

Uber Eats – General Terms (Australia)

KEY PRINCIPLES

- Uber owns the rights to the Uber Tool which can connect restaurants with customers and Delivery Partners for the purpose of ordering and delivering Items. Portier Pacific provides Uber Services which are related to the use of the Uber Tool.
- You will not receive Uber Services or access to the Uber Tool unless:
 - o Uber and Portier Pacific approve your Order Form; and
 - o all conditions referenced in section 1.2 of the General Terms are satisfied.
- When you agree to supply Items to customers via the Uber Eats App, you are contracting directly with those customers when you accept their order.
- When you engage a Delivery Partner via the Uber Tool to provide delivery services on your behalf, you are contracting directly with that Delivery Partner when that Delivery Partner accepts your delivery request.
- You are responsible for complying with the Agreement, which requires you to (among other things) obtain licences and approvals, set the price of your Items, ensure the quality of your Items and ensure Item descriptions and photos on the Uber Eats App are accurate and not misleading.
- Uber and Portier Pacific may change this Agreement from time to time, but will tell you before any change is made that detrimentally affect your rights. You can end this Agreement as a result of a change without penalty.
- Please read the Agreement carefully. It includes information as to your responsibilities, how you, Uber and Portier Pacific may change or end the Agreement, what to do if there is a problem and important information about insurance, liability and refunds.

These General Terms apply to any Order Form entered into between the merchant specified in that Order Form (**Merchant** or **you**), Uber Portier B.V. (**Uber**) and Portier Pacific Pty Ltd (**Portier Pacific**) (together, the **parties**).

PART 1 - STRUCTURE OF THE AGREEMENT

This part describes how an Agreement is formed between you, Uber and Portier Pacific and the documents that make up the Agreement. It also sets out the steps you need to take before you are able to use the Uber Tool and the Uber Services, and how long the Agreement lasts.

1. STRUCTURE OF THE AGREEMENT

1.1 How the Agreement works

- (a) If Uber and Portier Pacific approve your Order Form, you enter into an agreement with Uber and Portier Pacific (the **Agreement**). The Agreement will consist of the following documents:

No.	Document	Description
1.	the Order Form	Details about you, pricing arrangements and special terms that apply to the relationship between you, Uber and Portier Pacific.
2.	these General Terms	Standard terms that apply to the Uber Services and/or the Uber Tool.

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| 3. | the Uber Policies | Standard policies that apply to the use of the Uber Services and/or the Uber Tool, as amended from time to time, including the Community Guidelines and the Restaurant Refund Policy. |
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- (b) The document that is higher in the above list will apply if there is any conflict between those documents.

1.2 Conditions Precedent

- (a) Uber and Portier Pacific will not provide any Uber Services or the Uber Tool to you unless you have met the following conditions (**Conditions Precedent**):

No.	Category	Condition
1.	Licence or permit to operate a food business	If you propose to make food Items available via the Uber Eats App from your location, and if requested by Portier Pacific, you have provided Portier Pacific with a valid and up to date licence or permit as required by Law to operate a food business in the local council area in which your location operates.
2.	Licence or permit to sell and deliver (if applicable) alcohol Items	If you propose to make alcohol Items available via the Uber Eats App from your location, you have provided Portier Pacific with a valid and up to date licence or permit as required by Law to sell and deliver (if applicable) alcohol from those locations.
3.	Completion of onboarding requirements	You have provided all documents or other information requested by Uber or Portier Pacific for your onboarding to the Uber Tool and Uber and Portier Pacific have approved the addition of your location(s) to the Uber Eats App (at their discretion).

- (b) You have no right to receive any Uber Services or use the Uber Tool unless and until Portier Pacific confirms that the Conditions Precedent have been met. If you have not met the Conditions Precedent within 90 days after the Effective Date, this Agreement will automatically terminate.

2. TERM OF THE AGREEMENT

- (a) Your Agreement will start on the Effective Date set out in the Order Form.
- (b) The Agreement will continue for one year from the Effective Date (the **Initial Term**) and will automatically renew for successive one year periods (each, a **Renewal Term**).
- (c) The Agreement may end earlier, if it is terminated by you, Portier Pacific or Uber in accordance with the Agreement.

PART 2 – ROLES AND RESPONSIBILITIES, FEES AND PAYMENT

This part describes each party's role and responsibilities under this Agreement. This includes your obligations in relation to the price and quality of Items.

This part also sets out how the fees and charges are calculated, including the fees payable to Portier Pacific, the fees payable to your Delivery Partners, the amount that you receive and the circumstances where you are responsible for the cost of refunds provided to your customers.

3. SERVICES

3.1 General description

- (a) If you satisfy all Conditions Precedent referenced in section 1.2:
 - (i) Portier Pacific will provide certain services to you (the **Uber Services**); and
 - (ii) Uber will grant you a licence to use its tablet, mobile and web application during the Term (the **Uber Tool**).
- (b) Uber (or its Affiliate) may also make the following applications available to your customers and Delivery Partners:
 - (i) mobile and web applications for your customers (**Uber Eats App**); and
 - (ii) mobile applications for Delivery Partners (**Uber Driver App**).
- (c) Together, the Uber Services and Uber Tool enable you to:
 - (i) seek, receive and fulfil requests for Items from your customers who order from you using the Uber Eats App; and
 - (ii) if you offer Delivery Items, connect with independent providers of delivery services to deliver Items to your customers on your behalf (**Delivery Partners**).
- (d) To receive the Uber Services and use the Uber Tool, you must make your approved Items available via the Uber Eats App during your normal business hours or as otherwise agreed by the parties.

3.2 Service scope

- (a) As part of the Uber Services provided to you, Portier Pacific will:
 - (i) provide lead generation services to you;
 - (ii) provide technology services to you via the Uber Tool;
 - (iii) if you offer Delivery Items and provided you have supplied all relevant business and taxation information in the Uber Tool, issue receipts and invoices to your customers on your behalf for Delivery Items sold by you via the Uber Eats App;
 - (iv) respond to complaints on your behalf about issues arising in connection with Items sold by you via the Uber Eats App;
 - (v) manage refunds to your customers in relation to Items sold by you via the Uber Eats App;
 - (vi) if you offer Delivery Items, connect you with Delivery Partners via the Uber Tool;
 - (vii) if you offer Delivery Items, set policies and standards for Delivery Partners to access the Uber Driver App;
 - (viii) facilitate the performance of the services set out in section 3.2(b); and
 - (ix) perform any other services or activities described in your Order Form.
- (b) As part of the Uber Services, Portier Pacific will also facilitate:
 - (i) the collection of payments from your customers on your behalf;

- (ii) the processing of payments to you;
- (iii) if you offer Delivery Items, the processing of payments to your Delivery Partners on your behalf; and
- (iv) the processing of refunds to your customers and wholly or partially deducting refunds from payments owed to you.

