

TouchBistro Inc
85 Richmond St. West - Suite 1100
Toronto, Ontario
M5H 2C9
Canada



Bill To:
Opem Outcry Trading Company
Ben Chen
811 West Pender Street
Vancouver, British Columbia
V6C 1K6
Canada

Sold To:
Opem Outcry Trading Company
Ben Chen
811 West Pender Street
Vancouver, British Columbia
V6C 1K6
Canada

Quote Created Date: September 28, 2023
Initial Term (months): 24
Renewal Term (months): 12
Auto-Renew: True
Currency: CAD

Quote Expiry Date: October 04, 2023
Billing Method: Email
Payment Method: Credit Card
Payment Term: Due Upon Receipt

SOFTWARE

DETAILS	BILLING FREQ.	LIST PRICE	DISCOUNT	QUANTITY	TOTAL
Tiered License - Monthly	Month	\$82.25	0.00%	4	\$329.00
TouchBistro Reservations - Monthly	Month	\$229.00	34.50%	1	\$150.00
Software Total					\$479.00

SERVICES

DETAILS	QUANTITY	LIST PRICE	DISCOUNT	TOTAL
Installation Services	1	\$399.00	100.00%	\$0.00
- Wiring/Product Remote (phone) Installation Consultation				
Onboarding Services	1	\$399.00	100.00%	\$0.00
- Specialist provided for Remote (phone) Consultation & Project Management				
- Webinar Access for Owners, Managers, and Staff				
Menu Services	1	\$299.00	100.00%	\$0.00
- Menu Best Practices Consultation				
- Pre-live One time Menu Inputting (up to 800 items)				
Services - Total				\$0.00

Total Incentive Received
\$1,097.00

The Total Incentive includes all promotions and discounts received

SUMMARY:TouchBistro	
SOFTWARE	\$479.00
HARDWARE (TouchBistro):	\$0.00
SERVICES:	\$0.00
BUNDLES:	\$0.00
SHIPPING:	\$0.00
GST 5% & PST 7%	\$57.48
Total of your first payment to TouchBistro	\$536.48

TERMS AND CONDITIONS

This order is governed by the terms of this Sales Quote and TouchBistro Terms of Use found at <http://www.touchbistro.com/terms-of-use/> (the "Terms"), a copy of which as at the date hereof is attached hereto. Capitalized terms used below but not defined shall have the same meanings as given to such terms in the Terms.

Professional services must be booked 15 days in advance. Payment is required at time of booking. Cancellation or rebooking must be made more than 3 days before services commence or will be subject to \$100 change fee. If you cancel or change dates, you will be given a credit (less change fee) for such services which must be used by within 60 days of your Effective Date, after which the credit expires and constitutes non-refundable payment to TouchBistro.

Apple and other third-party hardware or services are exclusively subject to Apple or such third-party pricing, terms, conditions, warranties, and policies. Apple hardware is subject to Apple pricing at the time of delivery. Payment is required prior to shipping hardware, FOB shipping, to the specified address provided by you in writing.

Installation services exclude wiring and local IT infrastructure (including Internet) which are your responsibility, risk and expense.

To ensure your target Go-Live Date is met, you will ensure all wiring in place at your venue (as per wiring diagram), internet set up on site, construction completed, all necessary hardware and payment processor received and ready.

YOUR ACKNOWLEDGEMENT

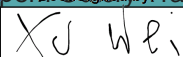
INITIALS

By initialling below, you agree and acknowledge that:

- (i) this order is non-cancellable and all fees are non-refundable;
- (ii) your payment obligations under this Sales Quote shall commence on the earlier of your Go-Live Date or November 27, 2023 (the "Outside Payment Date");
- (iii) you have read, understand and agree to be bound by the Terms;
- (iv) there is no representation, warranty or agreement made to you that is in addition to, or different from, this Sales Quote or the Terms, on behalf of, or to bind, TouchBistro in any way;
- (v) hardware purchased from TouchBistro cannot be returned or exchanged;
- (vi) to help better manage the delivery of TouchBistro Services to you, TouchBistro requires that you consent to the installation of Mobile Device Management (MDM) software on all applicable hardware deployed by you to utilize TouchBistro Services and you shall take all steps, as directed by TouchBistro, to do so; and
- (vii) as the Total Incentive is provided in exchange for your commitment to the Initial Term, in the event of default, among other consequences provided in the Terms, you shall repay to TouchBistro the Total Incentive received.

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Signature

Open Outen Trading Company	
Signature:	
Name:	6149E783999646E... Ben Chen
Title:	GM
Date:	9/29/2023

HARDWARE - Self Sourced

DETAILS

QUANTITY

AmpliFi HD Mesh Router Customer Sourced
Other Router Customer Supplied

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TouchBistro Merchant Terms of Use

Last Updated: December 15, 2022

TouchBistro Inc. and its affiliates (collectively, "TouchBistro", "we", "us" and terms of similar meaning) provide the TouchBistro restaurant point of sale software, its websites (the "Sites"), and all associated services and add-ons, including supported integrations with third-party services or any other current or future services offered by TouchBistro (collectively, the "TouchBistro Services") to you ("Merchant") subject to these terms and conditions of use (the "Terms"). The Terms apply to the use of TouchBistro Services, Content (as defined below) and any additional software, hardware or other services provided, referred, or recommended by us or third parties as part of, or for use with, TouchBistro Services, by all Merchants and Subscribers (as defined below).

