

**Updated:** March 27, 2024  
**Please Read Carefully.**

## **Terms and Conditions**

These Terms and Conditions ("**Terms**") are between Back of House Services, LLC ("**Back of House**", "**we**", "**our**" and "**us**") and the vendor ("**Vendor**", "**you**" and "**your**") that accepts these Terms by (a) clicking the "I agree" button, (b) entering into an agreement ("**Vendor Agreement**") with Back of House, or (c) accessing and/or using the Platform (as defined below), and governs the referral relationship between Vendor and Back of House as further described herein, as well as access to and use of the Platform, including any data and content maintained therein and any features or functionalities thereof, and is effective as of the latest date Vendor first accepts these Terms ("**Effective Date**"). The term of these Terms shall commence on the Effective Date and continue thereafter until either party terminates these Terms and/or a Vendor Agreement in accordance with the terms and conditions set forth herein. The term of each Vendor Agreement will commence on the date set forth in the applicable Vendor Agreement and continue thereafter as set forth in such Vendor Agreement, unless otherwise terminated earlier in accordance with the terms and conditions of such Vendor Agreement or these Terms. Neither party will have any obligation with respect to any draft Vendor Agreement unless and until it is executed by both parties. Except as otherwise provided herein, if any of the terms or conditions of these Terms conflict with any of the terms or conditions of any Vendor Agreement, the terms or conditions of such Vendor Agreement will control solely with respect to the matters described in such Vendor Agreement.

YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THESE TERMS AND ANY VENDOR AGREEMENT. IF AN INDIVIDUAL IS ENTERING INTO THESE TERMS ON BEHALF OF A LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THE INDIVIDUAL HAS THE LEGAL AUTHORITY TO BIND SUCH ENTITY.

### **1. Description of Platform; Vendor Content; Security.**

1.1 The Platform. Back of House, through the use of one or more third-party service providers ("**Third-Party Service Providers**"), operates a digital marketplace platform at <https://backofhouse.io/vendors/> (the "**Platform**") to connect vendors that provide restaurant-related technology solutions ("**Products or Services**") with restaurant operators ("**Restaurant Operators**"). Vendor may enter into Vendor Agreement(s) as described herein, which will set forth the referral fees to be paid by Vendor to Back of House in connection with the sale of Vendor's Products and Services to Restaurant Operators through the Platform.

1.2 Vendor Content. During the course of Vendor's use of the Platform, Vendor may provide to Back of House descriptions including but not limited to the descriptions of its Products and Services, photos, pricing, files, data, communications, text messages, audio messages, videos, graphics, sounds and other content, as well as business logos, trademarks, service marks, brands, taglines and/or other Intellectual Property (collectively, "**Vendor Content**"). Vendor shall provide valid and accurate descriptions of its Products and Services to Back of House, provided that Back of House will have final approval over the information to be included on the Platform. Vendor hereby grants Back of House and/or its Third-Party Service Providers a worldwide, non-exclusive, irrevocable, royalty-free, transferable, and perpetual right and license to reproduce, access, process, copy, store, distribute, display and otherwise use the Vendor Content as necessary to provide the Platform and other services, and consent to the collection, use, transfer and processing of all Vendor Content by Back of House, its licensors and Third-Party Service Providers consistent with these Terms. Vendor represents and warrants that Vendor owns all Vendor Content or that Vendor has permission from the rightful owner to use each of the elements of Vendor Content, and that Vendor has all rights necessary for Back of House and/or its Third-Party Service Providers to use the Vendor Content in connection with the Platform and other services. Vendor and its licensors retain title, all ownership rights, and all Intellectual Property, in and to the Vendor Content and reserve all rights not expressly granted hereunder. Neither Back of House nor its Third-Party Service Providers shall be responsible for any unauthorized access to, alteration of, and/or the deletion, destruction, damage, loss and/or failure to store any Vendor Content. Notwithstanding anything herein to the contrary, Back of House and/or its Third-Party Service Providers may use, collect and/or disclose any Vendor Content in an anonymized, de-identified, aggregated form (including without limitation, the number of records in the platform, the types of transactions, configurations, and reports processed

in the Platform, and the performance of the Platform) that is derived from or created through the use of the Platform by Vendor and/or its authorized users and shall own all right, title and interest therein.