3.3 Promotional activities

- (a) As part of the Uber Services, Portier Pacific and its Affiliates will display the availability of your Items on the Uber Eats App. Portier Pacific and its Affiliates may also promote your Items in various ways, such as on Portier Pacific's and its Affiliates' social media channels, websites, online and print advertisements and blogs.
- (b) You understand that:
 - (i) Portier Pacific and its Affiliates are not obliged to display your Items on the Uber Eats App at all times;
 - (ii) neither Portier Pacific nor its Affiliates are obliged to promote your Items; and
 - (iii) Portier Pacific and its Affiliates may remove Items from the Uber Eats App in the circumstances described in this Agreement.
- (c) Portier Pacific may authorise you to use automated tools that allow you to feature Promotions to your customers through the Uber Eats App. All Promotions will be subject to Portier Pacific's prior written approval. You are the only person responsible for fulfilling and, subject to technical and functional limitations of the automated tools, defining the Promotions offered by you to your customers. Portier Pacific may deduct the costs of the Promotions from your Item Payment (described in section 5.5(a)).

3.4 Virtual Restaurant (Delivery)

- (a) This section 3.4 applies if a "Virtual Restaurant (Delivery)" Service Fee is specified on your Order Form.
- (b) You agree to make your Delivery Items available to your customers via the Uber Eats App from your Virtual Restaurant location.
- (c) You must prepare and sell all of your Delivery Items from your Virtual Restaurant at your fully-licensed kitchen premises.

3.5 Reporting

As part of the Uber Services, Portier Pacific will provide the following information to you:

- (a) aggregate information regarding the number of Items and delivery services (if applicable) sold by you to your customers via the Uber Eats App;
- (b) for Delivery Items, information regarding the Delivery Fees paid by you to your Delivery Partners; and
- (c) information regarding any refunds given to your customers where the cost of such refunds were wholly or partially deducted from payments owed to you in accordance with the Restaurant Refund Policy in the reporting period, including the date of the transaction, the Item ordered and the reason for the refund.

3.6 Your acknowledgements

- (a) You acknowledge and agree that any materials provided to you by Uber and/or Portier Pacific in connection with the Uber Tool and/or Uber Services are Uber's and Portier Pacific's Confidential Information. These materials may include information on cuisine demand and suggestions, consumer preferences, and restaurant case studies.
- (b) You acknowledge and agree that Portier Pacific, Uber and/or their Affiliates will use various tools from time to time to manage marketplace conditions, including supply and demand, with a view to ensuring the efficient

operation of the marketplace for all participants. You acknowledge and agree that neither Uber, Portier Pacific nor any of their Affiliates make any guarantee in relation to the number of Items you will sell via the Uber Eats App, the number of Delivery Partners that will be available to deliver Items to your customers on your behalf (if you offer Delivery Items) or the number, or geographic location, of users of the Uber Eats App that will see you or your Items on the Uber Eats App.

4. YOUR ROLE AND RESPONSIBILITIES

4.1 Your relationship with Uber and Portier Pacific

By entering into this Agreement, you acknowledge that:

- (a) Uber is a technology services provider; and
- (b) neither Uber, Portier Pacific nor any of their Affiliates provide any delivery or transportation services in connection with Items sold by you via the Uber Eats App.

4.2 Approved Items

- (a) You are only allowed to offer an item for sale via the Uber Eats App if that item, or category of items, is approved by Portier Pacific.
- (b) Portier Pacific may remove Items from the Uber Eats App if the Item is not an approved item or part of an approved category of items, or if Portier Pacific discovers an Item has been approved in error.
- (c) Uber, Portier Pacific, or one of their Affiliates will let you know, in accordance with section 14.2(c), at least 30 days before making any modification to the approved categories of items that will be detrimental to your rights under this Agreement.

4.3 Delivery of Delivery Items

In relation to the delivery of each Delivery Item that has been ordered from you by your customer using the Uber Eats App:

- (a) Portier Pacific will perform the applicable Uber Services set out in section 3;
- (b) your Delivery Partner is engaged by you to deliver Delivery Items to your customers, as your agent;
- (c) you (with your Delivery Partner as your agent) will have possession, control and care of the Delivery Items at all times; and
- (d) your Delivery Partner operates under your retail licence and control.

4.4 Quantity, type and price of Items

- (a) You are responsible for determining the quantity and type of Items you make available via the Uber Eats App.
- (b) Portier Pacific may provide information to you regarding predicted customer demand. You are not required to act on this information and Portier Pacific does not make any representation that the predicted customer demand will be met. It is your responsibility to assess the predicted customer demand and determine the quantity and type of Items you wish to make available via the Uber Eats App.
- (c) You are responsible for setting the retail price (**Retail Price**) for each Item that you make available via the Uber Eats App.
- (d) You must not make an Item available via the Uber Eats App at a Retail Price that is higher than the eat-in price or in-store price of a similar Item at your location.

4.5 Quality of Items

- (a) You are responsible for ensuring that Items are appropriate for sale via the Uber Eats App. This includes ensuring that your:
 - (i) Delivery Items are packaged appropriately for delivery (including any additional protection necessary based on the nature of the Item); and
 - (ii) Items meet all requirements under Law, this Agreement and all applicable Uber Policies.
- (b) Without limiting section 4.5(a), you agree that you are solely responsible for:
 - (i) determining the criteria that apply to your Items, such as any quality, portion, size, ingredient and other criteria that apply to your Items;
 - (ii) ensuring that your Items meet those criteria when those Items are made available via the Uber Eats App; and
 - (iii) ensuring that the description of your Items, and any photographs of your Items that you make available on the Uber Eats App are (and continue to be) accurate and not misleading.
- (c) Portier Pacific may remove Items from the Uber Eats App if Portier Pacific, acting reasonably:
 - (i) determines that:
 - (A) the description of the Items, or any photographs of the Items, that you make available on the Uber Eats App are inaccurate or misleading; or
 - (B) the Items contain or may contain an endangered species; or
 - (ii) considers that the Items are inappropriate for sale via the Uber Eats App. Inappropriate Items include people, animals of any size, illegal items, alcohol (unless otherwise agreed in writing with Portier Pacific), fragile items, dangerous items (such as weapons, explosives or flammables), stolen goods, or any Items that you do not have permission to sell or send.

4.6 Accuracy of nutritional information

- (a) You represent and warrant that all nutritional information (such as calorie count or allergen information) you make available on the Uber Eats App about your Items is (and will continue to be) accurate and not misleading.
- (b) If the nutritional information you make available on the Uber Eats App becomes inaccurate or misleading, you must promptly update that information.

4.7 Item Inventory

- (a) For Delivery Items, you maintain title to each Item until the Item is delivered to your customer by your Delivery Partner.
- (b) For Pick Up Items, you maintain title to each Item until the Item is provided to your customer by you or your agent.

4.8 Refunds

- (a) As part of the Uber Services provided under this Agreement, Portier Pacific manages refunds to your customers in relation to issues arising in connection with the Items they ordered from you via the Uber Eats App.

