Terms and Conditions

Foodpanda and the Vendor shall collectively be referred to as “**Parties**” and individually as “**Party**”, as the case may be.

WHEREAS Foodpanda acts as an independent contractor of the Vendor who, through this agreement, grants Foodpanda full authority to conclude and negotiate contracts with customers in the name and for the account of the Vendor, as well as for the offers of the Vendor, made via Foodpanda's online platform [www.foodpanda.ph](http://www.foodpanda.ph) as well as through its corporate sub-domain [www.corporate.foodpanda.ph](http://www.corporate.foodpanda.ph) (individually and jointly the “**Website**”) and a mobile application (where applicable). It is understood that Foodpanda does not act on behalf of the customers.

WHEREAS Foodpanda, as part of the Foodpanda online platform, provides an online marketplace for a number of vendors, via which customers can order prepared food items directly from the vendors. Thereto, Foodpanda receives the order of the customer online via the Foodpanda platform, transmits it via a printer / tablet / Vendor app installed by Foodpanda or, in exceptional circumstances, by phone, to the Vendor and accepts the payment of the customer for his orders online. The payment is accepted by Foodpanda in the name and for the account of the Vendor and transmitted to the Vendor, after deducting the fees already agreed upon by the Parties as per the Vendor Registration Form.

WHEREAS in addition to the online marketplace, the Parties shall also agree on who shall deliver the food from the Vendor to the Customer once an order is placed via the Foodpanda platform.

WHEREAS all contracts that are concluded by Foodpanda in its function as agent on behalf of the Vendor with customers via Foodpanda's online marketplace will be based on the General Terms and Conditions with the customers as found on the Website.

WHEREAS these terms and conditions ("**Terms**") together with the Vendor Registration Form form the agreement ("**Agreement**") under which Foodpanda provides online food ordering to the Vendor, and, where applicable, delivery services to the Customer (together referred to as "**Services**")  as detailed respectively on the Vendor Registration Form in the territory of Philippines (the “**Territory**”).