### 1.3 Security.

1.3.1 Because Back of House uses Third-Party Service Providers to provide the Platform and/or related services, Vendor acknowledges and agrees that Back of House shall have no liability related thereto. In particular, Vendor acknowledges and agrees that Back of House uses Third-Party Service Providers to host the Platform and store Vendor Content and the protection of such data will be in accordance with such third party's safeguards for the protection of the security, confidentiality, and integrity of Vendor's data. Back of House is not responsible for any unauthorized access to, alteration of, and/or the deletion, destruction, damage, loss and/or failure to store Vendor Content. Vendor is responsible for taking appropriate steps to maintain security, protection and backup of any and all Vendor Content. Vendor is solely and exclusively responsible for engaging with and providing its Products and Services to restaurant operators. Back of House is not responsible for any performance and/or quality claims associated with any third-party and/or products on the Platform nor shall Back of House have any liability related thereto.

1.3.2 Back of House and its licensors and Third-Party Service Providers may process, store and use account data wherever they do business to enable product features, administer use, personalize user experience, and otherwise support or improve Vendor's use of the Platform. Account data is information about Vendor or its authorized users (such as user names, email addresses and call log records) provided to or collected by Back of House or its Third-Party Service Providers (including through tracking and other technologies, such as cookies) which is processed in accordance with Back of House's Privacy Notice. Any account data processed in connection with the Platform may be transferred to and stored in the United States and/or Canada. Use of the Platform by Vendor is deemed consent to this transfer.

## 2. **Use of the Platform.**

### 2.1 Right to Use; Accounts.

2.1.1 Subject to the terms and conditions set forth in these Terms and the Vendor Agreement(s) (if applicable), Back of House grants Vendor the right to access and use the Platform, and will include Vendor and Vendor's Products and Services on the Platform during the term set forth in the Vendor Agreement(s) (if applicable) in accordance with the terms and conditions set forth herein and therein.

2.1.2 The Platform may be accessed and used by Vendor's authorized users, provided that (a) Vendor remains responsible for compliance with these Terms by each authorized user, and (b) any use of the Platform by each authorized user is solely for Vendor's benefit. Each individual account for an authorized user accessing the Platform through Vendor's account is referred to herein as a "**User Account.**" Each User Account is protected by a password selected by the authorized user during registration. Each authorized user is responsible for maintaining the confidentiality of his or her password, and a User Account may not be used without permission from its authorized user. Back of House is not responsible for any loss or damage arising from an authorized user's failure keep his or her password secure or confidential. Authorized users must notify Back of House of any unauthorized use of their password and any other breach of security, and authorized users must ensure that they exit their User Account at the end of each session.

2.1.3 Vendor is expected to log into the Platform frequently (no less than once every two weeks) to update the status of its sales of Products and Services and to ensure that all Vendor Content is up to date. Back of House reserves the right to suspend and/or terminate Vendor's access to the Platform if Vendor fails meet this requirement three times in any calendar quarter.

2.2 Ownership of Platform. The Platform contains proprietary and confidential information of Back of House and its Third Party Service Providers that is protected by applicable United States and foreign laws and treaties. As between the parties, the Platform and all intellectual property rights therein, are and will remain the sole property of Back of House and/or its Third-Party Service Providers, and no rights are granted to Vendor with respect to the Platform, or the intellectual property rights therein, other than the limited rights and licenses specified in these Terms. Back of House and/or its Third-Party Service Providers retains all rights, title, interest and ownership of, any and all Intellectual Property and proprietary rights with respect to the Platform, and any other materials provided or made available to Vendor by Back of House in connection with the Platform and the use thereof including without limitation any comments, suggestions, ideas, enhancement requests, feedback, recommendations or other

information provided by Vendor or its users relating thereto. Vendor will not (and will not allow any authorized user or third party to) remove any copyright or other proprietary or product identification notices contained in or displayed by the Platform or contained in any written material which may relate to the Platform. **“Intellectual Property”** means all intellectual property including without limitation all patents, inventions, trademarks, service marks, trade names and trade dress, copyrights and copyrightable works, trade secrets, know-how, design rights and database rights. Except for the rights expressly granted to Vendor in these Terms, the Platform and other materials that are provided or made available to Vendor in connection with the Platform, and all modifications, compilations, and derivative works thereof, and all Intellectual Property and proprietary rights pertaining thereto, are and shall remain the property of Back of House and its respective licensors (and to the extent any rights of ownership in any such materials, works, or rights might, for any reason, otherwise vest in Vendor, Vendor hereby assigns such ownership rights to Back of House).