- (b) You can find out more about the refund process that Porter Pacific follows by reading the Restaurant Refund Policy.
- (c) The Restaurant Refund Policy provides information about how Portier Pacific will apply refunds on your behalf and describes the circumstances where you may be responsible for the costs of refunds for Items to your customers. You agree that if Portier Pacific, acting reasonably, determines that you are responsible for the cost of a refund in accordance with the Restaurant Refund Policy, you will be responsible for the costs of the refunded Item (or partial costs if only part of the Item was refunded).
- (d) Portier Pacific may deduct these costs from the payment owed to you under this Agreement, in accordance with the Restaurant Refund Policy.
- (e) If you believe that Portier Pacific has deducted the cost of any refund from you in error, you may dispute the deduction in accordance with the Restaurant Refund Policy by contacting restaurants.anz@uber.com (or a replacement email address) and reporting your issue. If you dispute a deduction, Portier Pacific will consider the dispute reasonably, taking into account any information provided by you about the circumstances related to the refund. You will not be held responsible for the cost of the relevant refund if Portier Pacific believes, acting reasonably, that you are not at fault. The Restaurant Refund Policy may be amended under section 14.2, which also provides you with the right to terminate this Agreement if you do not agree with certain changes to that policy.

4.9 Items that include alcohol

- (a) This section 4.9 applies to you if you offer to sell alcohol Items to your customers via the Uber Eats App, which is only permitted with the prior approval of Portier Pacific.
- (b) If you make any alcohol Items available to customers via the Uber Eats App:
 - (i) you represent and warrant at all times that you:
 - (A) have and will maintain all licenses and permits required to sell and deliver (if applicable) alcohol; and
 - (B) will comply with all applicable Laws, regulations, and rules applicable to the sale and delivery (if applicable) of alcohol;
 - (ii) you must identify each Item that contains alcohol by telling Uber and Portier Pacific in writing or by using the Uber Tool;
 - (iii) if the supply of alcohol is prohibited by applicable Law (for example, due to the age or sobriety of the recipient), you acknowledge that a Delivery Item containing alcohol may not be delivered by your Delivery Partner and may be returned to your originating location where it was initially picked up by your Delivery Partner; and
 - (iv) you acknowledge that alcohol Items will only be available to your customers via the Uber Eats App during hours reasonably determined by Portier Pacific based on its operational requirements and any relevant regulatory requirements.

4.10 Restrictions

- (a) For each order that you receive via the Uber Eats App, you must not include any additional materials in bags or packages for your customers other than Items and other materials approved by Portier Pacific.
- (b) If you make Delivery Items available via the Uber Eats App, you:
 - (i) acknowledge that Delivery Partners are independent providers of delivery services, and as such, they reserve the right to refuse to accept any Delivery Item for delivery in their sole discretion; and
 - (ii) must ensure that each order of Delivery Items does not weigh (in total) more than 13kg.

4.11 Uber Policies

- (a) You must comply with the Uber Policies that apply to your use of the Uber Services and the Uber Tool.
- (b) Uber, Portier Pacific or their Affiliates may update the Uber Policies from time to time in accordance with section 14.2.

4.12 Changes to your locations or business

- (a) You must tell Uber and Portier Pacific in writing if you intend to add a location to, vary a location, or remove a location from, the locations from which you will make Items available via the Uber Eats App (including the addition of any Virtual Restaurant).
- (b) If you are adding or varying a location you must provide all licences, permits or other documents or information requested by Uber or Portier Pacific. You will not be permitted to make Items available via the Uber Eats App from that location until Uber or Portier Pacific has approved the new location.
- (c) If your location remains offline on the Uber Eats App for over 60 days (other than as a result of section 13.2(b)), Uber and Portier Pacific may remove that location from the Uber Eats App provided that Uber, Portier Pacific or their Affiliates give you at least 7 days' notice before the removal. You may be required to pay Portier Pacific an Activation Fee to reinstate a location that has been removed.
- (d) You must tell Uber and Portier Pacific in writing when, or as soon as reasonably possible after, there is a Change in Ownership of you or your business. You must give Uber and Portier Pacific reasonable assistance (including providing copies of relevant documentation) as requested to enable Uber and Portier Pacific to make any necessary adjustments to your account and/or Uber or Portier Pacific's systems.

4.13 Licences and permits

Without limiting any other part of this Agreement, you must obtain and maintain all applicable licences and permits, and comply with all notification and registration obligations, to enable you to operate your business and sell (and deliver, if applicable) your Items from each of your locations via the Uber Eats App in accordance with all applicable Laws and regulations.

4.14 Ratings

- (a) After receiving an Item, your customer may be prompted by the Uber Eats App to provide a rating of that Item and any feedback related to you or that Item (**Customer Feedback**).
- (b) Portier Pacific and its Affiliates may use, share, and display Customer Feedback for any purpose related to their businesses without attribution to you or your approval. You acknowledge that Portier Pacific and its Affiliates are distributors (without any obligation to verify) and not publishers of Customer Feedback, provided that Portier Pacific and its Affiliates may edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other Personal Data, violate any privacy or other applicable Laws, or Portier Pacific's or its Affiliates' content policies.

5. FEES AND PAYMENT

5.1 Payment for Items

- (a) If you offer Delivery Items, Portier Pacific will provide to your customers a receipt and/or tax invoice on your behalf for any Item (including any delivery services related to such Item) they have purchased from you via the Uber Eats App.
- (b) You appoint Portier Pacific as your limited payment collection agent solely for the purpose of accepting payments from your customers on your behalf.
- (c) Payment made by your customer to Portier Pacific (or its Affiliate) will be considered the same as payment made directly by your customer to you.

5.2 Service Fee

- (a) In exchange for the Uber Services provided by Portier Pacific as described in this Agreement, you agree to pay Portier Pacific a service fee on each order placed with you via the Uber Eats App, which is calculated in accordance with section 5.2(b) (the **Service Fee**).
- (b) Portier Pacific will calculate the Service Fee on each order placed with you via the Uber Eats App as follows:
 - (i) the Retail Price of the Item(s) sold by you via the Uber Eats App (including any GST) (the **Item Revenue**);
 - (ii) multiplied by the Service Fee Percentage specified in the Order Form relevant to the order; and
 - (iii) less (in the case of Delivery Items), any Discount that applies under section 5.3(g).
- (c) If you are paid for an Item, you must pay the applicable Service Fee to Portier Pacific.

5.3 Delivery Fee (for Delivery Items)

- (a) If you are paid for a Delivery Item, you must pay the applicable delivery fee to your Delivery Partner (**Delivery Fee**).
- (b) The Delivery Fee is a specified fee, which is based on a calculation available on the Uber website for the relevant location (**Delivery Fee Calculation**). The Delivery Fee Calculation is based on various factors, which may include the following:
 - (i) each pick-up and/or drop off made by your Delivery Partner;
 - (ii) the distance from your location to your customer's delivery address;
 - (iii) time spent in relation to delivering an order;
 - (iv) demand in the relevant location and/or at the relevant time; and/or
 - (v) other promotions or incentives applied from time to time.
- (c) Uber, Portier Pacific, or one of their Affiliates will let you know, in accordance with section 14.2(c), at least 30 days before making any modification to the Delivery Fee Calculation that will be detrimental to your rights under this Agreement.
- (d) You agree that distance and time amounts used for the Delivery Fee Calculation may be based on the expected, not actual, trip distance and duration as reasonably determined by Uber or its Affiliates.
- (e) Your Delivery Partners will invoice you for the delivery services they provide to you for the delivery of Delivery Items, which you may access via the Uber Tool.
- (f) Where you provide Delivery Items, you authorise Portier Pacific (or its Affiliate) to:
 - (i) collect a delivery charge from your customers on your behalf (the **Delivery Charge**); and
 - (ii) remit the applicable Delivery Fee earned by your Delivery Partner on your behalf.
- (g) If the Delivery Fee exceeds the Delivery Charge, Portier Pacific will give you a discount on your Service Fee equal to the difference between the GST exclusive Delivery Fee and the GST exclusive Delivery Charge (such amount being the **Discount**).