1. **Foodpanda Rights and Obligations** 
   1. In order to perform the Services, Foodpanda shall:
      1. have full right to remove or amend certain items from the Menu Information, provided that no new or untrue information shall be made available, and provided that prior notice and consent shall be given by the Vendor, whose consent shall not be unreasonably withheld and shall be given in a timely manner;
      2. have the right to influence the prices for the food items offered by the Vendor on a case-by-case basis by offering discounts at Foodpanda’s sole cost, whereas Foodpanda will not increase the prices provided by the Vendor;
      3. provide the Vendor with the Device and SIM card, if applicable, (collectively, the “**Equipment**”);
      4. in the event of Foodpanda performing the delivery services:
         1. effect such deliveries  in accordance with the delivery time indicated on the Website;
         2. ensure that the delivery time stated on the Website complies with the delivery time actually required;
         3. ensure that Foodpanda delivery personnel shall be at the Vendor premises to collect the order at the time stated when the order was transmitted to the Vendor;
         4. ensure that all orders will be delivered in a state that a customer would expect for that type of food, provided that Vendor complies with the obligation in clause 2.1.6;
         5. have the right to charge the customer a delivery fee (“**Foodpanda Delivery Fee**”), and determine a minimum order value, at its own discretion;
      5. transfer to the Vendor, the Restaurant Revenue for such orders minus the Agency Fee in accordance with clause 6 of these Terms;
      6. inform the Vendor in writing of any changes implemented to the procedures by Foodpanda at least 2 days prior to the intended change taking place, and the Vendor shall as such comply with all such change/s.
      7. have the right to alter, at its sole discretion, any services related to delivery, including delivery areas and operational timing, without prior notice;
      8. have the right to refuse the onboarding of customers in the event of customer verification measures being implemented by Foodpanda (such as SMS verification of the customer when first registering on the platform) and Foodpanda is not satisfied of the outcome of the verification. Additionally, Foodpanda has the right to block customers from ordering in the event of a customer abusing any promotions or in any other case of fraud-like attempts by the customer on the account of Foodpanda or the Vendor. Foodpanda shall not require any consent from Vendor in order to effect the provisions of this clause.
2. **Vendor Rights and Obligations** 
   1. The Vendor shall:
      1. ensure that it makes personnel available to receive the appropriate training from Foodpanda in order for the Vendor to operate the system provided by Foodpanda with ease;
      2. provide Foodpanda with all of the menu information as agreed on with Foodpanda, including: menu items; allergen information; minimum order values; promotions; discounts; opening hours; times of delivery and areas of delivery (if applicable) (“**Menu Information**”) to be made available for display on the Website. Should the Vendor wish to change any of the Menu Information, it shall inform Foodpanda in writing of any such suggested changes at least 2 business days before the intended change(s) take(s) place, together with an updated copy of the latest menu reflecting such changes. Such changes shall not occur more than once per month, barring exceptional circumstances;
      3. provide Foodpanda with a clear acceptance or rejection of all orders provided by Foodpanda, no later than 8 minutes from the time the order was made available to the Vendor;
      4. provide Foodpanda, its employees, agents, consultants and subcontractors, with access to the Vendor's premises but only to areas where the food orders will be received and Services will be performed;
      5. comply with all local Laws and Regulations and obtain and maintain all necessary licenses, permissions and consents (including, without limitation, any food and beverage and / or health and safety legislation and / or regulations) which may be required in order to perform its obligations under this Agreement;
      6. upon accepting an order, prepare and fulfill such order without delay, pack it in accordance with Foodpanda standards and requirements as communicated from time to time, and at no less than the common standard of the Vendor, and transfer it to the Foodpanda delivery person or to its own delivery person, as applicable; together with the required cutlery;
      7. in the event of Vendor Delivery:
         1. provide Foodpanda with a realistic estimated delivery time at the same time as providing the Menu Information;
         2. deliver to the customer all accepted orders within the time indicated at acceptance by Vendor;
         3. immediately inform Foodpanda of any delay in delivering the order according to the estimated delivery time;
         4. deliver the order in a state that a customer would expect for that type of food, with the appropriate packaging; AND
         5. inform Foodpanda about any cancelled, fake or any non-fulfilled orders within 48 hours from acceptance of the order.
      8. in the exceptional case of the Vendor providing Foodpanda with a rejection as per clause 2.1.3, the Vendor shall clearly state the reason(s) for such rejection no later than 8 minutes from the time the order was made available to the Vendor;
      9. be solely responsible and liable for any and all customer queries, claims and/or complaints in respect of the contents and quality of the food and orders and any consequential effects thereof if the cause for the same is attributable to the Vendor;
      10. ensure that it has available at all times sufficient capacity (including staff, food items and equipment) to process all orders received through Foodpanda in accordance with the average delivery time provided to the customers;
      11. immediately inform Foodpanda of any menu items that are not available at any given time and shall do so by accessing the Vendor App or the backend if available to Vendor, or by phone, if the Vendor App or backend access is not possible;
      12. ensure that all portions provided to its indirect customers availing of Foodpanda services shall be of the same size and quality as the portions provided by the Vendor to its direct customers;
      13. ensure that the prices, and minimum order values, offered to customers by Vendor, and set by Foodpanda are consistently identical to the prices offered to customers by the Vendor when placing orders by phone, website, mobile app or any other platform which is operated by the Vendor. In particular, if the Vendor wishes to offer any lower prices through any promotions or discounts for orders received by phone, website, mobile app or any other platform which it operates, it shall inform Foodpanda at least 7 days in advance. The Vendor shall clearly explain the conditions of the promotions or discounts and Foodpanda shall have the right to provide the Vendor’s promotions or discounts on its platform;
      14. use the Equipment for the entire duration of the Agreement and with respect to the same, the Vendor shall:
          1. pay the corresponding Data Recharge Fee;
          2. in the event, the Vendor does not obtain the SIM card from Foodpanda, ensure that the Device has adequate and stable internet connection that allows receipt of food orders;
          3. ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner;

* + - 1. maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted);
      2. make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment;
      3. not part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment;
      4. not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Vendor shall notify Foodpanda and the Vendor shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify Foodpanda on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
      5. not use the Equipment for personal use and/or any unlawful purpose.
      6. not claim any ownership or other rights over the Equipment.
    1. shall perform its obligations under this Agreement at all times in a competent, professional, and businesslike manner, within established industry standards, practices, and principles, and within the time deadlines set forth herein; and
    2. if the Vendor is Halal certified, it must inform Foodpanda in writing of this certification and, where required, provide Foodpanda with a copy of the certification. If there are any changes to the Vendor’s status with regards to Halal certification, the same must be made known to Foodpanda within 24 hours of any such changes.