By accessing, using or continuing to use TouchBistro Services, Merchant agrees to be legally bound by the terms and conditions of Merchant's TouchBistro Services Agreement. If Merchant does not agree with the TouchBistro Services Agreement in its entirety, Merchant may not use TouchBistro Services. In the event of any conflict between the Terms and the terms and conditions of a Merchant's Sales Quote (as defined below), the Merchant's Sales Quote shall govern and be paramount.

In the Terms, Merchant and its staff members to whom Merchant gives access to the Merchant's TouchBistro account are called "Subscribers", and Merchant's customers who use TouchBistro Services are called "Customers". Users of TouchBistro Services, whether they are Subscribers or Customers, are called "Users".

TouchBistro reserves the right to change or modify any of the terms and conditions contained in the Terms, or any policy or guideline applicable to TouchBistro Services, at any time and in its sole discretion, provided that if a change or modification is material, TouchBistro will provide at least thirty (30) days' notice. If Merchant does not agree with the changes, Merchant must forthwith notify TouchBistro in writing and may cancel its Merchant account with TouchBistro effective upon the expiration of the then current term of the Merchant's TouchBistro Services Agreement (as defined below). In such an event, until such expiration, the prior Terms will remain in force. Notwithstanding the foregoing, if Merchant renews its TouchBistro Services Agreement past the then current term thereof, it shall be deemed to have accepted the then most current version of the Terms as then in effect. Subject to the foregoing, any changes or modifications will be effective immediately upon the posting of same on the Sites, and Merchant's continued use of TouchBistro Services after such time will constitute Merchant's acceptance of such changes or modifications. Merchant should from time to time review the Terms and any policies and documents incorporated therein to understand the terms and conditions that apply to Merchant's use of TouchBistro Services. The Terms will always show the "last updated" date at the top.

For the purposes of the Terms, the defined terms referenced below have the following meanings. Any capitalized terms not otherwise defined herein shall have the meaning provided in the Merchant's Sales Quote.

"Effective Date" means the earlier of: i) the Go-Live Date and ii) the Outside Payment Date. "Go-Live Date" means the actual date upon which Merchant begins using the TouchBistro Services in a live production environment (if applicable). "Hardware" means the iPads and other related hardware technology required by Merchant to utilize TouchBistro Services and acquired by Merchant from TouchBistro, as detailed in the Sales Quote. "HPP Agreement" means an agreement between Merchant and TouchBistro pursuant to which Merchant agrees to pay for the cost of any Hardware described therein over time. "Outside Payment Date" has the meaning set forth in Merchant's Sales Quote. "Quote Created Date" has the meaning set forth in Merchant's Sales Quote. "Sales Quote" means the ordering document entered into by and between Merchant and TouchBistro pursuant to which Merchant has agreed to obtain TouchBistro Services from TouchBistro. "TouchBistro Services Agreement" means collectively Merchant's Sales Quote, the Terms, the Privacy Notice, the HPP Agreement (if any), and any other agreements entered into by and between TouchBistro and Merchant relating to the provision of TouchBistro Services to Merchant.

1. Registration Data; Account Security

If Merchant registers for an account on TouchBistro Services, Merchant agrees to (a) provide and maintain accurate, current and complete information as may be prompted by any registration forms on TouchBistro Services ("Registration Data"); (b) maintain the security of Merchant password(s) to its TouchBistro account; (c) maintain and promptly update the Registration Data, and any other information Merchant provides to TouchBistro, and keep it accurate, current and complete; (d) accept all risks of unauthorized access to the Registration Data and any other information or data Merchant provides to TouchBistro directly or through TouchBistro Services; and (e) execute any third-party service provider agreements required to receive the TouchBistro Services. Merchant is responsible for all activity under Merchant's TouchBistro account, whether authorized by Merchant or not, and for charges incurred by and through Merchant's TouchBistro account.

2. Fees; Charges; Taxes

TouchBistro shall commence charging the software license fees described in the Merchant's Sales Quote on the Effective Date. Merchant shall pay TouchBistro any fees specified in its Sales Quote, in accordance with the timing and currency specified in the Sales Quote. All pre-paid license, subscription, or other fees (including professional services such as installation and training) are non-refundable and subject to any additional payment or other terms or conditions provided for in the Merchant's TouchBistro Services Agreement. Overdue amounts shall accrue interest at a rate which is the lesser of: two percent (2%) per month or the maximum rate allowable by law, plus all reasonable expenses of collection, including reasonable attorneys' fees and costs. For Merchants outside of Quebec, TouchBistro may charge you a fee plus applicable taxes if your payment is refused by your financial institution for insufficient funds, which will be specified on your bill. Such fee is to offset costs incurred by TouchBistro and shall not exceed the maximum amount allowed under applicable law. Merchant is responsible for all taxes applicable to the fees and charges in any applicable jurisdiction.

