



TERMS & CONDITIONS

By signing up, accessing or using the Software (as defined below), you acknowledge that you have read and understood these Terms & Conditions (“Terms”) and accept and agree to be bound by them. Please read these Terms carefully because they affect your legal rights, including an agreement to resolve any disputes that may arise between you and ManIDger LLC (“ManIDger”, “we”, “us”, or “our”) by arbitration on an individual basis instead of by class actions or jury trials. If you disagree with any part of these Terms then you are not authorized to access the Software.

1. License and Scope of Services.

a. **Grant of Software License.** Subject to these Terms, we hereby grant you a limited personal, non-exclusive, non-transferable, non-sublicensable revocable right and license to access our mobile device application and accompanying web site (the “**Software**”) via any computer device (including mobile devices and tablets), and to have you listed within the Software database to be displayed to Software users in the applicable market segment (collectively, “**Users**”).

b. Grant of Mark Licenses.

i. Subject to these Terms, we hereby grant you a limited personal, non-exclusive, non-transferable, non-sublicensable revocable right to use the ManIDger name and logo (together, the “**ManIDger Marks**”) for the limited purpose of promoting your affiliation with us. All other rights related to the ManIDger Marks are expressly denied.

ii. Subject to these Terms, you hereby grants us a personal, non-exclusive, non-transferable, non-sublicensable right and license to use your name, address, contact details, logo, and Menu Data (collectively, the “**Restaurant IP**”) for the limited purpose of displaying the Restaurant IP in the Software and promoting your affiliation with ManIDger. All other rights related to the Restaurant IP are expressly denied.

c. **Online Terms and Conditions.** All online terms and conditions displayed in the Software, as amended, modified, or replaced by us from time to time, are hereby incorporated into these Terms for all purposes. In the event of a conflict between these Terms and any online terms and conditions, the terms of these Terms shall control.

d. **Changes to Software.** At any time, and from time to time, we may make updates, enhancements, and/or other modifications to the Software (each, an “**Enhancement**”), in its sole discretion. We may provide such Enhancements to you at no cost; or, in our sole discretion, we may charge a fee for your access to such Enhancements. You will not be required to use any Enhancements for which we charge an additional fee.

e. **Access Control.** You may create your own authenticating credentials (e.g., a username and password) (“**Credentials**”) for purposes of accessing the Software. You hereby accept full responsibility for, and shall be liable for, all access to the Software in connection with your Credentials, any and all damages caused by unauthorized access using your Credentials, and all expenses or damages incurred by us in maintaining the security of your Credentials, including but not limited to dealing with or preventing unauthorized access to the Software. You shall access the Software only using your own Credentials and shall not use the Credentials of any other restaurant or any User. You agree to immediately notify us of any suspected unauthorized use of your name or Credentials or any other breach of security to the Software. We will not be liable for any loss or damage arising from your failure to comply with this Section.

f. **Optional Training.** We may, in our reasonable discretion, provide optional training to you in the use of the Software. Such training may be provided at no cost or, in our sole discretion, We may charge a separate fee for such training.

g. **Support.** We may provide email, telephone, and/or other technical support for the Software upon request by you (collectively, “**Support**”). We may charge fees for Support, in our sole discretion, and reserve the right to suspend, reduce or discontinue providing Support at any time.

e. **Service Interruptions.** We will make reasonable efforts to keep the Software operational. However, certain technical difficulties or maintenance may, from time to time, result in temporary interruptions. To the extent permissible under applicable law, we reserve the right, periodically and at any time, to modify or discontinue, temporarily or permanently, functions and features of the Software, with or without notice, all without liability to you.