1. **Penalties for Breach of Obligations**
   1. Vendor specifically acknowledges that it has read, understood and agrees with the provisions of clause 3 and also agrees that the application of the provisions of clause 3 shall be suspended until otherwise agreed by the Parties in writing.

***Vendor Penalties***

* 1. Saving the provisions of clause 6.9, the Vendor agrees to be bound by the following penalties which shall be payable to Foodpanda by way of contractual penalty for the below-mentioned specific breaches:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Breach of Clause** | **Penalty amount (PHP)** | **Provisions** |
| a | 2.1.3  (delayed response to order notification) | 56 (VAT inclusive) per infraction | Provided that the number of infractions amounts to more than 5% of the total amount of orders accepted by the Vendor. |
| b | 2.1.6 or 2.1.7.2  (late preparation or late delivery) | 56 (VAT inclusive) per infraction | Provided that the penalties shall only apply after a  5 minute delay |
| c | 2.1.7.1  (delivery time inaccurate on Website) | 56 (VAT inclusive) per infraction | a. delay shall be deemed effective when the Vendor adds additional delivery time to an order at the time of acceptance.  b. provided that the number of infractions amounts to more than 10% of the total amount of orders accepted by the Vendor. |
| d | 2.1.8  (Vendor rejecting an order in breach of this agreement) | Agency Fees or Corporate Agency Fees (as applicable) that would have been due on such rejected order | No penalty shall be due to Foodpanda by the Vendor if the breach arose as a fault of Foodpanda or due to a Force Majeure event. |

* 1. For the purposes of sections 3.2 (a) to (c) above,  any feedback received by Foodpanda from a customer in relation to the delivered order shall be considered as an inspection performed by Foodpanda and the Vendor shall accept any such outcome without contest. Furthermore, despite the penalty payment, Foodpanda shall reserve all its rights at law in relation to the breaches.

***Foodpanda Penalties***

* 1. Foodpanda agrees to be bound by the following penalties which shall be payable to the Vendor by way of contractual penalty for the below-mentioned specific breaches:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Breach of Clause** | **Penalty amount (PHP)** | **Provisions** |
| a | 1.1.4.4  (Foodpanda fails to deliver food in a proper state) | Refund and/or compensate the customer for the spoiled food. | The amount of the refund and/or compensation to the customer shall be agreed between Foodpanda and customer. |

* 1. Foodpanda shall strive to properly report on all its own breaches that lead to a penalty and inform the Vendor about penalties due by Foodpanda through a Notification of Penalty.
  2. The above penalties shall not limit, in any manner whatsoever, the Parties’ rights at law in relation to any breaches of this Agreement.

1. **Suspension**
   1. Foodpanda shall have the right to temporarily suspend the Vendor from the Website, without penalty, if:
      1. the Vendor has failed to pay any Foodpanda invoices that have become due; OR
      2. in its reasonable opinion, the Vendor is in breach of any terms of this Agreement or may be negatively affecting Foodpanda’s business.

For the avoidance of doubt, any suspension shall not result in the termination of this Agreement, the provisions of which shall remain fully applicable.