5.4 Additional charges

- (a) You authorise Portier Pacific (or its Affiliate) to:

- (i) collect additional charges, such as transactional charges and other charges that relate to the provision of the Items to your customers, on your behalf; and
 - (ii) remit the applicable additional charges to you.
- (b) The calculation of a Delivery Charge for the purposes of section 5.3(g) will include any additional charges collected under this section 5.4.

5.5 Remittance of Item Payment

- (a) Portier Pacific will remit to you the total Item Revenue earned by you, less:
- (i) the Service Fee; and
 - (ii) the cost of any refunds given to your customers on your behalf in accordance with the Restaurant Refund Policy,
- (such final remitted amount being the **Item Payment**).
- (b) The Item Payment will be remitted to you on a weekly basis.

5.6 Activation Fee

- (a) In exchange for the Uber Services provided by Portier Pacific as described in this Agreement, you also agree to pay Portier Pacific an activation fee (as specified in your Order Form) (**Activation Fee**) per location. For the avoidance of doubt, a Virtual Restaurant is a separate location for the purpose of this section 5.6.
- (b) Until you have paid the full Activation Fee for all locations, you agree that Portier Pacific may deduct from your Item Payment the Activation Fee (in full or in part) before remitting the Item Payment to you.

5.7 Payment Processing Errors

- (a) Portier Pacific reserves the right, in its sole discretion, to seek reimbursement from you if Portier Pacific discovers payment processing errors.
- (b) If there has been a payment processing error, you agree that Portier Pacific (or its Affiliate) may recover from you an amount equivalent to the error by either:
- (i) deducting the applicable amount from your Item Payment prior to remitting the Item Payment to you;
 - (ii) debiting your card on file or your bank account on record; or
 - (iii) seeking reimbursement of the applicable amount from you by any other lawful means.
- (c) You expressly authorise Portier Pacific and its Affiliates to use any or all of the above methods to seek reimbursement.
- (d) It is your responsibility to ensure that any card details or bank account information that you provide to Portier Pacific or its Affiliates are accurate and remain up to date.

5.8 GST and other taxes

- (a) In relation to the Items sold by you via the Uber Eats App:
- (i) you are the 'retailer', 'provider' or 'seller' of all Items (including delivery services related to such Items) for GST purposes and the responsible party for collection and remittance of all applicable taxes; and

- (ii) the Retail Price for each Item must include GST, but you are solely responsible for determining all applicable taxes and identifying and informing Portier Pacific of the appropriate tax amount for Portier Pacific to collect on your behalf for Items sold by you via the Uber Eats App.
- (b) In relation to the Service Fee and other amounts payable under this Agreement:
- (i) for the purposes of the GST Law, Portier Pacific supplies to you the Uber Services in sole consideration for the Service Fee. In addition, Uber supplies to you a licence to use the Uber Tool for no consideration;
 - (ii) all amounts payable, or consideration provided by you to Portier Pacific under this Agreement are exclusive of GST (unless expressly stated otherwise); and
 - (iii) if GST is payable on any supply by Portier Pacific made under this Agreement, for which the consideration is not expressly stated to include GST, you agree to pay Portier Pacific an additional amount equal to the GST at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. In this Agreement, GST that is payable by Portier Pacific includes GST that is payable by the representative member of Portier Pacific's GST group.
- (c) You represent and warrant that you are registered for GST, and will remain registered for GST, at all times during the Term.

5.9 Currency

All amounts under this Agreement must be paid in Australian dollars.

PART 3 – OWNERSHIP OF MATERIALS, CONFIDENTIALITY AND PRIVACY

This part describes the rights that you, Uber and Portier Pacific have in relation to materials made available under this Agreement, including the Uber Tool and Devices provided to you. It also describes what steps you, Uber and Portier Pacific will take to protect confidential information and your obligations in respect of Personal Data.

6. INTELLECTUAL PROPERTY

6.1 Ownership of Uber Materials

- (a) Uber, its Affiliates and their licensors own, or have the rights to, the Uber Tool and all related materials and data (together, the **Uber Materials**). This includes all Intellectual Property Rights.
- (b) The only rights that you have to the Uber Materials are the rights set out in this Agreement.
- (c) Without limiting any other part of this Agreement, you must not:
 - (i) copy, modify, distribute, sell or lease any part of the Uber Tool or any other Uber Materials;
 - (ii) reverse engineer or attempt to extract the source code of Uber's or its Affiliates' software, except to the extent allowed by Law; or
 - (iii) improperly use the Uber Tool, any other Uber Materials or any Uber Service.

6.2 Licence

- (a) Subject to you complying with the terms of this Agreement (including the satisfaction of the Conditions Precedent in section 1.2), Uber grants you for no charge a non-exclusive, royalty-free, non-transferable, non-sublicensable and non-assignable licence to use the Uber Tool for the Term.

- (b) You may only use the Uber Tool in connection with your use of the Uber Services under this Agreement.

6.3 Licence to each party's Marks

- (a) You grant to Uber and Portier Pacific (and their Affiliates) a licence to use your Marks and Uber grants to you a licence to use Uber's Marks, each subject to the terms of this Agreement. You are only permitted to use Uber's Marks, and Uber, Portier Pacific and their Affiliates are only permitted to use your Marks, for the purpose of performing the activities permitted in this Agreement (including promotional activities under section 3.3).
- (b) The licences granted to you, Uber, Portier Pacific (and their Affiliates) under section 6.3(a) continue for the Term. The licences are granted for no charge and are limited, non-exclusive, non-transferable and royalty-free.
- (c) The rights of you, Uber, Portier Pacific (and their Affiliates) to use the Marks licensed to them under section 6.3(a) are subject to the following restrictions:
 - (i) a party must only use the Marks in the form and format specified or approved by the owner of those Marks;
 - (ii) a party must not use the Marks for any purpose other than what is permitted in this Agreement, without the prior, express, written consent of the other party;
 - (iii) all goodwill related to the use of the Marks by another party (and, in the case of Uber or Portier Pacific, by their Affiliates) will benefit the owner of those Marks and not any other party; and
 - (iv) each party licensing a Mark reserves the right to revoke the licence to use the Mark if that party reasonably considers that the quality of the other party's goods, services or performance of its obligations under this Agreement falls below an acceptable standard.
- (d) You must not try to register, use or claim ownership over any of Uber's, Portier Pacific's or any of their Affiliates' Marks.
- (e) Uber or Portier Pacific may remove any of your Marks from the Uber Eats App if they reasonably believe that any of your Marks are inappropriate or infringe the rights (including the Intellectual Property Rights) of any third party.
- (f) You must not bring a claim against Uber or Portier Pacific, or any of their Affiliates or directors, officers, employees or agents, or assert a defence against any claim by any of those parties, alleging that any use or exploitation by them of your Marks in accordance with this Agreement infringes your rights (including Intellectual Property Rights).