2.3 Use of the Platform; Maintenance. Vendor is solely responsible for obtaining, maintaining, installing and supporting all ‘Internet’ access, computer hardware, software, third-party applications, telecommunications capabilities, personal computers, mobile devices and other equipment, products and services needed for it and its authorized users to access and/or use the Platform. Vendor shall ensure that its network, systems, software and third-party applications comply with the relevant specifications provided by Back of House from time to time and shall provide Back of House with information and access as may be required by Back of House in order to provide the Platform. While Back of House uses reasonable efforts to keep the Platform accessible, the Platform may be unavailable from time to time. Vendor understands and agrees that there may be interruptions to the Platform due to circumstances both within Back of House’s control (e.g., routine maintenance) and outside of Back of House’s control. The Platform may be modified, updated, suspended and/or discontinued at any time without notice and/or liability. Occasionally there may be information on the Platform that contains typographical errors, inaccuracies, and/or omissions that may relate to services, information, and data. Back of House reserves the right to (i) correct any errors, inaccuracies, and/or omission, and/or (ii) make changes to content, descriptions, service and/or other information without obligation to issue any notice of such changes, except as prohibited by law. Back of House also reserves the right to revise, suspend and/or terminate an event and/or promotion at any time without notice and without liability. Back of House may make available to Vendor updates, patches and bug fixes with respect to the Platform as may, from time to time, be developed and made generally available by Back of House to its clients. Back of House reserves the right to modify and/or discontinue, temporarily and/or permanently, the Platform and/or any features or portions thereof without prior notice. Vendor agrees that Back of House will not be liable for any modification, suspension and/or discontinuance of the Platform or any part thereof. Back of House also retains the right to create limits on use and storage at its sole discretion at any time without prior notice to Vendor. By continuing to access or use the Platform after any such updates or modifications become effective, Vendor agrees to be bound by the revised Terms.

#### 2.4 Illegal Use.

2.4.1 Vendor shall not access, store, distribute or transmit any Viruses or any material during the course of its use of the Platform that (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, (ii) facilitates illegal activity, and/or (iii) causes damage or injury to any person or property. **“Virus”** shall mean any thing or device (including without limitation any software, code, file or program) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device, prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise) and/or adversely affect the user experience, including worms, ‘Trojan’ horses, viruses and other similar things or devices. Notwithstanding anything herein to the contrary, Back of House reserves the right, without liability to the Vendor, to disable or suspend the Vendor’s access to the Platform in the event (a) of any breach or anticipated breach of these Terms, (b) Vendor and/or its users’ access to and/or use of the Platform disrupts or poses a security risk to the Platform and/or any other user, may harm Back of House’s systems and/or any provider of any third-party services and/or may subject Back of House and/or any third-party to liability, (c) Vendor and/or its authorized users are using the Platform for fraudulent or illegal activities, and/or (d) Back of House’s continued provision of any of the Platform to the Vendor and/or its users is prohibited by applicable law.

2.4.2 Vendor is responsible for its conduct and the conduct of its authorized users when using the Platform, even if any such conduct occurs without Vendor’s knowledge or permission. Vendor is also responsible for (i) any Vendor

Content submitted or contributed to the Platform by Vendor or its authorized users, and (ii) the accuracy, content and legality of all Vendor Content and data displayed, transmitted, distributed or stored by or on behalf of Vendor and its authorized users when using the Platform. Vendor is solely responsible for ensuring that Vendor's use of the Platform and all Vendor Content complies with Vendor's own privacy policies and all applicable local, state, federal and international laws, regulations and conventions.