1. **Indemnification from Third Party Claims**
   1. Vendor will, at its expense, defend any of the following types of third party claims brought against Foodpanda, its directors, officers, or agents (collectively, “**Indemnitees**”):
      1. any claim that, if true, would constitute a breach of this Agreement by the Vendor, its employees, agents or representatives;
      2. any claim related to injury to or death of any person or damage to any property arising out of or related to the Vendor obligations arising out of this Agreement; or
      3. any claim that otherwise arises from the negligence, acts, or failures to act, of Vendor, its employees, agents or representatives.
      4. Vendor will indemnify and hold harmless the Indemnitees from any costs, losses, claims, damages and fees (including reasonable legal fees) incurred by any of them that are attributable to any such claim.
2. **Fees, Payment and Collection of Funds**
   1. The Vendor grants Foodpanda authority to receive any funds in the name, and for the account, of the Vendor paid by the customers, whether by online means or in cash.
   2. In the event of cash payment by the customer at delivery, the Party making the delivery shall be responsible for collecting the cash payment, and reconciling with the other Party in accordance with the provisions of clause 6.
   3. In the event of online payments, Foodpanda shall collect money and reconcile in accordance with the provisions of clause 6.
   4. The Agency Fee, Corporate Agency Fees (if applicable), the Data Recharge Fee, (if applicable) and the Photography Fee (if applicable), collectively referred to as “**Amounts Payable**”.
   5. The Parties agree and accept that the Restaurant Revenue, the Amounts Payable will be calculated and payable in the amount agreed to on the Vendor Registration Form and that no other fees or charges shall apply between the Parties or towards the customers, except as provided for in this Agreement. Vendor specifically accepts that, if applicable, Foodpanda may set-off the Amounts Payable against the Restaurant Revenue.
   6. The Parties agree and accept that within five (5) business days from the end of every month, starting from the Commencement Date (each a "**Payment Period**"), Foodpanda will issue a monthly ordering statement (“**Order Statement**”) to the Vendor for the orders received during the previous month indicating the Restaurant Revenue and any other sums due to the Vendor as well as an invoice for the Amounts Payable. Foodpanda shall clearly outline, in writing, the total sum to be transferred to Vendor after any applicable set-off (“**Transfer Amounts**”), or the total sum to be paid by Vendor, as the case may be.
   7. Foodpanda's payment partner, or Foodpanda, as the case may be, shall transfer the Transfer Amounts to the Vendor’s bank account listed on the Vendor Registration Form, within 15 business days of acceptance of the Order Statement by the Vendor .
   8. Saving the provisions of clause 3.1, in addition to the above-mentioned invoice, Foodpanda shall also issue the Vendor with an outline of penalties due by Vendor to Foodpanda and/or Foodpanda to Vendor (“**Notification of Penalty**”).
   9. The Vendor shall have the right to appeal the Order Statement and Notification of Penalty in accordance with the below:
3. Vendor shall object in writing within 7 business days of the issuing date of the relevant Order Statement or Notification of Penalty and shall clearly state all the reasons for the appeal, including any supporting documentation;
4. Foodpanda shall review the objection within 5 business days and:
5. if agreed with, shall adjust the Order Statement or Notification of Penalty accordingly;
6. if Foodpanda disagrees with the Vendor, it shall inform Vendor of such and the Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between a director of each of the Parties with authority to settle the relevant dispute.
7. If the dispute cannot be settled amicably within 14 days of receipt of the appeal will entitle either Party to apply the provisions of clause 24.2.
8. **Commencement of Services**

The Vendor shall only be listed on the Website after the receipt of all information requested by Foodpanda, including, but not limited to the Menu Information; a logo and approved images. Foodpanda shall inform the Vendor, in writing, of the starting date of the Services (“**Commencement Date**”), which notification shall be annexed to this Agreement.

1. **Marketing Materials and Intellectual Property**
   1. The Vendor agrees that its name, address, a brief slogan and one or more images of the Vendor, including any logos or insignia, may be published on the Website, mobile application, Foodpanda partner and affiliate platforms, so that Foodpanda  can be identified as an agent of the Vendor on such online platforms.
   2. The Vendor furthermore permits Foodpanda, at Foodpanda's cost, to advertise the Vendor on the Website, mobile application, Facebook, Google and any other social media or relevant offline and online marketing channels and specifically authorized Foodpanda unlimited use to its intellectual property, including its logo, in doing so.
   3. The Vendor, where practicable, is to display and distribute official Foodpanda marketing materials such as, *inter alia*, business cards of Foodpanda, and links to the Website,  on a variety of online and offline tools, such as the Vendor website (if available) and any social media availed of by Vendor, via a certificate picture and an “order now” button. Foodpanda shall provide such material or images to produce such material, and Vendor shall not produce any marketing materials including reference to Foodpanda, without the consent of Foodpanda. The Vendor shall not bear any cost in respect of these marketing materials.
   4. Foodpanda may provide Vendor with offline marketing materials, such as stickers, and Vendor obliges itself to display such offline marketing materials as instructed by Foodpanda.
   5. All intellectual property rights in the marketing materials mentioned in clauses 8.3 and 8.4, and otherwise arising out of the Services shall remain the exclusive property of Foodpanda.
   6. It is hereby clarified that Vendor does not have any rights whatsoever to use or avail of any Intellectual Property rights of Foodpanda, including any domains or similar domain names.
   7. It is agreed that neither Party shall obtain any other rights to the Intellectual Property of the other Party, except as catered for in these Terms.
2. **Partnering Platforms**

Foodpanda may display the Menu Information on any other platform owned by, operated by, or affiliated with Foodpanda, and the terms of this Agreement apply for such platforms as well.