Except as expressly provided in the applicable Sales Quote, TouchBistro reserves the right to change the fees for TouchBistro Services upon thirty (30) days' prior written notice to Merchant. If Merchant does not agree with the fee changes, Merchant must forthwith notify TouchBistro in writing prior to the effective date of such change and may cancel its Merchant account with TouchBistro effective upon the expiration of the then current term of the Merchant's TouchBistro Services Agreement. In such an event, until such expiration, the fees in effect prior to the fee change notice will remain in force. Subject to the foregoing, any changes will be effective on the date indicated in the notice, and Merchant's continued use of TouchBistro Services after such time will constitute Merchant's acceptance of such changes.

3. Ownership, Copyright and Trademarks

The content, including all information, content, data, logos, marks, interfaces, designs, graphics, pictures, sound files, other files, and their selection and arrangement (collectively the "Content"), made available by Merchant to TouchBistro through TouchBistro Services is called "Merchant Content". Content provided or made available to TouchBistro by Users is called "User Content". Other than User Content, all Content and all software available on TouchBistro Services or used to create and operate TouchBistro Services is the property of TouchBistro or its respective licensors, and is protected by Canadian and international patent, trademark, and copyright laws, and all rights to TouchBistro Services, such Content and such software are expressly reserved. All trademarks, registered trademarks, product names and company names or logos mentioned in TouchBistro Services are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation of them by TouchBistro. Merchant hereby grants TouchBistro a nonexclusive, royalty-free right and license to use and display Merchant's business name, logo and/or other registered or unregistered trademarks, trade names, brands and/or service marks on the Sites, marketing collateral and other public disclosures, or to otherwise identify Merchant as a customer of TouchBistro.

TouchBistro may use and shall be the exclusive owner of any feedback, suggestions, improvements or ideas ("Feedback") Merchant provides or has provided to TouchBistro regarding TouchBistro Services. This applies to Feedback provided to TouchBistro at any time in any format. Merchant assigns all intellectual property rights in Feedback to TouchBistro immediately upon communication of such Feedback to TouchBistro or its representatives. TouchBistro may use Feedback for any purpose without compensation or attribution to Merchant and Merchant forever waives and surrenders any and all rights in Feedback.

If Merchant authorizes third parties to access Merchant's User Content through TouchBistro Services, Merchant agrees that we are permitted to provide to such third parties with the User Content, and also agrees that we have no responsibility or liability for the use of such User Content by such third parties. Any such access shall be governed by any applicable end user or API agreements or terms applicable to such third party and may be subject to fees charged by such third party. Without limiting the generality of the foregoing, Merchant is responsible for all business continuity, data loss, business interruption, or other risks that may arise out of Merchant's use of TouchBistro Services. TouchBistro denies, disclaims, and waives any liability for any loss that may occur arising through use of TouchBistro Services, including, but not limited to, loss of data, business interruption, incorrect calculation of any amount, including taxes or amounts due from Merchant's Customers, or loss of Merchant's goodwill.

4. Merchant License of Merchant Content to TouchBistro

Merchant grants TouchBistro an irrevocable, perpetual, worldwide, transferable, non-exclusive, royalty-free, and sublicensable right and license to use, copy, modify, display and transmit Merchant Content as necessary to provide and perform the TouchBistro Services. With respect to any Merchant Content, Merchant represents and warrants that (i) Merchant owns or controls all necessary rights to the Merchant Content, or Merchant otherwise has the lawful right to post and distribute the Merchant Content, to or through TouchBistro Services and provide TouchBistro the foregoing license, and (ii) the use and posting or other transmission of such Merchant Content does not violate the Terms or any applicable law and will not violate any rights of or cause injury to any person or entity. Merchant is solely responsible for the accuracy, quality, content, and legality of the Merchant Content it provides. Merchant shall not upload any Merchant Content that violates these Terms.

In addition to the foregoing, Merchant agrees that TouchBistro may compile, collect, copy, modify, publish and otherwise use aggregated, disidentified data (excluding any parts of the User Content that represents personally identifiable information of an individual) that includes or arise from User Content ("Aggregated Deidentified Data") for any lawful purpose. TouchBistro shall be the owner of the Aggregated Deidentified Data, and may, without limitation, use the Aggregated Deidentified Data to analyze, improve, support and operate TouchBistro Services, combine it with data from other sources, share it with third parties and otherwise use it for any lawful business purpose, both during and after the termination of the Merchant's TouchBistro Services Agreement, including without limitation, in order to generate industry benchmarks or best practices guidance, recommendations or similar reports for distribution to and consumption by TouchBistro, Subscribers and other third parties.

5. Our Limited License to Merchant

Subject to Merchant's compliance with the TouchBistro Services Agreement and during the term thereof, TouchBistro grants Merchant a limited, revocable, non-exclusive, non-sublicensable, non-transferable license to access and use, and to permit its employees to access and use TouchBistro Services solely and exclusively for Merchant's internal business purposes. Merchant agrees that all rights, title and interest in and to all the intellectual property rights in the TouchBistro Services, and all derivatives, updates, modifications, upgrades, enhancements, extensions, or improvements thereof, as well as any new features, functionality, applications, or services, are owned exclusively by TouchBistro and/or its licensors. All rights not granted to Merchant in its TouchBistro Services Agreement are reserved by TouchBistro. Unless explicitly stated herein, nothing in the Terms may be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. The license in this section is revocable by TouchBistro at any time without notice or warning.