2. Menu Data.

a. **Creation and Control.** You may input, retrieve, and modify information in the Software displaying your menu items, prices, delivery terms, and other related details (collectively, “**Menu Data**”). Modifications to Menu Data shall not affect any orders placed through the Software prior to such modifications.

b. **Ownership.** You represent and warrant to us that you have the full right, title, and authority to use and display any content, material, or intellectual property incorporated into the Menu Data, including but not limited to descriptions, prices, logos and pictures and, further, that such use and display does not violate these Terms, applicable law or the property rights of others.

c. **Data Integrity.** You shall use your best efforts to ensure that your menu items, prices, and delivery



terms offered to in-person customers are consistent with the Menu Data. Your Menu Data may not contain any references that are offensive, defamatory, pornographic, threatening or obscene or that impersonates or misrepresents your affiliation with any other person, entity or organization or that is otherwise fraudulent, deceptive, false or misleading. We have no obligation to monitor, review or edit any Menu Data.

d. **Risk of Loss and Inaccuracies.** You assume the risk of inaccuracies in, or loss to, all Menu Data within the Software. You accept the sole responsibility of regularly reviewing, updating and maintaining all Menu Data, either directly or through our Profile Management system.

e. **Profile Management.** If we are maintaining your Profile Management, then we shall be responsible for the input and maintenance of Menu Data as provided by you. You shall communicate in writing to us any requested changes to Menu Data. We shall update the Menu Data in the Software within a reasonable period of time, typically not to exceed three (3) business days. You are solely responsible for accurately communicating any requested modifications to Menu Data to us. We are not responsible for correcting any inaccurate information (including typos) provided by you.

f. **Brand Accounts.** If you establish an account with us on behalf of a company, organization, entity or brand (a "Brand" or "Brand Account"), the terms "you" and "your" as used throughout these Terms, apply to both you and the Brand, as applicable. If you open a Brand Account, you hereby represent and warrant that you are authorized to grant all permissions and licenses provided in these Terms and to bind the Brand to these Terms.

3. Term of Agreement.

a. **Termination.** Either party may terminate these Terms, for any reason, upon seven (7) calendar day's prior written notice to the other party, which advance notice may be waived by us in our sole discretion. We may immediately terminate or suspend your access to or use of the Software at any time in the event of your actual or suspected unauthorized use of the Software or noncompliance with any of these Terms.

b. **Effect of Termination.** Upon termination of these Terms for any reason:

i. We shall stop accepting any new orders as of the effective date of any termination, but shall continue processing all orders placed through the Software prior to the effective date of any termination (collectively, "**Final Orders**").

ii. You shall honor and fulfill all Final Orders.

iii. We shall pay to you all funds owed under these Terms for orders placed and fulfilled prior to termination, including all Final Orders, on or before

the next scheduled payment date in accordance with the usual terms and conditions for processing such payments.

iv. You shall immediately cease all use of the ManIDger Marks and shall destroy (or remove the ManIDger Marks from) all signage, materials, advertising, labels, letterhead, menus, and similar materials bearing the ManIDger Marks (including but not limited to deleting or removing the ManIDger Marks from all websites or other electronic communications) at your sole cost.

v. We shall remove the Restaurant IP from the Software.

c. **Survival.** The provisions of Sections 2(b), 2(c), 2(d), 3(b), 4, 6, 7, 8, and 9, as well as any other Sections of these Terms that, either explicitly or by their nature, must remain in effect even after termination of these Terms, shall survive the termination of these Terms for any reason.

4. Payment and Financial Terms.

a. **Collection of Revenue.** We shall charge the full amount of each order (the "**Total Order Cost**") to the User placing such order (the "**Ordering User**") in accordance with the prices contained in the Menu Data, including all applicable delivery fees, taxes, etc.

b. **Taxes.** We shall charge each Ordering User the applicable taxes on such order as determined and calculated by the third party sales tax service engaged by us and such taxes shall be included in the Total Order Cost. You (and not us) shall be solely responsible for reporting and remitting all taxes on orders to the applicable taxing authorities and shall indemnify, defend, and hold us harmless from and against any costs, charges, fees, or other expenses (including attorneys' fees) incurred by or assessed against us arising out of or related to any tax or disputed tax on orders. You shall have an affirmative duty to immediately notify us of any discrepancy in the amount or applicability of any taxes.