2.5 **Prohibited Conduct.** Except as expressly permitted hereunder, Vendor shall not, directly or indirectly, without the express, prior written consent of Back of House (i) use or permit the use of, reproduce and/or otherwise duplicate, disclose, distribute, publish, modify, mirror, encumber, time-share, license, sublicense, rent, lease, sell, and/or transfer the Platform and/or any portion thereof, and/or any of Vendor's rights thereto, (ii) merge the Platform or any portion thereof with any other program and/or materials, (iii) reverse engineer, decompile, decode, adapts, disassemble, extract, and/or otherwise derive and/or attempt to derive the source code of the Platform and/or any other compiled software provided or made available by Back of House hereunder, (iv) adapt, translate, localize, port, or otherwise modify the Platform and/or any other compiled software provided or made available by Back of House hereunder, (v) remove, obliterate, and/or cancel from view any copyright, trademark, and/or other proprietary and/or confidentiality notice and/or legend appearing on and/or in any materials provided or made available by Back of House hereunder, and/or fail to reproduce any such notice and/or legend on any copy made of any such materials, (vi) take any action that materially interrupts and/or interferes with, or that might reasonably have been expected to materially interrupt and/or interfere with, the Platform, Back of House's business operations and/or other users, (vii) copy or imitate part or all of the design, layout and/or look and feel of the Platform in any form or media or create any derivative works based on the Platform, (viii) ) access the Platform in order to (a) build a competitive product or service, or (b) copy any content, features, functions or graphics of the Platform, and/or (viii) permit any other user, person and/or entity to engage in any of the foregoing conduct. In the event of Vendor's breach of this Article 2, Back of House may terminate Vendor's access to the Platform immediately without liability.

### **3. Fees, Invoices, Taxes and Expenses.**

3.1 **Fees.** Vendor agrees to pay Back of House the referral fees set forth in duly executed Vendor Agreement(s). If Vendor has not executed a Vendor Agreement, then the following referral fees shall apply: (i) a fee of \$100 for each new customer demonstration performed by Vendor; and (ii) a fee of 15% of the total sales price of all Products and Services sold by Vendor to each new customer during the one (1) year period commencing on the date a Product or Service is first sold to such customer (the "**Payment Period**"). For purposes of these Terms, (i) a "new customer" shall be a new paying user of Vendor's Products or Services that has not purchased Vendor's Products and Services during the prior six (6) month period, and (ii) a "demonstration" shall be the first call between vendor and a new customer during which Vendor's Products or Services are shown, demonstrated and/or explained. Unless otherwise set forth in the Vendor Agreement(s) (if applicable), on or before the fifth day of each calendar month, Vendor shall provide to Back of House a report setting forth in detail the new customer demonstrations provided and Products or Services sold during the previous month and the referral fees due to Back of House for the previous month. Unless otherwise set forth in the relevant Vendor Agreement(s) (if applicable), Vendor shall pay all referral fees due within thirty (30) days from the date of such report. All fees due and payable by Vendor to Back of House under these Terms and any Vendor Agreement(s) must be paid in full without any deduction, set-off, counterclaim or withholding of any kind unless required by law. The fees shall be in U.S. dollars. All fees due and payable under these Terms are exclusive of taxes, which will be added at the prevailing rate from time to time. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. In the event payment of fees is not made on or before the date such payments are due, Back of House may, in its sole discretion, suspend access to the Platform until payment is made in full without incurring any liability.

3.2 **Audit.** At any time upon notice to Vendor, Back of House and/or its representatives may audit Vendor's books and records relating to Vendor's demonstrations and Vendor's sales of Products and Services to Restaurant Operators to confirm the accuracy of referral fees due from Vendor. In the event that such audit reveals that Vendor has underpaid any fees due to Back of House, Vendor shall promptly make payment of all amounts due. If the audit reveals that such underpayment is more than 5%, then Vendor shall also reimburse Back of House for the cost of the audit.

### **4. Term; Termination.**

4.1 Term. The term of these Terms shall commence on the Effective Date and continue thereafter until either party terminates these Terms and/or Vendor Agreement(s) in accordance with the terms and conditions set forth herein.