Merchant acknowledges and agrees that, in the course of providing the TouchBistro Services to Merchant, both TouchBistro and Merchant will collect, store and use Customer Content including the rights in personally identifiable information. To the extent allowable by applicable law, TouchBistro grants Merchant a limited, revocable, non-exclusive, and non-transferable license to the Customer Content from Customers who request Merchant's services through TouchBistro Services, solely for the purpose of Merchant fulfilling such services and for no other purposes. Merchant agrees to utilize all such Customer Content it accesses only within the scope of the foregoing license, and Merchant agrees to at all times comply with these Terms, TouchBistro Privacy Notice (as defined below), and applicable privacy and other laws associated with the handling and use of such Customer Content. To the extent Merchant's use of the Customer Content is outside the scope described in the TouchBistro Services Agreement or within the Privacy Notice, Merchant shall be solely responsible for putting in place any additional controls (e.g. notice, consent) and governance in relation to such use. Each party's use of Customer Content shall be in compliance with the applicable law.

6. Restrictions on Use of TouchBistro Services

Any party's use of TouchBistro Services is also subject to the following restrictions. Merchant (alone or by assisting or enabling any other party) may not: (i) interfere or attempt to interfere in any manner with the proper workings of TouchBistro Services that adversely affects the functionality or performance of TouchBistro Services or adversely impacts the behavior of other applications using TouchBistro Services; (ii) misrepresent Merchant's identity or intentions when communicating with us in relation to TouchBistro Services, use the developer credentials licensed to a different individual or entity, or mask Merchant's usage of TouchBistro Services; (iii) use TouchBistro Services in association with, or as a component of, any website that in the sole discretion of TouchBistro is determined to be obscene or otherwise commercially inappropriate; (iv) use TouchBistro Services for any application that constitutes, promotes or is used in connection with spam, spyware, adware, other malicious programs or code; (v) use TouchBistro Services in any manner or for any purpose that violates any law or regulation, any right of any person, including but not limited to intellectual property rights, privacy, data protection, electronic communications and anti-spam legislation; (vi) replicate, in whole or in part, the "look and feel" of TouchBistro Services or portion of them; (vii) use TouchBistro Services for any application or service that attempts to replace or replicate the essential user experience or functionality of any or all TouchBistro Services; (viii) alter, distribute, license, resell, transfer, assign, rent, lease, timeshare or otherwise commercially exploit the Services to any third-party or provide it as a service bureau; (x) reverse engineer, decompile or otherwise attempt to extract the source code of TouchBistro Services or any part thereof; (xi) circumvent or render ineffective any IP address-based functionality or restriction imposed by TouchBistro Services; (xii) circumvent technological measures to prevent direct database access, or manufacture tools or products to that effect; (xiii) modify or otherwise make derivative works based on TouchBistro Services, or reproduce, distribute, rent, lease, pledge, assign, or otherwise transfer or encumber rights to the TouchBistro Services; (xiv) remove or modify any copyright, trademark, or other proprietary notices from the TouchBistro Services; (xv) use any data mining, robots or similar data gathering or extraction methods to extract data from TouchBistro Services; or (xvi) build conversion functionality that converts Content from the Service to a competing or alternative product or service. Merchant agrees to carefully monitor the use of TouchBistro Services by Merchant's authorized parties and ensure that it remains within reasonable operational limits for both Merchant's own server capacity and for ours, when applicable. TouchBistro has no responsibility to any person for any use or misuse of any User Content obtained through TouchBistro Services.

7. Hardware and Professional Services

TouchBistro Services do not function with every mobile device. TouchBistro may alter which hardware is approved as compatible with the TouchBistro Services in its discretion from time to time, subject to reasonable notice. If Merchant does not use the approved hardware, we reserve the right to not support Merchant's TouchBistro Services as the other applications may cause conflicts or performance issues with TouchBistro Services.

If Merchant orders any professional services under a Sales Quote, then, upon request from TouchBistro or its authorized service provider (collectively, the "Service Provider"), Merchant will promptly provide the Service Provider with any information, resources and assistance required by the Service Provider to enable the implementation of the TouchBistro Services and, if applicable, to provide training to Merchant.