6.4 Ownership and Licence of Marketing Materials

- (a) Portier Pacific (or its nominee) may create videos, photos and other materials for marketing purposes (**Uber Eats Marketing Materials**). The Uber Eats Marketing Materials (including all Intellectual Property Rights) are, and will continue to be, the property of Portier Pacific or its Affiliates.
- (b) You may provide videos, photos or other materials to Portier Pacific or its Affiliates (**Your Marketing Materials**) to display the availability of your Items on the Uber Eats App and for other marketing purposes. You represent and warrant that you either own all rights to Your Marketing Materials or have the right to grant Uber, Portier Pacific and their Affiliates the following licence to Your Marketing Materials. You grant Uber, Portier Pacific and their Affiliates for no charge a non-exclusive, perpetual, royalty free, sub-licensable right to use and display Your Marketing Materials in connection with your Items and all other marketing activities (including marketing activities relating to the Uber Services, the Uber Tool or the Uber Eats App).

- (c) Uber or Portier Pacific may remove Your Marketing Materials from the Uber Eats App if it reasonably believes Your Marketing Materials are inappropriate or infringe the rights (including the Intellectual Property Rights) of any third party.
- (d) You must not bring a claim against Uber or Portier Pacific, or any of their Affiliates or directors, officers, employees or agents, or assert a defence against any claim by any of those parties, alleging that any use or exploitation by them of Your Marketing Materials in accordance with this Agreement infringes your rights (including Intellectual Property Rights).

6.5 No implied rights

All rights (including Intellectual Property Rights) not granted under this Agreement by you, Uber, Portier Pacific or any of their Affiliates, are expressly reserved.

6.6 Feedback

- (a) You may, but are not required to, provide feedback relating to Portier Pacific's, Uber's and/or their Affiliate's products and services (**Feedback**).
- (b) If you provide Feedback to Portier Pacific, Uber or any of their Affiliates, you also grant to Portier Pacific, Uber and their Affiliates for no charge a perpetual, irrevocable, worldwide, royalty free, sublicensable right to use and otherwise exploit that Feedback for any purpose.

7. DEVICES

- (a) If Portier Pacific or its Affiliate supplies a tablet or other mobile device (**Device**) to you, you must ensure that all such Devices are:
 - (i) only used for the purpose of receiving the Uber Services and using the Uber Tool in accordance with the terms of this Agreement; and
 - (ii) not transferred, loaned, sold or otherwise provided in any manner to any third party.
- (b) You acknowledge and agree that:
 - (i) Devices remain the property of Portier Pacific or its Affiliate at all times;
 - (ii) you must return all applicable Devices to Portier Pacific or its Affiliate within 10 days after:
 - (A) the termination or expiry of the Agreement; or
 - (B) the removal of your location from the Uber Eats App under section 4.12(c);
 - (iii) the loss or theft of a Device, the failure to return any Device within the required time period, or any damage to a Device outside of normal wear and tear, will result in a AUD\$200 fee (per Device) (**Damage Fee**) payable by you; and
 - (iv) if any Damage Fees are payable by you, Portier Pacific or its Affiliate may invoice you for the Damage Fees and/or deduct from your Item Payment the applicable Damage Fees, prior to remitting your Item Payment to you.

8. CONFIDENTIALITY AND PRIVACY

8.1 Confidentiality

- (a) A party to this Agreement may not disclose another party's Confidential Information to any third party except as permitted below.
- (b) Each party:

- (i) may only use and disclose the other party's Confidential Information to the extent necessary to perform this Agreement or enforce its rights;
 - (ii) must ensure that any third party who receives Confidential Information of another party under this Agreement maintains the confidentiality of that information; and
 - (iii) must not, and must not authorise others to, remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of the disclosing party's Confidential Information.
- (c) Nothing in this section 8.1 prevents a party from using or disclosing another party's Confidential Information to the extent that:
- (i) the disclosing party has authorised the use or disclosure; or
 - (ii) disclosure of the Confidential Information is required by Law or by order of a court; or
 - (iii) the receiving party reasonably considers it necessary to disclose the Confidential Information to a third party legal, tax or financial advisor in connection with this Agreement.
- (d) Each party must, at another party's request, return or destroy the requesting party's Confidential Information (including all copies), except where that party needs to retain that information for the purpose of complying with its obligations under this Agreement, any Law or any court order.

8.2 Privacy

- (a) The terms and conditions of Uber's privacy policy, currently available at <https://privacy.uber.com/policy/>, will apply to Uber's collection, use and processing of Personal Data.
- (b) You must comply with all applicable Data Protection Laws in connection with the Uber Services and your activities under this Agreement.
- (c) Without limiting the general obligation under section 8.2(b):
- (i) you must only use, disclose, store, retain or otherwise process Personal Data provided to you solely for the purpose of providing Items under this Agreement and ensure your employees and agents do the same;
 - (ii) you are responsible for maintaining the accuracy and integrity of any Personal Data provided by Uber to you in relation to the provision of Items, the Uber Services or this Agreement;
 - (iii) you agree to use Personal Data provided to you by Uber solely by using the Uber Tool provided by Uber and must not copy, store, retain, remove from the Uber Tool or otherwise process the Personal Data;
 - (iv) you must promptly tell Uber and Portier Pacific if you become aware of any actual or reasonably suspected unauthorised access, modification, use, disclosure, loss of or interference with Personal Data provided to you by Uber (**Data Breach**); and
 - (v) you must promptly provide Uber and Portier Pacific with any information or assistance reasonably requested by either of them for the purposes of investigating and responding to any non-compliance with this section 8.2, any Data Breach, or a request from a customer or for a party's compliance with Data Protection Laws.
- (d) You agree that Uber and Portier Pacific may use aggregate, anonymised data related to your transactions in connection with the Uber Services (**Aggregate Data**). If you allow a party to provide technology services to you in connection with your obligations under this Agreement, then Uber and Portier Pacific may share Aggregate Data with that third party to enable the provision of Uber Services to you.

- (e) You agree that Uber may share your contact information (including name, address, email and phone number) with third parties necessary for your onboarding to the Uber Tool, including logistics and/or delivery service providers (for the delivery of Devices or other equipment) as well as photography services (for any photography which may be provided by a third-party provider).
- (f) You are responsible for maintaining the integrity of information relating to your access and use of the Uber Tool and related Uber Services, including any password, login or key information. You represent and warrant that you will not share any such information with any third party.
- (g) Notwithstanding anything else in this Agreement, you must, at your expense, defend, indemnify and hold harmless Uber, its Affiliates and their respective directors, officers, employees and agents from and against any and all claims, damages, losses and expenses (including reasonable legal fees) in connection with:
 - (i) any loss, unauthorised disclosure, theft, or compromise of Personal Data by or from you or your employees, agents or contractors (including sub-processors); and
 - (ii) any breach of and/or non-compliance with the Agreement or where appropriate, any Data Protection Law by you or your employees, agents or contractors (including sub-processors).

