH PARTY IS REQUIRED TO USE ARBITRATION TO RESOLVE CLAIMS OR DISPUTES ON AN INDIVIDUAL BASIS, AS FURTHER SET FORTH IN THIS SECTION. Except for claims or disputes related to a party's intellectual property, each party agrees that any claim or dispute arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration before a single arbitrator, and not in a court of law. The arbitration will be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. A party who desires to initiate arbitration must provide the other party with a written demand for arbitration as specified in such rules. Unless the parties agree in writing otherwise, the arbitration will be conducted in the city of Los Angeles, California. The award and decision of the arbitrator will be conclusive and binding upon all parties, and judgment upon the award may be entered in any court of competent jurisdiction. The arbitrator will have the right to include in the award any relief which he or she deems proper in the circumstances, only to the extent permitted by the Agreement and Applicable Law, provided that the arbitrator will not have the authority to award exemplary or punitive damages. The arbitrator shall award the prevailing party its reasonable attorneys' fees and expenses. Each party hereby agrees that arbitration will be conducted on an individual, not a class-wide, basis and that any arbitration proceeding between you and Licensor will not be consolidated with any other arbitration proceeding involving Licensor or any other person or entity.
12. **Miscellaneous.** Any notice or other communication to Licensor under this Agreement shall be in writing and either delivered to the address in the Order Form in person (effective when received) or by an overnight commercial delivery service (effective one business day after sending). You agree that we may use the email address on the Order Form to send you notices under this Agreement (effective on the day sent). You may not assign, convey, delegate, lease, sublet, sublicense or otherwise transfer in any manner this Agreement, or any of your rights, remedies or obligations hereunder, in whole or in part, by operation of law or otherwise, to any third party without our prior written consent, and any purported assignment or transfer by you in violation of this provision is void. We may assign or otherwise transfer this Agreement, including any of our rights, remedies or obligations, in whole or in part, at any time. The Agreement will be binding upon each party and its successors and permitted assigns. We may subcontract any of the services in our sole discretion. The Agreement may only be modified, supplemented or amended in a writing signed by both parties. No failure or delay by a party in exercising any right, power, or privilege under the Agreement will operate as a waiver hereunder. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement, all of which will remain in full force and effect. This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules. Subject to the section entitled "**Arbitration**" above, the parties agree that any dispute arising from or related to the Agreement must be resolved exclusively in Federal or State courts located in Los Angeles County, California. The Agreement contains the entire understanding of the parties regarding its subject matter, and supersedes all prior and related contemporaneous agreements and understandings between the parties. When used herein, the term "including" shall be deemed to mean "including, without limitation".
13. **Definitions.**
- a) "**Access Date**" means the estimated date you will be able to access your Kitchen (your actual first day of access may be pushed back or moved up due to inspection, construction, cleaning or various other delays).
 - b) "**Applicable Laws**" means applicable federal, state, local, or other laws, rules, regulations, ordinances, or similar, including all applicable health and safety and employment and labor laws.
 - c) "**Changes**" means any alterations, modifications, changes, or improvements to the Licensed Space made by either you or us.
 - d) "**CPI Increase**" means the increase in the Consumer Price Index (CPI-U, All Urban Consumers, U.S. City Average, 1982/84=100) over the Base Index. The Base Index is that value published immediately prior to the Access Date.
 - e) "**Confidential Information**" means information or materials that: (a) are disclosed in writing or orally and are either marked or identified as "confidential" or "proprietary" by the disclosing party at the time of disclosure; or (b) the receiving party knows or has reason to know, by the nature or circumstances surrounding their disclosure, should be treated as confidential, including technical, business, marketing, product and financial information, in any form or format; provided, however, that Confidential Information does not include information that: (i) is in or enters the public domain through no act or omission of the receiving party; (ii) a party lawfully received from a third party without restriction on use or disclosure and without breach of a non-disclosure obligation or expectation of confidentiality; (iii) a party knew prior to receiving such Confidential Information from the party who owns it and without restriction as to use or disclosure; or (iv) a party independently developed without use of, or access to, any Confidential Information.
 - f) "**Indemnitees**" means Licensor and its parent, affiliates, and subsidiaries, and their respective employees, agents, directors, officers, shareholders, members, and representatives, and our other space licensees and their employees and contractors.
 - g) "**Kitchen Tech**" means the proprietary technology platform (including all related software, services and hardware) provided by our partner, which facilitates the Processing Services and enables interaction with Third Party Vendors while in the Licensed Space. Your use of the Kitchen Tech is subject to the terms of use available at <https://www.tryotter.com/documents/legal/us/tou/kl-073120>
 - h) "**Orders**" means orders for the delivery of food and beverage products placed by the end users of Third Party Vendors apps, websites or other means for ordering.
 - i) "**Permitted Use**" means the storing, preparing and packaging of your food and beverage products for delivery to your customers to fulfill Orders in the ordinary course of your restaurant and/or catering business.
 - j) "**Taxes**" means taxes, levies, duties or other similar government assessments of any nature, including value added, sales and use, or withholding taxes.
 - k) "**Third Party Vendors**" means third party delivery service platforms, point of sale vendors, online ordering platforms and/or other third party vendors or service providers that you may elect to use.
 - l)
14. **Beta Products.** We are constantly looking to evolve and create new products and services to make your use of the licensed Kitchen more efficient. As such, we developed new beta products and services (collectively, "**Beta Products**") which you can use in accordance with the terms below. Orders placed via the new Beta Products shall be included within the definition of Orders, and as such, all other terms in the Agreement shall apply to your use of these services and these Orders. The following outlines the Beta Products that may be made available.