8. Using TouchBistro Gift Card Services

TouchBistro Services may include certain gift card services (the "Gift Card Services") which support the issuance and management of gift cards to Customers. If Merchant offers gift cards to its Customers through Gift Card Services, Merchant (not us) is the issuer and administrator of such gift cards, which must: (i) not be reloadable; (ii) not be used for payment for a credit account; (iii) be "closed loop" gift cards that may only be used for purchase of goods and services from Merchant and no other merchant or company; and (iv) not assess or impose any fees or charges on the issuance, activation, maintenance, or redemption of gift cards. Merchant further agrees: (i) not to issue a gift card with a value in excess of \$2,000 or add value to a previously issued gift card so that the total funds loaded on a gift card in any single day exceed \$2,000; (ii) not to issue more than \$10,000 in gift cards to any single person in any one day; (iii) not to impose an expiration date on the gift card, and any unused balance of a gift card must remain available to the holder of the gift card until fully redeemed, even if Merchant's TouchBistro account is closed, suspended, or terminated; and (iv) not to provide a cash refund from or cash back on gift cards except to the extent required by applicable law. When issuing a gift card, Merchant must clearly disclose on the gift card itself, and on any packaging and promotional materials associated with the gift card, any restrictions, limitations and terms and conditions in respect of the use of such gift card, as well as contact information for the purpose of obtaining information about the gift card, including any remaining balance. All gift cards and the funds associated with gift cards are Merchant's sole property. In addition to Merchant's other indemnification obligations under the Terms, any liability for the use or misuse of Merchant's gift cards, including any unfunded gift card balance or fraudulent activity, unauthorized use or losses related to a gift card or Customer, and any third party claims arising from or relating to Merchant's gift cards, are Merchant's sole responsibility. Merchant is solely responsible for compliance with federal, provincial/state, territorial, and local laws, rules and regulations that apply to its gift cards, including but not limited to notice, disclosure requirements and language requirements, expiration dates and fees, refunds, unclaimed property or escheat requirements (such as tracking, reporting, and remittance of unclaimed property balances in all states), and customer service for buyers and holders of gift cards. Merchant represents and warrants that the balance associated with its gift cards will be at all times appropriately funded by deposits placed by the Customers with Merchant in connection with such gift cards in an amount that is no less than 100% of the total amount of currency represented as active and available to Customers of the current day's gift card balance. Merchant will be responsible for overseeing and managing such funding, and responsible and liable for any failure of the gift cards to be fully funded.

9. Using Social Media Areas and TouchBistro Services

TouchBistro Services may include discussion forums, location-based services, menu, pricing, and establishment information, bulletin boards, review services or other forums in which Merchant or third parties may post reviews or other content, messages, materials or other items ("Social Media Areas"). If TouchBistro provides such Social Media Areas, Merchant is solely responsible for Merchant's use of such Social Media Areas and uses them at its own risk. User Content submitted to any Social Media Areas will be considered non-confidential. Merchant agrees not to post, upload to, transmit, distribute, store, create or otherwise publish on Social Media Areas any of the following: (i) any message, data, information, text, music, sound, photos, graphics, code or other material that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objectionable; (ii) content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law; (iii) content that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party; (iv) content that impersonates any person or entity or otherwise misrepresents Merchant's affiliation with a person or entity; (v) unsolicited promotions, political campaigning, advertising or solicitations; (vi) private information of any third party, including, without limitation, addresses, phone numbers, email addresses and credit card numbers, unless that third party has expressly consented to such use; (iv) viruses, corrupted data or other harmful, disruptive or destructive files; (v) content that is inaccurate, misleading, or unrelated to the topic of the Social Media Area(s) in which such Content is posted; or (vi) content that, in the sole judgment of TouchBistro, is objectionable or which restricts or inhibits any other person from using or enjoying the Social Media Areas or TouchBistro Services, or which may expose TouchBistro or its users to any harm or liability of any type. TouchBistro has a "zero-tolerance" policy towards unauthorized marketing and spam: Merchant may not use the Social Media Areas or TouchBistro Services generally to send commercial or other messages to any third party if those messages are not solicited, authorized or welcomed by the third party, and in Merchant's use of TouchBistro Services, Merchant must comply with all applicable law, including laws that apply in any jurisdiction to spam and marketing practices, and with any applicable marketing association guidelines on ethical marketing practices. Any use of the Social Media Areas or other portions of TouchBistro Services in violation of the foregoing violates the Terms and may result in, among other things, termination or suspension of Merchant's rights to use the Social Media Areas and/or TouchBistro Services.

10. Maintenance and Updates

TouchBistro may perform scheduled and/or unscheduled repairs or maintenance, or remotely patch or upgrade the TouchBistro Services. This may temporarily degrade the quality of the services or result in service interruptions, delays, errors or bugs. TouchBistro will not be liable for any such interruptions, delays, errors or bugs. TouchBistro will endeavor to carry out such work during times that will cause the least disruption to Merchant's business. Merchant shall cooperate, if necessary, to perform such work.

TouchBistro may release enhancements, improvements, or other updates to the TouchBistro Services. Merchant shall integrate and install any update into your systems within thirty (30) days of receipt of notice from us that such actions by you are required. Failure to install any updates in a timely fashion may impair the functionality of the TouchBistro Services. TouchBistro will have no liability for your failure to properly install the most current version of any update, and TouchBistro will have no obligation to provide support or services for any outdated versions.

11. Payment Processing

The TouchBistro Services enable Merchants to receive access to payment processing services provided by third party service providers ("Payment Processing Services"). Depending on the terms of a Merchant's TouchBistro Services Agreement, the Payment Processing Services are provided by WePay, JPM Chase or other TouchBistro's bank partners and/or payment providers. If the Payment Processing Services are provided by WePay or JPM Chase ("TB Payment"), and Merchant acknowledges and agrees that in order to use TB Payment, Merchant must: (a) in the case of WePay, agree to the WePay terms in connection with registering an account with WePay, which constitutes a valid, binding, and enforceable contract between Merchant and WePay; or (b) in the case of JPM Chase, execute a separate agreement with JPM Chase (the "Chase Agreement") governing the receipt of such services. With respect to payment Services provided by other TouchBistro's bank partners and/or payment providers, Merchant shall be required to execute a separate agreement with the applicable party governing the provision of such services.