This obligation is subject to the requirements in section 10.2 below.

8.3 Publicity

Unless agreed by the parties in writing, neither you, Uber nor Portier Pacific are allowed to issue a press release or otherwise refer to another party to this Agreement in any manner (in relation to this Agreement or otherwise), without the prior written consent of the other party. This section does not prevent Uber or Portier Pacific from referring to each other in any manner.

PART 4 – ALLOCATION OF RISK

This part describes the representations that you, Uber and Portier Pacific give to each other, and sets out the indemnities provided by each party and the liability of each party.

The indemnity and liabilities sections help determine who is responsible under the Agreement if something goes wrong, or if a third party brings a claim against you, Uber or Portier Pacific as a result of something going wrong under the Agreement. This part also contains important information about the insurance that you, Uber and Portier Pacific are required to maintain.

9. REPRESENTATIONS AND WARRANTIES

- (a) Each party represents and warrants to the other parties throughout the Term that:
 - (i) it has full power and authority to enter into this Agreement and perform its obligations under this Agreement;
 - (ii) it is properly organised, validly existing and in good standing under the laws of the jurisdiction that it is incorporated under;
 - (iii) it has not entered into, and during the Term will not enter into, any agreement that would prevent it from complying with this Agreement (in your case, including any exclusive agreements with any third parties for the availability of your Items on any technology platform);
 - (iv) it is able to pay its debts as and when they fall due, it is not taken under applicable Laws to be unable to pay its debts, and it has not stopped or suspended, or threatened to stop or suspend, payment of all or a class of its debts;

- (v) it will comply with all applicable Laws in its performance of this Agreement (including all Data Protection Laws); and
 - (vi) the content, media and other materials (including any Uber Materials, Marks or Marketing Materials) used or provided by that party or as part of the performance of, or exercise of rights under, this Agreement do not, and will not, infringe or otherwise violate the Intellectual Property Rights, Moral Rights, rights of publicity or other proprietary rights of any third party.
- (b) You also represent and warrant to Uber and Portier Pacific throughout the Term that:
- (i) the name of your restaurant or store on the Uber Eats App (**Business Name**) is a validly registered business name in the location in which you operate; and
 - (ii) you are the holder of the Business Name registration referred to above.
- (c) If you enter into this Agreement as the trustee of a trust, each trustee (including you) represents and warrants to Uber and Portier Pacific throughout the Term that:
- (i) it enters into this Agreement in its capacity as trustee of its trust;
 - (ii) the trust deed empowers it to enter into and perform its obligations in this Agreement, to carry on its current or contemplated business and to own its assets, in its capacity as trustee of the trust;
 - (iii) it has obtained all resolutions, consents and approvals, and all other procedural matters have been attended to, as required for it to enter into and perform this Agreement;
 - (iv) it is the sole trustee of the trust, or all of the trustees of the trust have executed this Agreement;
 - (v) no event of default has occurred and no action has been taken which has or may prejudice the trustee's right of indemnity against the trust assets;
 - (vi) it is of the opinion that the execution, delivery, and performance of this Agreement is in the best interests of the beneficiaries of the trust and in furtherance of the administration of the trust;
 - (vii) it will notify Portier Pacific and Uber in writing immediately if there is any alteration to the trustees or if there is any change to the trust deed, or in the case of a corporate trustee, if the constitution of the trustee is amended or revoked; and
 - (viii) the trust has not been terminated, and no event for the vesting of the assets of the trust has occurred.
- (d) If you enter into this Agreement as the partner of a partnership, each partner (including you) represents and warrants to Portier Pacific and Uber throughout the Term that:
- (i) the partnership deed empowers it to enter into and perform its obligations in this Agreement, to carry on its current or contemplated business and to own its assets;
 - (ii) it has obtained all resolutions, consents and approvals, and all other procedural matters have been attended to, as required for it to enter into and perform this Agreement;
 - (iii) there are no other partners in the partnership other than those that have executed this Agreement; and
 - (iv) no partner has given notice of its intention to terminate the partnership under the partnership deed and the partnership has not been determined or dissolved.
- (e) Except as required of a party under the Australian Consumer Law, each party makes no representations, and expressly disclaims all warranties, express or implied, regarding its goods or services or any portion of them, including any implied warranty of merchantability or fitness for a particular purpose and implied warranties arising from course of dealing or course of performance. The limitations and disclaimers in this section 9(e)

do not purport to limit liability or alter your rights as a consumer that cannot be excluded under applicable Law, including the Australian Consumer Law.

10. INDEMNIFICATION

10.1 Indemnified Claims

Each party (the **Indemnifying Party**) must indemnify, defend (at the other party's option) and hold harmless the other party (the **Indemnified Party**), its Affiliates and their respective directors, officers, employees and agents from and against any and all claims, damages, losses and expenses (including reasonable legal fees) with respect to any third party claim arising out of or related to any of the following:

- (a) the negligence or wilful misconduct of the Indemnifying Party or its employees or agents (in your case, excluding Delivery Partners to the extent they are your agents under section 4.3) in their performance of this Agreement;
- (b) any claims that the Indemnifying Party breached its representations and warranties in this Agreement;
- (c) any claims that the Indemnifying Party's Marks or Marketing Materials infringe a third party's Intellectual Property Rights, as long as such Marks or Marketing Materials have been used in the manner approved by the Indemnifying Party under this Agreement;
- (d) any non-compliance with applicable Data Protection Laws by the Indemnifying Party or its employees or agents (in your case, excluding Delivery Partners to the extent they are your agents under section 4.3); or
- (e) where you are the Indemnifying Party, any harm resulting from your violation or alleged violation of any applicable retail, food or other health and safety code, rule or regulation, except to the extent such harm was directly caused by the gross negligence or wilful misconduct of Uber, Portier Pacific or their employees or agents or of any Delivery Partners.

10.2 Procedure

- (a) The Indemnified Party agrees to provide prompt notice to the Indemnifying Party of any potential third party claim that would be subject to an indemnity in this Agreement.
- (b) In relation to the defence of any third party claim that would be subject to an indemnity in this Agreement, if a defence is requested by the Indemnified Party:
 - (i) the Indemnifying Party must defend the claim using legal counsel designated by the Indemnifying Party and reasonably acceptable to the Indemnified Party;
 - (ii) the Indemnifying Party must not settle or compromise any claim, or consent to the entry of any judgment, without written consent of the Indemnified Party, which will not be unreasonably withheld; and
 - (iii) the Indemnified Party must reasonably cooperate with the Indemnifying Party in the defence of the third party claim, at the Indemnifying Party's expense.