4.2 Termination for Breach. If a party materially breaches these Terms and/or any Vendor Agreement (the “**Defaulting Party**”), and the Defaulting Party does not cure such breach within thirty (30) days after its receipt of written notice of material breach, the non-defaulting party may terminate these Terms and/or the relevant Vendor Agreement upon written notice to the Defaulting Party. Termination of a Vendor Agreement and/or these Terms will be without prejudice to any other rights and remedies that the non-defaulting party may have under these Terms or at law or in equity.

4.3 Termination for Convenience. Back of House may terminate these Terms, any Vendor Agreement and/or the Platform at any time and/or suspend Vendor’s account at any time and for any reason. Unless otherwise agreed in a Vendor Agreement, Vendor may terminate these Terms and/or any Vendor Agreement at any time upon thirty (30) days prior written notice to Back of House.

4.4 Effect of Termination. Upon termination of these Terms and/or any Vendor Agreement, Vendor will immediately pay all fees due to Back of House through the effective date of termination. In addition, notwithstanding any termination of these Terms and/or any Vendor Agreement, Vendor shall continue to submit reports to Back of House and pay all fees due resulting from the sale of Products and Services to new customers through the end of the applicable Payment Period for each such customer. In the event of any termination, (a) Vendor’s right to use the Platform will terminate, and Vendor will cease, and will cause its authorized users to cease, any and all use of the Platform; (b) Vendor will have no further access to any Vendor Content stored on the Platform, and Back of House, in its sole discretion, may remove all or any portion of Vendor Content from the Platform; (c) you will return to us all copies of Confidential Information in your possession or within your control, or, with our prior written consent, you may destroy such Confidential Information; provided that the Confidential Information is (i) destroyed in accordance with applicable law, rule or regulation and (ii) is rendered unreadable, undecipherable and otherwise incapable of reconstruction, in which case an officer of yours will certify in writing to us that all such Confidential Information has been so destroyed.

## 5. **Confidentiality.**

During the term of these Terms, you may have access to certain information about Back of House that is not generally known to others including any and all information relating to Back of House and its business including without limitation: its business, legal, and operational practices, financial, technical, commercial, marketing, competitive advantage and/or other information concerning the business and affairs, partnerships and potential partnerships, information about Restaurant Operators and Products and Services, business model, fee structures, employees, funding opportunities, metrics, know-how, systems, procedures and techniques that have been or may hereafter be provided or shown to you, regardless of the form of the communication and the terms and conditions of these Terms and applicable Vendor Agreement (“**Confidential Information**”). You agree not to use or disclose the Confidential Information, and may disclose the Confidential Information only as necessary and appropriate to perform your obligations hereunder and to receive the benefit of the Platform in accordance with these Terms to your officers, directors, employees, agents and subcontractors (and their employees) (“**Representatives**”) who have a need to know such Confidential Information solely in connection with these Terms and applicable Vendor Agreement. You will cause such Representatives to comply with these Terms and will assume full responsibility for any failure to comply with the terms of these Terms. You will not transfer or disclose any Confidential Information to any third party without our prior written consent and without such third party having a contractual obligation (consistent with this Article) to keep such Confidential Information confidential. You will not use any Confidential Information for any purpose other than to perform your obligations under these Terms. Confidential Information does not include information that: (i) is obtained by you from the public domain without breach of these Terms and independently of your knowledge of any Confidential Information; (ii) was lawfully and demonstrably in your possession without use of or reference to our Confidential Information; (iii) is independently developed by you without use of or reference to our Confidential Information; and/or (iv) becomes known by you from a third party independently of your knowledge of the Confidential Information and is not subject to an obligation of confidentiality. If you are requested or required to disclose any of our Confidential Information under a subpoena, court order, statute, law, rule, regulation or other similar requirement (a “**Legal Requirement**”), you will, if lawfully permitted to do so, provide prompt notice of such Legal Requirement to us so that we may seek an appropriate protective order or other

appropriate remedy or waive compliance with the provisions of these Terms. If we are not successful in obtaining a protective order or other appropriate remedy and you are legally compelled to disclose such Confidential Information, or if we waive compliance with the provisions of these Terms in writing, you may disclose, without liability hereunder, such Confidential Information solely to the extent necessary to comply with the Legal Requirement. Each party acknowledges that a breach of this Article may result in irreparable and continuing damage to us for which monetary damages may not be sufficient, and agrees that we will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or all other equitable relief, and such further relief as may be proper from a court of competent jurisdiction. The obligations with respect to Confidential Information as set forth in this Article shall survive termination or expiration of these Terms.