In connection with the provision of the payment processing services, Merchant agrees to provide the payment processor accurate and complete information about Merchant's business and any other information requested by the payment processor. In the event that you share the aforementioned information with us, you authorize TouchBistro to share such information and your transaction information with the relevant payment processor. You acknowledge that the providers of Payment Processing Services may impose limits on payment transactions and/or decline to process for you or process individual transactions, all as set forth in the provider's governing terms and conditions.

Except for Merchant's obligations to TouchBistro under its TouchBistro Services Agreement, your access to or use of any Payment Processing Services is solely between you and the provider of the Payment Processing Services, which provider is solely responsible for the Payment Processing Services, the content therein, any warranties to the extent that such warranties have not been disclaimed. In addition to and without limiting any provision of the Terms, Merchant agrees that: (i) Merchant will use the Payment Processing Services solely for the processing of customer transactions involving Merchant's sale of goods and services; (ii) TouchBistro is not a party to the Merchant's agreement with its payment processor and shall not be liable or responsible to you under such agreement for any damages of any kind, whether direct, indirect, incidental or consequential, regardless of the legal theory or cause of action; (iii) TouchBistro disclaims any and all liability or responsibility regarding any portion, component, or feature of the Payment Processing Services; (iv) TouchBistro expressly disclaims any representations, warranty, or other guarantee regarding the Payment Processing Services, including without limitation, any warranty of title, merchantability, or fitness for a particular purpose; and (v) Merchant will use the Payment Processing Services in full compliance with the governing terms and conditions and all applicable law, regulations, industry self-regulatory guidelines, and payment network rules and instructions.

12. Data Privacy and Security

Please refer to TouchBistro's privacy notice (the "Privacy Notice"), available at www.touchbistro.com/privacy-notice for information on how TouchBistro collects, uses and discloses personally identifiable information of Users. By using TouchBistro Services, Merchant agrees to our use, collection and disclosure of personally identifiable information in accordance with the Privacy Notice. Furthermore, Merchant agrees to establish and maintain a privacy policy that complies with laws applicable to Merchant and that is consistent with the TouchBistro Privacy Notice.

Merchant agrees to comply with all applicable privacy laws including, but not limited to, federal, state, provincial, regional and local laws and regulations related to the collection, processing, or handling of personal information, in connection with its use of the TouchBistro Services. Merchant also agrees that it and its Subscribers will comply with the terms of the TouchBistro Privacy Notice. Upon TouchBistro's request, Merchant shall make available to TouchBistro all information necessary to demonstrate its compliance with applicable law and these Terms. TouchBistro will have the right to monitor Merchant's compliance with these Terms.

Merchant shall assist TouchBistro in TouchBistro's compliance with applicable law, including without limitation, compliance with individual rights requests, responding to notices or inquiries from governmental, regulatory, legal or other authorities, and providing notifications and remedies to individuals with respect to the TouchBistro Services. To the extent legally permissible, Merchant shall notify TouchBistro prior to responding to any consumer or governmental request related to the TouchBistro Services.

Merchant shall implement and maintain appropriate technical, organizational, and administrative security controls to safeguard any User Content it receives through the TouchBistro Services, including without limitation, personally identifiable information, from unauthorized use, access, or disclosure. To the extent Merchant engages any subcontractor who receives User Content made available to Merchant via the TouchBistro Services, Merchant shall enter into a written contract with such subcontractor that requires the subcontractor to, at minimum, meet Merchant's obligations under these Terms. Merchant shall immediately notify TouchBistro of any actual or suspected loss or unauthorized processing, use, disclosure or acquisition of or access to any personally identifiable information obtained via the TouchBistro Services or any anticipated threats or hazards to the security or integrity of User Content obtained via the TouchBistro Services or to the TouchBistro Services themselves.

13. Confidential Information

For the purpose of the Terms, "Confidential Information" means information previously, now, or hereafter disclosed to a receiving party in connection with the parties' business dealings with each other, which information is of a proprietary or otherwise sensitive nature and is not generally known. Confidential Information includes, but is not limited to, the terms of Merchant's TouchBistro Services Agreement and TB Dine Customer Data. Confidential Information does not include information that: (i) is in the possession of the receiving party at the time of disclosure or, after disclosure, comes into the receiving party's possession from another source without obligation of confidentiality; (ii) is or becomes publicly available without a breach of this Agreement by the receiving party; or (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information.

The receiving party agrees: (a) to take reasonable precautions to protect such Confidential Information; and (b) not to use or divulge to any third person any such Confidential Information unless expressly permitted under the Terms. Notwithstanding any provision of the Terms to the contrary, either party may disclose the other party's Confidential Information, in whole or in part (i) to its representatives (the "Representatives") who have a need to know and are legally bound to keep such Confidential Information confidential by confidentiality obligations or, in the case of professional advisors, are bound by ethical duties to keep such Confidential Information confidential, consistent with the Terms; (ii) as required by law, in which case Merchant shall, if permitted by applicable law, provide TouchBistro with prior written notification thereof and the opportunity to contest such disclosure, and shall use its reasonable efforts to minimize such disclosure in each case to the extent permitted by applicable law, or (iii) otherwise in accordance with the Privacy Notice. The receiving party will remain primarily responsible for any breach of this Section 13 by any of its Representatives with whom it shares the other party's Confidential Information as permitted by this Section 13.