11. LIMITATION OF LIABILITY

11.1 Limitations and Exclusions of Liability

- (a) Subject to section 11.2(b), in no event will a party be liable for any claim for any indirect, wilful, punitive, incidental, exemplary, special or consequential damages, for loss of business profits, or damages for loss of business of Merchant or any third party arising out of this Agreement, or loss or inaccuracy of data of any kind, whether based on contract, tort or any other legal theory, even if the party has been advised of the possibility of such damages.

- (b) Subject to section 11.2(b), Uber's and Portier Pacific's combined total cumulative liability of each and every kind to you under this Agreement will not exceed AU\$100,000, and your total cumulative liability of each and every kind to Uber and Portier Pacific under this Agreement will not exceed AU\$100,000.
- (c) The limitation and exclusion provisions above apply regardless of the success or effectiveness of other remedies.

11.2 Exception to Limitations and Exclusions of Liability

- (a) Subject to section 11.2(b), the limitations and exclusions set out in section 11.1 do not apply to a party's indemnification obligations or a breach of confidentiality.
- (b) This section 11 applies only to the maximum extent permitted by applicable Law, and does not (and is not intended to) override any rights that a party may have pursuant to applicable law, including the Australian Consumer Law.

12. INSURANCE

- (a) Each party must maintain the following insurances during the Term and for one year thereafter:

No.	Description	Scope and Details
1.	Commercial general liability insurance	As set out on your Order Form.
2.	Workers' compensation insurance	As set out on your Order Form.

- (b) The above insurance policies must be provided by reputable insurance companies authorised to do business in Australia and hold a Best's policyholder rating of not less than A VII.
- (c) The insurance held by you under this section 12 must be primary and non-contributing to any insurance maintained or obtained by Uber or Portier Pacific and must not be cancelled or materially reduced unless you have provided at least 30 days' prior written notice to Portier Pacific.
- (d) On request from a party, the other party must provide evidence of the insurance it maintains in accordance with this section 12.
- (e) The limits of an insurance policy maintained under this section 12 will not limit the liability of any party under this Agreement.

PART 5 – ENDING THE AGREEMENT

This part describes what steps you, Uber or Portier Pacific need to take in order to end the Agreement, as well as the circumstances in which your access to the Uber Tool or the Uber Services might be suspended or deactivated.

13. TERMINATION

13.1 Termination by you

You may terminate this Agreement:

- (a) at any time without cause, by giving 7 days' prior written notice to Uber or Portier Pacific;

- (b) immediately by written notice to Uber or Portier Pacific, if either of those parties commits a material breach of this Agreement and the breach is not cured within 2 days of the breaching party receiving written notice from you requiring that breach to be remedied; or
- (c) immediately by written notice to Uber or Portier Pacific, if:
 - (i) there has been an update to the Agreement, an Uber Policy, the approved categories of items or the Delivery Fee Calculation under section 14.2 and that update detrimentally affects your rights under this Agreement; and
 - (ii) the notice of termination that you provide to Uber or Portier Pacific under this section 13.1(c) is provided within 30 days after the date you were first notified of the relevant update.

13.2 Termination or suspension by Uber or Portier Pacific

- (a) Uber or Portier Pacific may, acting reasonably, terminate this Agreement in its entirety by giving you 30 days' prior written notice of termination, for any legitimate business, legal or regulatory reason.
- (b) Uber or Portier Pacific may also immediately restrict or deactivate your account or access to the Uber Tool, and provide you with written notice of the restriction or deactivation, if:
 - (i) you commit a material breach of this Agreement; or
 - (ii) an act or omission by you, in Uber's or Portier Pacific's reasonable judgment, is in violation of the Community Guidelines or has the potential to cause adverse publicity, media attention or regulatory scrutiny or other issues that could detrimentally impact the reputation, good name, brand or Marks of Uber, Portier Pacific or any of their Affiliates, including matters of safety (a **Brand Matter**).

13.3 Survival

Sections 1, 5.8(a), 8, 9, 10, 11 and 12 (for the period specified), this section 13.3, and sections 14 and 15 survive the termination or expiry of this Agreement.

PART 6 – GENERAL LEGAL PROVISIONS

This part sets out additional standard provisions that describe how the Agreement operates, the laws that apply to this Agreement, as well as defined terms that have special meaning.

Importantly, this section also describes what steps Uber and Portier Pacific need to take to update this Agreement, as well as your rights if you do not agree with a proposed update.

14. GENERAL PROVISIONS

14.1 Notice

- (a) Notices under this Agreement must be sent to the address specified below, or an updated address provided by a party to the other by notice under this section. A notice will be considered to be received: (i) on actual delivery, if delivery is by hand; (ii) one day after being sent by overnight courier (charges prepaid); (iii) on actual delivery, if by electronic mail to the other party.
- (b) Notices to Portier Pacific should be provided to Unit 8, 1 O'Connell Street, Sydney NSW 2000 or restaurants.anz@uber.com. Notices to Uber should be provided to Meester. Treublaan 7, 1097 DP Amsterdam, The Netherlands or restaurants.anz@uber.com. Notices to you should be provided to the address or email address set out in the Order Form.

14.2 Modifications to the Agreement

- (a) Uber and Portier Pacific may modify the General Terms or an Order Form at any time by:
 - (i) for an Order Form, providing you with a new Order Form Variation by email – the modification will take effect from the Variation Effective Date set out in that form; or
 - (ii) for the General Terms, publishing a new version on the Uber website and letting you know by email – the modification will take effect from the date the General Terms are published on the Uber website.
- (b) Uber and Portier Pacific may also modify the Uber Policies or the Delivery Fee Calculation from time to time by publishing a new version on the Uber website.
- (c) If a modification to the General Terms, an Order Form, an Uber Policy, the approved categories of items or the Delivery Fee Calculation will be detrimental to your rights under this Agreement, Uber, Portier Pacific, or one of their Affiliates will let you know at least 30 days before that modification is made. During that 30 day period, you have the right to terminate this Agreement in accordance with section 13.1(c).
- (d) You will be deemed to have consented to the modifications made under this section if you continue to use the Uber Services and/or the Uber Tool after the modifications have come into effect.

14.3 Governing law

This Agreement is governed by and construed in accordance with the laws of New South Wales, excluding its rules on conflicts of laws. The Vienna Convention on the International Sale of Goods of 1980 (CISG) will not apply.

14.4 Force Majeure Event

- (a) Any delay in or failure by any party in performance of this Agreement is excused if and to the extent the delay or failure is caused by something that happens which is beyond the control of the affected party (a **Force Majeure Event**). Force Majeure Events can include decrees or restraints of government, acts of God, strikes, work stoppage or other labour disturbances, war or sabotage.
- (b) The affected party must promptly tell the other parties in writing upon becoming aware that any Force Majeure Event has occurred or is likely to occur. The affected party must use commercially reasonable efforts to minimise the impact of the Force Majeure Event.