## **6. Representations and Warranties.**

6.1 Mutual Representations and Warranties. Each party represents and warrants that it (i) is a duly organized, validly existing and in good standing under the laws of its state of organization; and (ii) has the power and authority to enter into these Terms.

6.2 Vendor Representations, Warranties, and Covenants. Vendor represents, warrants and covenants that (a) it shall obtain, at its sole cost and expense, all licenses, permits, and approvals as may be required for the operation of Vendor's business; (b) it shall comply with all applicable laws, rules, regulations, self-regulatory requirements, and industry best practices, including but not limited to: the federal "CAN-SPAM Act of 2003; all applicable privacy laws and regulations; import, export and economic sanction laws and regulations; and those laws and regulations applicable to the Products and Services, any engagement with restaurant operators, technology development, sales and marketing activities, or otherwise; (c) it will abide by Back of House's privacy notice located at [[https://7620253.fs1.hubspotusercontent-na1.net/hubfs/7620253/Back%20of%20House%20Assets/Downloadable%20Content/BOH\\_Privacy\\_Policy.pdf](https://7620253.fs1.hubspotusercontent-na1.net/hubfs/7620253/Back%20of%20House%20Assets/Downloadable%20Content/BOH_Privacy_Policy.pdf)]

("Privacy Notice"), as may be changed from time to time by Back of House in its sole and absolute discretion, and which such then-current version shall be incorporated herein by reference; (d) it has all necessary ownership, rights, authority, capacity, and licenses to perform its obligations under these Terms as contemplated hereby and to provide the Products and Services; and (e) the Products and Services (i) do not and will not infringe on any third party's copyright, trade mark, trade secret, patent, or other Intellectual Property, proprietary, or other rights; (ii) are free from viruses and do not and will not contain any matter which is injurious to the end users of such technology solutions or their property, including bugs, viruses, Trojan horses, spyware, malware, or other programming designed to interfere with the normal functioning of the technology solutions or any end user's networks, equipment, programs, or data; and (iii) conform to any description which was provided to Back of House, the Restaurant Operators and/or any other uses on the Platform.

6.3 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER BACK OF HOUSE NOR ITS THIRD-PARTY SERVICE PROVIDERS MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THESE TERMS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND/OR FITNESS FOR A PARTICULAR PURPOSE. THE PLATFORM AND ANY RELATED SERVICES AND MATERIALS ARE PROVIDED ON AN "AS-IS" BASIS. NEITHER BACK OF HOUSE NOR ITS THIRD-PARTY SERVICE PROVIDERS REPRESENTS, WARRANTS OR COVENANTS THAT THE PLATFORM, SERVICES AND/OR MATERIALS (INCLUDING, BUT NOT LIMITED TO, ANY DOCUMENTATION, REPORTS, ADVICE AND RECOMMENDATIONS, IN ANY FORM) PROVIDED IN CONNECTION WITH THESE TERMS, ARE OR WILL NECESSARILY ALWAYS BE COMPLETELY ACCURATE, CURRENT, COMPLETE AND/OR CONTINUOUSLY AVAILABLE. NEITHER BACK OF HOUSE NOR ITS THIRD-PARTY SERVICE PROVIDERS REPRESENTS, WARRANTS OR COVENANTS THAT THE PLATFORM, SERVICES AND/OR MATERIALS WILL BE AVAILABLE WITHOUT INTERRUPTION OR TOTALLY ERROR-FREE, OR THAT ALL DEFECTS (INCLUDING, BUT NOT LIMITED TO, MINOR OR COSMETIC DEFECTS THAT DO NOT SIGNIFICANTLY AND ADVERSELY AFFECT FUNCTIONALITY OR FEATURES) WILL BE CORRECTED. NEITHER BACK OF HOUSE NOR ITS THIRD-PARTY SERVICE PROVIDERS IS RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER LOSS OR DAMAGE RESULTING FROM (A) TRANSFER OF DATA OVER COMMUNICATION NETWORKS SUCH AS THE INTERNET AND/OR (B) INABILITY TO ACCESS OR GET ACCURATE DATA FROM THIRD-PARTY SYSTEMS AND/OR APPLICATIONS THAT THE SERVICES ARE DEPENDENT ON.