14. No Responsibility for Third-Party Material

TouchBistro Services may contain links or references to third-party websites ("Third-Party Sites") and third-party content ("Third-Party Content") as a service to those interested in this information, including third party suppliers, payment processors and other payment intermediaries that Merchant may use in connection with Merchant's use of TouchBistro Services. Merchant uses links to Third-Party Sites and any Third-Party Content or service provided there, at Merchant's own risk. TouchBistro makes no claim or representation regarding Third-Party Content or Third-Party Sites, and provides them or links to them only as a convenience. Inclusion in TouchBistro Services of a link to a Third-Party Site or Third-Party Content does not imply TouchBistro's endorsement, adoption or sponsorship of, or affiliation with, such Third-Party Site or Third-Party Content. TouchBistro accepts no responsibility for reviewing changes or updates to, or the quality, content, policies, nature or reliability of, Third-Party Content, Third-Party Sites, or websites linking to TouchBistro Services. When Merchant leaves TouchBistro Services, our Terms and policies no longer govern. Merchant should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Site, and should make whatever investigation Merchant feels necessary or appropriate before proceeding with any transaction with any third party. The provider of any third-party service is solely responsible for that third-party service, the content therein, any warranties to the extent that such warranties have not been disclaimed, any training, support or maintenance for the third-party services, and any claims that Merchant or any other party may have relating to that third-party services or Merchant's use of that third-party service. Merchant acknowledges that: (i) Merchant is purchasing the license to each third-party service from the provider of that third-party service; (ii) TouchBistro is not acting as agent for the provider in providing each such third-party services to Merchant; (iii) TouchBistro is not a party to the license between Merchant and the provider with respect to that third-party services; and (iv) TouchBistro is not responsible for that third-party services, the content therein, or any warranties or claims that Merchant or any other party may have relating to that third-party services or Merchant's use of that third-party services. Merchant acknowledges and agrees that TouchBistro is a third party beneficiary of the End User License Agreement for each third-party services, and that, upon Merchant's acceptance of the terms and conditions of the license to any such third-party services, TouchBistro will have the right (and will be deemed to have accepted the right) to enforce such license against Merchant as a third party beneficiary thereof.

15. Advertisements and Promotions

TouchBistro may run advertisements and promotions of third parties on TouchBistro Services. Merchant's business dealings or correspondence with, or participation in promotions of, advertisers other than TouchBistro, and any terms, conditions, warranties or representations associated with such dealings, are solely between Merchant and such third party. TouchBistro is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of third-party advertisers on TouchBistro Services.

16. Warranty Disclaimer

TouchBistro Services and any third-party services are provided to Merchant on an "as is" basis without any warranties from TouchBistro of any kind, either express or implied. TouchBistro expressly disclaims all other warranties, express or implied, including without limitation implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. TouchBistro does not represent or warrant that TouchBistro Services are accurate, complete, reliable, current or error-free. TouchBistro Services and access to data may be interrupted or unavailable at any time and Merchant accepts all risks associated with such unavailability or interruption. Merchant should establish other systems to ensure business continuity and to ensure the accuracy or reliability or any business, financial or accounting data generated by the use of TouchBistro Services or otherwise stored or accessed through TouchBistro Services. While TouchBistro attempts to make Merchant's access to and use of TouchBistro Services safe, TouchBistro does not represent or warrant that the TouchBistro Content, the third-party services or TouchBistro Services are free of viruses or other harmful components or will be available without interruption or error.