14.5 Assignment and subcontracting

- (a) Portier Pacific and Uber each have the right to assign or transfer this Agreement or any or all of their respective rights or obligations under this Agreement, in whole or in part, without obtaining your prior consent. You may not assign or transfer this Agreement, as the Agreement needs to remain with you. However, if Portier Pacific or Uber assigns or transfers this Agreement or any of their rights or obligations, you have the right to terminate this Agreement immediately, by providing written notice of termination to Portier Pacific or Uber within 30 days after the date you were first notified of the assignment or transfer.
- (b) Portier Pacific and Uber may each subcontract any of their obligations under this Agreement.
- (c) Without limiting section 14.5(a), this Agreement binds, and will continue to benefit, each party to this Agreement and that party's respective successors and assignees.

14.6 Relationship between the parties

Nothing in this Agreement creates any joint venture, joint enterprise, or agency relationship among the parties (except as specified in section 5.1(b) above), and no party has the right to enter into contracts on behalf of, to legally bind, to incur debt on behalf of, or to otherwise incur any liability or obligation on behalf of, the other parties to this Agreement, except where the other party has provided written authorisation, executed by an authorised representative of that other party.

14.7 General provisions

- (a) Except where expressly agreed in this Agreement, each party is responsible for its own expenses and costs in connection with its performance of this Agreement.
- (b) Each party is solely responsible for its employees and contractors used in connection with this Agreement.
- (c) The failure of any party to enforce, at any time or for any period of time, the provisions of this Agreement, or the failure of any party to exercise any option under this Agreement, is not a waiver of that provision or option and does not in any way affect that party's right to enforce that provision or exercise that option.
- (d) If a court of competent jurisdiction determines that a provision of this Agreement is invalid or unenforceable, the remainder of this Agreement (and to the extent practicable, the relevant provision) will remain in full force and effect.
- (e) This Agreement contains the full and complete understanding and agreement between the parties relating to the subject matter of this Agreement, and this Agreement supersedes all prior and contemporary understandings and agreements, whether oral or written, relating to the subject matter of this Agreement.
- (f) This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same original instrument. Without limitation, the parties may enter into this Agreement by:
 - (i) exchange of electronically signed counterparts transmitted by pdf format; or
 - (ii) your agreement to these General Terms and an applicable Order Form using a website or portal provided by Uber, Portier Pacific or an Affiliate of them, countersigned or otherwise accepted in writing by Uber or Portier Pacific.
- (g) Nothing in this Agreement limits or excludes (nor is intended to limit or exclude) any statutory rights that you may have under applicable Law that cannot be lawfully limited or excluded.

15. DEFINITIONS AND INTERPRETATION

15.1 Definitions

In this Agreement:

Affiliate means an entity that, directly or indirectly, Controls, is under the Control of, or is under common Control with a party.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Change in Ownership means any circumstance or event that results in a person Controlling you or your business, where that person did not Control you or your business immediately prior to the relevant circumstance or event.

Community Guidelines means the policy available at <https://www.uber.com/legal/community-guidelines/ubereats/anz-en/> (or a replacement URL).

Confidential Information means any confidential, proprietary or other non-public information disclosed by one party (the disclosing party) to the other (the receiving party), whether disclosed verbally, in writing, or by inspection of tangible objects. Confidential Information does not include information that: (a) was previously known to the receiving party without an obligation of confidentiality; (b) was acquired by the receiving party without any obligation of confidentiality from a third party with the right to make such disclosure; or (c) is or becomes publicly available through no fault of the receiving party.

Control means having more than 50% of the voting stock or other ownership interest or the majority of the voting rights of such entity, the ability of such entity to ensure that the activities and business of the other entity are conducted in accordance with the wishes of that entity or the right to receive the majority of the income of that other entity on any distribution by it of all of its income or the majority of its assets on winding up.

Data Protection Law means all applicable Laws imposing an obligation in relation to the collection, use, disclosure, storage or transmission of personal information (including health information), including any codes, principles or guidelines contained in or arising out of such Laws, including the *Privacy Act 1988* (Cth).

Delivery Item means any food, drink or other item that you make available to your customers for delivery via the Uber Eats App.

Effective Date means the "Effective Date" set out in the agreed Order Form.

General Terms means the terms and conditions set out in this document.

GST Law means the same as "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all present and future rights conferred by Law in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, excluding Moral Rights.

Items means any food, drink or other items that you make available to your customers via the Uber Eats App, and includes Delivery Items and Pick Up Items.

Law means any law (including subordinate or delegated legislation or statutory instruments of any kind) and also any judgment, order, policy, guideline, official directive or request (even if it does not have the force of law) of any government agency or regulatory body, including a stock exchange, applicable to any of the parties, as amended or replaced from time to time.

Marketing Materials means:

- (a) the Uber Eats Marketing Materials; or
- (b) Your Marketing Materials.

Marks means any trade marks, service marks, trade names, Business Names, copyrights, logos, slogans and other identifying symbols and indicia (both registered and unregistered) of the applicable party and any Intellectual Property Rights in them.

Moral Rights means rights of integrity of authorship, rights of attribution or authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute in anywhere in the world that may now exist or that may come to exist in relation to the work.

Order Form means a document titled "Order Form – Base" (or a similar name) that refers to these General Terms and is agreed by Uber, Portier Pacific and you, as amended or replaced by any Variation Order Form that has taken effect in accordance with section 14.2.

Personal Data means any information obtained in connection with this Agreement: (a) relating to an identified or identifiable natural person; (b) that can reasonably be used to identify or authenticate an individual, including name, contact information, precise location information, persistent identifiers; and (c) any information that may otherwise be considered "personal data" or "personal information" under the applicable Data Protection Law.

Pick Up Item means any food, drink or other Item that you make available to your customers for pick up from your location via the Uber Eats App.

Promotions means short-term offers that are created and fulfilled by you that are intended to stimulate customer demand through the Uber Eats App (such as discounts and special offers).

Restaurant Refund Policy means the terms related to refunds for Items to your customers by Portier Pacific (or its Affiliate) on your behalf in Australia, available at <https://help.uber.com/restaurants> under the heading "Managing refunds for missing or incorrect orders" (or a replacement URL).

Service Fee Percentage means the percentage amount specified in an Order Form, used to calculate the Service Fee in accordance with section 5.2(b).

Term means the Initial Term and any Renewal Term.

Uber Policies means the standard policies of Uber, Portier Pacific and their Affiliates that apply to the use of the Uber Services and/or the Uber Tool, as amended from time to time, including the Community Guidelines and the Restaurant Refund Policy.

Variation Effective Date means the "Variation Effective Date" set out in a Variation Order Form provided to you by Uber or Portier Pacific.

Variation Order Form means a document titled "Order Form – Variation" (or a similar name) that refers to these General Terms and is agreed (or deemed to be agreed under section 14.2(d)) by Uber, Portier Pacific and you.

Virtual Restaurant means a location where Delivery Items are prepared by you (or on your behalf) which does not have a physical storefront that is accessible by your customers.

15.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings and information boxes are for convenience only, and do not affect interpretation;
- (b) reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time;
- (c) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (d) if an example is given of anything, such as by saying it includes something else, the example does not limit the scope of that thing; and
- (e) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form.