1. **Warranties**
   1. The Vendor represents, warrants and undertakes that the use by Foodpanda of the name, logo and /or image of the Vendor on the Website  and / or other marketing materials in accordance with clause 8 of these Terms shall not infringe the intellectual property rights of any third party.
   2. In case the Vendor is in breach of clause 10.1, with the result that Foodpanda is obligated to pay royalty fees or any other payment (the “Royalty Fee”) to any third party for the use of the name, logo and /or image of, or used by, the Vendor, necessary in order to provide the Services, the Parties agree that such Royalty Fee shall be passed on to the Vendor (“Pass-through”). Therefore, the Parties agree that Foodpanda shall only be allowed to enter into any agreement with a third party including such Royalty Fee, if prior-agreed between the Vendor and Foodpanda in writing.
2. **Confidentiality**
   1. A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the receiving party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to this Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. For the avoidance of doubt, the provisions of this Agreement are considered Confidential Information. This clause **11.1** shall survive termination of this Agreement.

* 1. In the event of Vendor Delivery, Foodpanda shall provide Vendor with certain personal data belonging to the Foodpanda customers ("**Customer Data**"). Such Customer Data may include, among others: name, surname, address, e-mail address and telephone number or other information provided by the Foodpanda customers that are considered to be required for the performance of service of food delivery. Vendor hereby undertakes to only use the Customer Data for the purposes of this Agreement and in accordance with the provisions of Data Protection legislation, and shall not retain, store or process, in any manner whatsoever, any part of the Customer Data, unless legally required to do so.
  2. Vendor shall ensure that all employees, agents or sub-contractors that handle the Customer Data, or any part thereof, shall abide by the provisions of clause 11.2.

1. **No Partnership**

Nothing in this Agreement is intended to, or shall be deemed to, establish any corporate partnership or joint venture between the Parties.

1. **Amendments**
   1. Foodpanda shall have the right to amend any section of this Agreement, provided that it shall inform Vendor of such amendments in writing by sending the full copy of the updated Terms and any changes being made to any section of the Vendor Registration Form, together with the effective date of such amendments, which shall not be shorter than fourteen days (14) days from date of notification.
   2. In the event of Vendor disagreeing with such amendments he shall have the right to terminate this Agreement in accordance with the provisions of clause 19.1 (a).
   3. It is specifically agreed that all amendments shall be effective between the Parties with effect from the date notified by Foodpanda in accordance with clause 13.1, without the need for any additional signatures or documentation, unless objected to in accordance with clause 13.2.
2. **Force Majeure**
   1. For the purposes of this Agreement, "**Force Majeure Event**" means an event beyond the reasonable control of either party including but not limited to acts of God; war; riot; civil commotion or terrorist action.
   2. Neither Party shall be liable to the other Party as a direct result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.
   3. If a Force Majeure Event prevents either Party from performing its obligations under this Agreement for more than four weeks, either Party shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the other Party.
3. **Third Parties**

A person who is not a party to this Agreement shall not have any rights to enforce its terms.

1. **Notices**
   1. All notices under this Agreement shall be in writing, addressed to the agreed contact person/address as per this Agreement, and be deemed duly given:
      1. On the same day when delivered, if delivered by hand during normal business hours of the recipient;
      2. On the same day when sent, if transmitted by fax or e-mail to the contact person on the Vendor Registration Form or any approved substitute thereof, and a confirmation of receipt or delivery is provided;
      3. On the third business day following mailing, if sent by post.
2. **Assignment**
   1. Foodpanda may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.
   2. The Vendor shall not, without the prior written consent of Foodpanda, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement.
3. **Waiver**

A waiver of any right under this Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

1. **Term and Termination**
   1. This Agreement shall commence on the Commencement Date and will continue for an indefinite period, unless terminated earlier in accordance with this clause 19.1. This Agreement may be terminated: (a) by either Party for convenience upon giving the other Party not less than 5 days' prior written notice (b) with immediate effect upon the provision of written notice by either party in the event of material breach of this Agreement by the other party; or (c) at any time by mutual written agreement between the Parties.
   2. Foodpanda shall have the right to terminate this Agreement, with immediate effect and without any liability, in the event of a breach of section 2.1.13, where Vendor has failed to remedy the breach within a maximum period of 2 business days from notification.
   3. Upon termination of this Agreement, for whatsoever reason:
      1. Foodpanda shall remove the Vendor from the Website and mobile application;
      2. the Vendor is obliged to immediately return all Foodpanda property in its possession, including in particular the assets loaned by Foodpanda;
      3. the Vendor must immediately remove any reference to Foodpanda and / or any of Foodpanda's intellectual property from its premises, website and / or marketing materials;
      4. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and
      5. clauses which expressly or by implication survive termination shall continue in full force and effect.
2. **Limitation of Liability**
   1. Nothing in this Agreement shall limit or exclude either Party’s liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors
   2. Subject to clause 20.1:
      1. Neither Party shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss or damages arising under or in connection with this Agreement; and
      2. Foodpanda's total liability to the Vendor in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Agency Fees paid in the preceding year at the time of the event giving rise to such liability.
   3. This clause shall survive termination of this Agreement.
3. **Conflicting Terms**
   1. To the extent that any of these Terms conflict with the terms stated on Vendor Registration Form (including, without limitation, any Special Conditions detailed on Vendor Registration Form), the terms of Vendor Registration Form shall prevail.
   2. This Agreement is written in the English language, which shall be the sole language of interpretation in the event of any translations.
4. **Entire Agreement**