- a) **Flipdish Kiosk and Online Ordering.** In the Delivery Hub, we may allow the public to access the Delivery Hub and place orders via a kiosk (“Kiosk”) and/or through an online ordering portal (“Web Platform” together with Kiosk “Digital Platform”). You agree to offer your merchandise and products for purchase via the Digital Platform. The public may be able to place orders via the Digital Platform for brands owned and operated by you or also brands owned and operated by us (if you’ve signed an agreement to comanage Future Foods brands).
- i) **Please note that the Digital Platform services are provided in partnership by Flipdish. To use the Digital Platform, you must accept and agree to Flipdish’s terms and conditions, which may be accessed when you sign on and access the Digital Platform.**
 - ii) For each Order made through the Digital Platform, in addition to the Processing Fee in the Kitchen Services Agreement or any other Flipdish specific fees, you agree to pay the additional fees outlined below:
 - (1) Program Fee of 4% of the Total Order, and
 - (2) Credit Card Processing Fee of 2.9% of the Total Order plus the applicable sales tax.
 - iii) You hereby grant us and our affiliates a worldwide, royalty-free, non-exclusive license to use Your IP for the purpose of providing the Digital Platform services. You will retain ownership of Your IP at all times. “Your IP” means your restaurant names, trademarks, other identifying indicators, your menu descriptions and pictures, and any marketing assets you provide us to help market your products.
 - iv) You agree not to access, collect, store, retain, transfer, use, disclose, or otherwise process in any manner Digital Platform Data (defined below), except as required to fulfill the food or product order and as otherwise required to perform your obligations and services under the Agreement. If you become aware of any unauthorized access to Digital Platform Data, you agree to immediately notify us, consult and cooperate with investigations and potentially required notices, and provide any information reasonably requested by us. You agree to implement and use security procedures, protocols or access credentials as reasonably requested by us and will be responsible for damages resulting from your failure to comply. You will be responsible for damages resulting from sharing your login credentials with unauthorized third parties or otherwise permitting unauthorized access to your account. You may not allow any third party to copy, modify, rent, lease, sell, distribute, reverse engineer, or otherwise attempt to gain access to the source code of the Digital Platform; damage, destroy or impede the services provided through the Digital Platform; transmit injurious code; or bypass or breach any security protection on the Digital Platform. Digital Platform Data shall mean any information that we provide or make accessible to you through the Digital Platform, including without limitation any personal information. “Digital Platform Data” shall mean any information that we provide or make accessible to you through the Digital Platform, including without limitation Personal Information. “Personal Information” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household.
 - v) In using the Digital Platform, you agree to: (i) continuously update your in-store menu, including the price of each item on such menu; (ii) continuously monitor your menu and store information on the Digital Platform, promptly make updates to reflect the most up-to-date products, pricing and other information or immediately notify us of any errors or changes in writing; (iii) accept all food or product orders placed from your then-current menu; (iv) prepare the orders for customer pickup at the designated time; (v) process in the order in which they are received; (vi) continuously update the pricing, availability, description, or other characteristics of the food or products; (vii) notify us if you closes earlier than your standard hours of operation or plans to close earlier than your standard hours of operation; provide the same utensils, napkins, bags and other materials that you would typically provide in a standard take-out or delivery order; and (viii) on an ongoing basis, review and confirm the transactions, fees and charges on orders via the Digital Platform, and promptly communicate to us and Flipdish of any inaccuracies.
 - vi) YOU ACKNOWLEDGE THAT FLIPDISH IS PROVIDING THE DIGITAL PLATFORM SERVICES, INCLUDING THE COLLECTION AND DISBURSEMENT OF FEES AND PAYMENTS. YOU HEREBY WAIVE, RELEASE AND DISCHARGE FOREVER FULLY AND UNCONDITIONALLY RELEASE US, AND OUR AFFILIATES, AGENTS, REPRESENTATIVES, SUBSIDIARIES FROM ALL DAMAGES, CLAIMS, CAUSES OF ACTION, LOSSES, DEMANDS, JUDGEMENTS, ATTORNEYS’ FEES ARISING FROM OR RELATED TO YOUR USE OF A BETA PRODUCT OR ANY ACTIONS OR INACTIONS OF FLIPDISH OR ANY OTHER THIRD PARTY PROVIDER THAT PROVIDES SERVICES UNDER THE DIGITAL PLATFORM. YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."
- b) **Notwithstanding anything to the contrary, we may modify or discontinue the Beta Products at any time, and we can suspend or terminate your use of the Beta Products at any time with or without notice to you. You agree that we may unilaterally modify the terms and conditions (including fees owed by you) regarding the use of the Beta Products. In such an event, we will provide you with at least thirty (30) days notice of any modification. By continuing to use the Beta Products, you agree to such modification.**
- c) The Beta Products may contain features, functionality or modules that will not be included in the final production version of the Beta Products, if released, or that will be marketed separately for additional fees. You expressly agree that we do not have an obligation to ensure the Beta Products function properly or at all. You hereby release Indemnitees for any losses, claims (known or unknown), expenses, or liability resulting from your use of the Beta Products. Further, you agree to indemnify, defend and hold Indemnitees harmless for any losses (including, without limitation, losses incurred in connection with any claims) arising from or related to your use of the Beta Products. This obligation shall survive any termination or expiration of the Agreement. YOUR USE OF THE BETA PRODUCTS IS AT YOUR OWN RISK. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, OUR AND OUR AFFILIATES TOTAL LIABILITY ARISING OUT OF OR RELATED TO YOUR USE OF THE BETA PRODUCTS SHALL BE LIMITED TO \$500. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.