7. **Indemnification.** Vendor shall defend, indemnify, and hold harmless Back of House, its Third-Party Service Providers, and all Restaurant Operators, and each of their parents, subsidiaries, and affiliates, and each of their respective directors, officers, agents, and employees, from and against any and all actions, suits, proceedings, claims,

demands, liabilities, losses, costs and expenses, including legal costs and attorneys' and experts' fees, arising out of or related to: (i) the acts, omissions, negligence and/or willful misconduct of Vendor or any of its representatives; and/or (ii) Vendor's and/or its representatives' breach or alleged breach of any terms and/or conditions of these Terms. Back of House shall promptly notify Vendor of any such claim; provided, however, no delay or failure to so notify Vendor shall relieve Vendor of its obligations under these Terms except to the extent that Vendor has suffered actual and material prejudice by such delay or failure to notify. Vendor shall assume control over the defense and settlement of the claim using counsel reasonably acceptable to Back of House; provided, however, Vendor shall keep Back of House fully apprised at all times as to the status of the defense and Vendor shall obtain the prior written approval of Back of House before entering into any settlement of such claim imposing financial or non-financial obligations or restrictions on Back of House or constituting an admission of guilt or wrongdoing by Back of House. Back of House is entitled to employ counsel at its own expense to participate in the handling of the claim.

**8. Limitation of Liability.** BACK OF HOUSE'S TOTAL AND CUMULATIVE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF AND/OR IN CONNECTION WITH THESE TERMS AND/OR ANY VENDOR AGREEMENT SHALL IN NO EVENT EXCEED THE FEES PAID BY VENDOR TO BACK OF HOUSE UNDER THE APPLICABLE VENDOR AGREEMENT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OR ANY VENDOR AGREEMENT, IN NO EVENT WILL BACK OF HOUSE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL AND/OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, BACK OF HOUSE'S THIRD-PARTY SERVICE PROVIDERS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTACT, TORT, OR OTHERWISE, AND WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL, OR FOR ANY LOSS OF PROFITS, REVENUE, DATA OR DATA USE HEREUNDER. VENDOR ACKNOWLEDGES THAT THE AMOUNT OF FEES PAYABLE BY VENDOR TO BACK OF HOUSE HEREUNDER REFLECT THE ALLOCATION OF RISK SET FORTH IN THESE TERMS AND THAT BACK OF HOUSE WOULD NOT HAVE ENTERED INTO THESE TERMS WITHOUT THE LIMITATIONS ON LIABILITY CONTAINED IN THIS SECTION. THESE LIABILITY LIMITATIONS APPLY EVEN IF CONTRACTUAL REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

**9. Independent Contractor.** The relationship between the parties to these Terms is and shall be that of an independent contractor. The parties acknowledge and agree that nothing in these Terms shall be construed to create or imply a partnership, joint venture, agency relationship or contract of employment. Neither party shall have the authority to make any statement, representation nor commitment of any kind, or to take any action that shall be binding on the other party.

**10. Notices.** Any notice either party desires or is required to give to the other party must be in writing and either served personally or sent by pre-paid, first-class mail or overnight delivery to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice will be deemed communicated upon receipt or in four (4) days from the date-stamped time of mailing if mailed as provided in this Article, whichever first occurs.