c. **Order Payment Terms.** For each order, we shall retain as our compensation an amount equal to 10% (the "**Affiliate Fee Rate**") multiplied by the Total Order Cost (the "**Affiliate Fee**"). We shall remit to you an amount equal to the Total Order Cost, less the applicable Affiliate Fee, for all orders placed within such payment cycle for which we have collected full payment. Our collection of Total Order Costs may be subject to delays beyond our reasonable control, including but not limited to delays caused by credit card processors, and we cannot guarantee that all Total Order Costs will be collected before the applicable payment date for all orders placed within that payment cycle. If any Total Order Costs for orders placed within a payment cycle are collected after the applicable payment date has passed, we shall pay such Total Order



Costs, less the applicable Affiliate Fee, to you on the next payment date.

d. **Payment Method.** All payments to you shall be by check, direct deposit, or Automated Clearing House (ACH) transfer to your account as elected by you.

e. **Payment for Additional Services.** We reserve the right to withhold and apply payment for any additional services from the next scheduled payment of Total Order Costs.

f. **Chargeback Policy.** In the event of a reversal of a credit or debit card charge made by a User, as a result of a chargeback or dispute initiated by User or otherwise, you shall be liable to us for the Affiliate Fee that we would otherwise receive on such charged back or disputed amounts, plus all costs and expenses incurred by us as a result of such chargeback or reversal.

5. Ordering.

a. **Via Faxes.** If you have elected to receive orders by fax, then we shall submit all orders to you via facsimile at the fax number provided by you. You shall ensure that such fax number is a dedicated fax line and accept the risk of loss or corruption of an order due to interruption in such fax line's connectivity or functionality for any reason, including but not limited to infrastructure problems, busy signals, disconnection, and other causes. Orders submitted via facsimile shall be deemed accepted by you immediately upon initiation of the facsimile transmission as reflected by the Software. We may re-send an order via facsimile if, in our sole discretion, we reasonably believe that the prior facsimile transmission was unsuccessful, but we are under no obligation to re-send any order.

b. **Via iPad.** If you have elected to receive orders by iPad, then we shall submit all orders to you via iPad, provided that you have an iPad that is properly configured and connected to the internet to receive orders from the Software. Orders submitted to your iPad must be affirmatively accepted by you through the Software. If any order is not affirmatively accepted by you within thirty (30) minutes after it is placed, we may permit the Ordering User to cancel such order (each, a "**Cancelled Order**"). Cancelled Orders shall be null and void immediately upon cancellation. We shall not charge the Ordering User for any Cancelled Order. No funds shall be owed by us to you for any Cancelled Order and we shall not charge any Affiliate Fee on such Cancelled Orders.

c. **Order Numbers.** All orders submitted to you shall include tracking numbers that can be used to reference such orders in the Software.

d. **Order Cancellation.** Except as expressly set forth above, Users may not cancel orders through the Software. Users may contact you directly for the purpose of cancelling any order and you may agree or decline to cancel any such order in your sole discretion. The

cancellation of an order by you shall not affect the Ordering User's obligation to pay us or our obligation to remit the Total Order Cost (less the Affiliate Fee) for such order to you. You shall refund the Ordering User for any order cancelled by you for the applicable Total Order Cost.

6. Your Restrictions.

a. **Competing Business.** You shall not utilize (or permit others to utilize) the Software for the purpose of evaluating, operating or developing a business or service similar to or in competition with us and/or the Software, or to develop any software, applications, web sites, or other items that are similar to or in competition with the Software, without our prior written consent.

b. **Lawful Purpose.** You represent and warrant that your use of the Software does not at any time violate any contract, statute, rule, regulation, or other obligation applicable to or under which you are bound. You represent and warrant that you shall not utilize the Software to conduct or solicit the performance of any business or activity that is tortious or prohibited by law.

c. **Reverse Engineering.** You shall not reverse engineer any portion of the Software nor permit any other person to do so.

d. **Modifications.** You shall not modify any portion of the Software, including but not limited to the source code of the Software.

e. **No Contest.** You shall not contest, or aid in contesting, the ownership or validity of the Software, or our trademarks, service marks, trade secrets, or copyrights nor components thereof, including but not limited to the ManIDger Marks.