This Agreement sets forth the entire agreement and understanding between the Parties or any of them in relation to the subject matter of this Agreement and supersedes and cancels in all respects all previous agreements, letters of intent, correspondence, understandings, agreements and undertakings (if any) between the Parties with respect to this subject matter hereof, whether written or oral.

1. **Severability**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

1. **Governing Law and Jurisdiction**
   1. This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of Philippines.
   2. Each Party agrees that any dispute arising out this Agreement shall be subject to the non-exclusive jurisdiction of the courts of Philippines who shall settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
   3. Performance of this Agreement shall continue during arbitration proceedings or any other dispute resolution mechanism pursuant to Clause 6.9. No payment due or payable by the Vendor, or amount to be transferred by Foodpanda shall be withheld on account of a pending Court dispute or other dispute resolution mechanism except to the extent that such payment is the subject of such dispute.
2. **Preferred Partnership** 
   1. In return for the Preferred Partnership Rate agreed to on the Vendor Registration Form (if applicable), subject to Clauses 25.2 and 25.3 below, the Vendor agrees that throughout the duration of this Agreement, it shall work on a Preferred Partnership basis with Foodpanda by not entering into any agreements with any or select third parties that provide services that are similar or identical to the Services ("**Third Parties**").
   2. Should the Vendor not opt to work on a Preferred Partnership basis with Foodpanda, the Non-Preferred Partnership Rate agreed to on the Vendor Registration Form shall apply.
   3. In the event of the Vendor opting to shift from the Preferred Partnership Rate to the Non-Preferred Partnership Rate, it shall inform Foodpanda of such decision with at least ninety (90) days’ notice and the Non-Preferred Partnership Rate shall apply with effect from the first day of the following month following the end of notice.
   4. In the event of the Vendor opting to shift from the Non-Preferred Partnership Rate to Preferred Partnership Rate it shall inform Foodpanda of such decision, at least five (5) working days notice prior to the month, such Preferred Partnership Rate shall apply.

Should the Vendor opt not to work on a Preferred Partnership basis with Foodpanda and fail to inform Foodpanda of such decision with at least ninety (90) days’ notice, the Vendor agrees that the Non-Preferred Partnership Rate shall apply with effect from the date that the Vendor begins working with any Third Parties.

1. **Photography Package**
   1. If the Vendor opts for one of the Photography Packages stated in the Vendor Registration Form, Foodpanda shall organize for the photographs to be taken and shall have all necessary Intellectual Property Rights to use the photographs on the Website and its mobile application.
   2. Vendor shall pay the monthly Photography Fee to Foodpanda as stated in the Vendor Registration Form. The Photography Fee stated is VAT inclusive (clause 1.1.X). Foodpanda shall invoice the Photography Fee in accordance with clause 6.
   3. The Vendor agrees and acknowledges, that the Photographs shall only be used at Foodpanda’s Website and mobile application. With payment of the Photography Fee, no additional usage right shall be granted to the Vendor.
   4. In case the Vendor Agreement will be terminated within the first contract year either by Foodpanda in accordance with clause 19.b) or by the Vendor in accordance with clause 19. a) or 19 c), the Vendor will pay 50% of the Photography Value to Foodpanda. Foodpanda shall invoice such amount with 30 days after termination of the Vendor Agreement.
2. **Authorized Signatories**
   1. The Vendor acknowledges that Foodpanda’s approval and agreement to be bound by the terms and conditions under this Agreement shall only constitute to be legally binding when signed by at least two duly authorised representatives of Foodpanda on this Agreement.