To Back of House:

Back of House Services, LLC  
Attn: Director of Operations  
Address: 1 N. Dearborn, Suite 1750  
Chicago, IL 60602  
Email: [nick@relishworks.com](mailto:nick@relishworks.com)

To Vendor:

See Vendor Agreement

**11. Mediation & Governing Law.**

**11.1 Mediation.** We want to address your concerns without filing a formal legal case. Before filing a claim against us, you agree to try to resolve the dispute informally by contacting us at [nick@relishworks.com](mailto:nick@relishworks.com). If we cannot resolve the dispute within thirty (30) days after receipt of your notice, you agree to resolve any claims related to these Terms through mediation in accordance with generally acceptable mediation process such as 'JAMS'. Notwithstanding anything herein to the contrary, you can opt-out and decline these Terms to mediate by contacting us within thirty

(30) days from the date you initially accepted these Terms. In such event, you must write us at Back of House Services, LLC, 1 North Dearborn, Suite 1750, Chicago IL 60602. If you opt out, neither party can require the other party to participate in a mediation proceeding. Any such controversy and/or claim shall be mediated on an individual basis, and shall not be consolidated in any mediation with any claim or controversy of any other party. All information relating to and/or disclosed by any party in connection with the mediation of any disputes shall be treated by the parties, their representatives, and the mediator as proprietary business information and shall not be disclosed without prior written authorization of the disclosing party. The mediation shall be held in Cook County, Illinois or any other location we agree to. Each party shall bear the burden of its own counsel fees incurred in connection with any mediation proceedings. Notwithstanding anything herein to the contrary, the request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, and other equitable remedies, including specific performance, shall not be subject to mediation, and any claims related to Back of House's Intellectual Property and/or Confidential Information shall be adjudicated only by the state or federal courts in Cook County, Illinois.

**11.2 Governing Law.** These Terms will be governed by, and construed in accordance with, the internal laws of the State of Illinois, without regard to its choice of laws principles. Notwithstanding anything herein to the contrary, any action related to or arising from these Terms related to Back of House's Intellectual Property and/or Confidential Information shall take place exclusively in the courts situated in Chicago, Illinois and the parties hereby submit to the venue of the courts situated therein.

## **12. Miscellaneous.**

You may not assign or transfer your rights or obligations hereunder without the prior written consent of Back of House. The terms and conditions of these Terms will inure to the benefit of, and shall be binding upon, each party's successors and permitted assigns. Notwithstanding any other provision of these Terms, neither Vendor nor Back of House shall be responsible for the delays or failures to the obligations related to the execution of these Terms, where the failure or delay arises from any cause or causes beyond its reasonable control, which may include without limitation fortuitous acts, wars, terrorism, civil disorders, strikes, labor litigation, labor suspension, fire, earthquakes, elements of nature, epidemics, communication line failures, power failures, acts of God or rebellions or any other similar cause ("**Force Majeure Event**"). In the event of a Force Majeure Event, the parties agree to meet and discuss how to resolve the issue. The headings and titles of the paragraphs of these Terms are not part of these Terms, but are for convenience only and are not intended to define, limit or construe the contents of the provisions contained herein. The recitals are hereby incorporated into the body of these Terms for all intents and purposes as if fully set forth herein. No waiver by any party of any of the provisions of these Terms shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from these Terms shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. If any term or provision of these Terms, or the application thereof to any person or circumstance, is contrary to law or is adjudged by any court or government agency of competent jurisdiction to be invalid, void or unenforceable, such term or provision will be deemed deleted from these Terms and the remaining provisions and any application thereof continue in full force and effect. Further, the parties hereto agree to substitute for such invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Back of House may amend these Terms in its sole discretion, at any time, in whole or in part. If Back of House makes any changes and/or modifications, Back of House will post notice of the change and/or modification and change the 'Updated' date set forth above. Vendor agrees that any Vendor Agreement executed following changes and/or modifications will constitute Vendor's acceptance of such changes and/or modifications. Except with respect to rights and remedies expressly declared to be exclusive in these Terms, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times, of the other rights or remedies for the same default or any other default by the other party. Any provision of these Terms which, by its nature, would survive termination of these Terms, will survive any such termination of these Terms. These Terms, each Vendor Agreement, and Back of House's Privacy Notice constitute the complete agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the parties. If any one or more of the provisions of these Terms are for any reason held to be invalid, illegal or unenforceable by a court of



competent jurisdiction, the remaining provisions of these Terms will be unimpaired and will remain in full force and effect.