7. Liability, Damages, and Warranties.

a. **Indemnification.** You shall indemnify, defend, and hold us harmless from and against any and all claims, liabilities, losses, damages, or expenses (including all attorneys' fees and expenses) incurred by us resulting directly or indirectly from claims brought by third parties: (i) regarding your use of or access to the Software; (ii) as a result of a breach of these Terms by you; (iii) regarding any Menu Data; (iv) regarding any items delivered (or failed to be delivered) relating to any order placed (or attempted to be placed) by any person through the Software; (v) regarding any activity in which you engage using the Software; and (vi) regarding your violation of any law or the rights of any third party.

b. **EXCLUSION OF WARRANTIES. WE MAKE NO WARRANTIES WITH RESPECT TO THE SOFTWARE OR ANY COMPONENT THEREOF, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO QUALITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY. WE HEREBY EXPRESSLY DISCLAIM, AND YOU HEREBY WAIVE, ALL**



SUCH WARRANTIES TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. THE SOFTWARE AND ALL COMPONENTS THEREOF ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT EXPRESS OR IMPLIED WARRANTIES OF ANY KIND. YOU HEREBY WAIVE ANY AND ALL WARRANTIES AS TO THE RESULTS OBTAINED FROM OR THE ACCURACY OR RELIABILITY OF THE SOFTWARE. YOUR SOLE REMEDY IN THE EVENT THAT YOU ARE DISSATISFIED WITH THE SOFTWARE IN ANY RESPECT IS TO DISCONTINUE USE OF THE SOFTWARE AND TERMINATE THESE TERMS.

c. **Limitation of Damages.** We (which term for purposes of this Limitation of Damages shall include our officers, members, shareholders, employees, agents, directors, affiliates, successors and assigns) shall not be liable to you for: (i) any indirect, special, consequential, exemplary, incidental, lost profits, lost expenses, or punitive damages, regardless of whether we have been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable; (ii) loss of the Menu Data; (iii) interruption to, inaccuracies in, or failure to receive any order, regardless of the form of action, whether in contract or tort, including negligence, regardless of whether we have been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable; (iv) any failure or inability to connect to or access the Software, for any reason whatsoever; or (v) any orders or other agreements entered into between a User and you, whether or not such agreement was based on information provided through the Software, arranged through the Software, or otherwise, it being agreed that you are solely responsible for any and all agreements between you and Users. Your exclusive remedy is to discontinue use of the Software. Notwithstanding the above, any damages owed by us to you under any circumstances shall not exceed the total Affiliate Fees actually received and retained by us with respect to your account during the preceding twelve (12) month period to the extent permissible by applicable law.

d. **Force Majeure.** We shall not be liable to you for failing to perform our obligations under these Terms if due, in whole or in part, to circumstances beyond our control. Such circumstances shall include, but not be limited to, any acts or omissions of any government or governmental authority, natural disaster, act of a public enemy, riot, sabotage, dispute or differences with workmen, power failure, failure of internet connectivity, actions or failure to act by third parties, acts of God, terrorism, or any events reasonably beyond our control.

8. Intellectual Property.

a. **Title to Software.** Title to the Software, including without limitation all ownership rights to associated report formats, screen displays, menu features,

source code, components, patents, copyrights, trademarks and trade secrets, shall be our exclusive property.

b. **Confidentiality.** Except as otherwise provided herein, any and all information that is not otherwise publicly available (other than as a result of unauthorized disclosure) and is communicated by us to you including, without limitation, intellectual property, marketing and financial information, information regarding the nature and location of processes and procedures, whether such information be written, oral or in electronic format (“Confidential Information”) shall be confidential and shall be treated as such and held in strict confidence by you. Confidential Information shall be used by you only as expressly permitted by these Terms, and no information, including, without limitation, the provisions of these Terms, shall be disclosed by you, your agents or employees, without our prior written consent, except as may be necessary by reason of legal, accounting or regulatory requirements beyond your reasonable control. You shall at a minimum safeguard Confidential Information with at least the same degree of care that you use to safeguard your own confidential, proprietary, privileged and trade secret information. These provisions shall not apply to information (i) in the public domain (other than as a result of unauthorized disclosure), (ii) you had in your possession prior to receiving it from us (as evidenced by dated documentation), (iii) you obtained from a third party who rightfully acquired such information and is authorized to make such disclosure, or (iv) you independently developed without reference to or guidance from the Confidential Information received from us (as evidenced by dated documentation). If you must disclose any Confidential Information pursuant to applicable law or regulation or by operation of law, you may disclose only such information as, in the opinion of our counsel, is legally required; and provided, further, that you shall provide reasonable notice to us of such requirement and a reasonable opportunity to object to such disclosure. Notwithstanding anything elsewhere in these Terms, the terms of this Section shall apply to Confidential Information amounting to a trade secret for as long as such information remains a trade secret under applicable law and shall survive the termination of these Terms for any reason.

9. Miscellaneous.

a. **Governing Law.** These Terms shall be governed by and construed in accordance with the laws of the State of Texas without regard to its conflict of laws principles, and the courts located in Houston, Texas shall have exclusive jurisdiction over any dispute arising out of these Terms.

b. **Dispute Resolution.** In the event the parties cannot, in good faith, arrive at a resolution of any dispute, then any controversy or claim arising out of or relating to these Terms or use of the Software, shall be subject to mediation before a mutually-agreeable mediator. If the



mediation is unsuccessful, or if the parties are unable to agree upon a mediator within thirty (30) days after the dispute arises, then the dispute shall be subject to binding arbitration in Houston, Texas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Any claim or action against us by you must be filed within one (1) year after the date you first know or reasonably should know of the act, omission or default giving rise to the claim. You shall have no right to any remedy for any claim not asserted within that time period.

c. **Assignment.** You may not assign your rights or obligations under these Terms without our express prior written consent. You shall not have any authority to create or assume in the name of or on our behalf, any obligation or to act or purport to act as our agent for any purpose whatsoever. These Terms are not intended to vest any third party beneficiary rights in any person or entity not a party hereto nor create a partnership or joint venture between us and you or any other third party.

c. **Independent Contractors.** We and you specifically agree that nothing in these Terms shall be construed to establish any relationship between them other than that of an independent contractor. You agree that we are not supervising or controlling the manner or methods of your performance under these Terms and/or use of the Software.

d. **Severability.** Each article, section, paragraph, clause and term of these Terms is severable from the remainder and if any article, section, paragraph, clause or term is declared invalid, illegal, or unenforceable, the remaining articles, sections, paragraphs, clauses and terms shall remain in effect and a new provision as similar as possible to the invalid, illegal, or unenforceable provision shall be inserted in these Terms that is not invalid, illegal, or unenforceable.

e. **Waiver.** No failure or delay by either party in enforcing its rights shall constitute a waiver of its right to enforce its rights.

f. **Changes to these Terms.** From time to time we may, in our discretion, make changes to these Terms. When we make material changes to these Terms, we intend to provide you with prominent notice as appropriate under the circumstances (such as by displaying a prominent notice within the Software or by sending you an email). In some cases, we may notify you in advance and your continued use of the Software after the changes have been made will constitute your acceptance of the changes. Therefore, please make sure that you read any such notice carefully.

g. **Entire Agreement and Amendments.** These Terms contain the entire agreement between us and you with respect to the Software and may not be amended or modified in any way except in a writing signed by both parties.