17. Limitation of Liability; Indemnity

Merchant waives and shall not assert any claims or allegations of any nature whatsoever against TouchBistro, its sponsors, suppliers, contractors, advertisers, vendors or other partners, licensors, any of their successors or assigns, or any of their respective officers, directors, agents or employees (collectively, the "Released Parties") arising out of or in any way relating to Merchant's use of TouchBistro Services or any third-party services, including, without limitation, any claims or allegations relating to infringement of proprietary rights, or allegations that any Released Party has or should indemnify, defend or hold harmless Merchant or any third party from any claim or allegation arising from Merchant's use or other exploitation of any third-party services or TouchBistro Services. With respect to Merchant's use of TouchBistro Services, Merchant is responsible for compliance with all local laws applicable to Merchant and Merchant's use of TouchBistro Services and, to the extent permitted by applicable law, Merchant agrees to indemnify TouchBistro and the other Released Parties for Merchant's failure to comply with any such laws. Without restricting the generality of the foregoing, TouchBistro has no liability whatsoever with respect to any Customer's use of services provided by Merchant. Merchant is solely responsible and liable in all respects to the Customer with regards to fulfilling any reservations or waitlist requests with Merchant made through TouchBistro Services, or any online orders placed with Merchant or any Merchant gift cards purchased through Gift Card Services, and, to the extent permitted by applicable law, Merchant shall indemnify, defend or hold harmless the Released Parties from any claim or allegation of a Customer arising from or relating to any such reservations or waitlist requests with Merchant, any such online orders placed with Merchant or such Merchant gift cards. In addition, Merchant is solely responsible for establishing policies and practices regarding payments (including prepayments) for reservations, waitlist requests and online orders or fees or costs incurred by Customers who fail to utilize a booked reservation or waitlist request. It shall be Merchant's responsibility to prominently display and disclose any and all such policies and practices to the Customer. Merchant uses TouchBistro Services completely at Merchant's own risk. Merchant agrees that this is fair and reasonable.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER TOUCHBISTRO NOR ANY OTHER RELEASED PARTY SHALL BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF ACCESS TO OR USE OF DATA OR LOSS OF GOODWILL, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE ANY OR ALL TOUCHBISTRO SERVICES OR ANY THIRD-PARTY SERVICES, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM MERCHANT'S RELIANCE ON TOUCHBISTRO SERVICES OR ANY THIRD-PARTY SERVICES OR OTHER INFORMATION OBTAINED FROM TOUCHBISTRO OR ANY OTHER RELEASED PARTY OR ACCESSIBLE VIA TOUCHBISTRO SERVICES OR ANY THIRD-PARTY SERVICE, OR THAT RESULT FROM MISTAKES, ERRORS, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR DATA OR EMAIL, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO TOUCHBISTRO OR ANY OTHER RELEASED PARTY'S RECORDS, PROGRAMS OR SERVICES. In no event shall the aggregate liability of TouchBistro, whether in contract, warranty, tort (including negligence, whether active, passive or imputed), product liability, strict liability or other theory, arising out of or relating to the use of TouchBistro Services or any third-party services exceed any compensation paid by Merchant for access to or use of TouchBistro Services for the three (3) months immediately prior to the date of any claim. Merchant shall defend, indemnify and hold harmless TouchBistro and the other Released Parties from any loss, damages, liabilities, costs, expenses, claims and proceedings arising out of Merchant's use of TouchBistro Services or any third-party services and from the use TouchBistro Services or any third-party services by any person to whom Merchant gives access to Merchant account (including as staff), including any claims made by any person that any of Merchant's User Content infringes the rights, including the intellectual property rights, of any third party. Some jurisdictions limit the scope of limitations of liability in which event TouchBistro claims the full scope of limitation of liability as may be allowed in any applicable jurisdiction.

18. Communications

Notices that we give Merchant (other than notice of amendment of the Terms, which is discussed in the introduction of the Terms) may be provided in any number of ways, depending on the circumstances. For example, we may email Merchant or telephone Merchant at the contact information Merchant provided at time Merchant entered into the TouchBistro Services Agreement (as same may have been updated by Merchant from time to time). Or we may post a notice to Users in the dashboard area of Merchant's account on the Sites, or post the notice elsewhere on the Sites. When we post notices on the Sites, we post them in the area of the Sites suitable to the notice. It is Merchant's responsibility to periodically review the Sites for notices. Merchant agrees to keep all Registration Data current and up to date. Subject to the Privacy Notice, if Merchant sends TouchBistro or posts on Social Media Areas any information, ideas, inventions, concepts, techniques or know-how ("User Submissions"), for any purpose, including the developing, manufacturing and/or marketing of products or services incorporating such information, Merchant acknowledges that TouchBistro can use without limitation the User Submissions without acknowledgement or compensation to Merchant, and Merchant waives any claim of ownership or compensation or other rights Merchant may have in relation to the User Submissions. We actively review User Submissions for new ideas. If Merchant wishes to preserve any interest Merchant might have in Merchant User Submissions, Merchant should not post them or send them to us.

19. Applicable Law and Venue

Merchant and TouchBistro both benefit from establishing a predictable legal environment in regard to TouchBistro Services. Therefore, Merchant and TouchBistro explicitly agree that all disputes, claims or other matters arising from or relating to Merchant's use of TouchBistro Services or any third-party services shall be exclusively governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and the courts sitting at Toronto, Ontario. The parties hereto waive any right to trial by jury in respect of any dispute arising from or related to the TouchBistro Services Agreement. Except where prohibited by applicable law, any claim, dispute or controversy (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether preexisting, present or future) involving TouchBistro and arising out of or relating to (a) the Terms; (b) TouchBistro Services or any associated third-party services; (c) oral or written statements, advertisements or promotions relating to TouchBistro Services or any associated third-party services; or (d) the relationships that result from TouchBistro Services or any associated third-party services (collectively, a "Claim"), will be referred to and determined by individual arbitration by a single arbitrator (to the exclusion of the courts) sitting at Toronto, Canada in accordance with the Arbitrations Act of Ontario. Arbitration can be initiated by either party delivering to the other party a written notice of arbitration invoking this provision. The arbitrator's authority is limited to claims between Merchant and us alone. Claims may not be joined or consolidated unless Merchant and we consent in writing. An arbitration award and any judgment confirming it will apply only to the specific case and cannot be used in any other case except to enforce the award. The arbitrator's decision will be final and binding. Each party will bear its own expenses under such arbitration, subject to the authority of the arbitrator to make an award of legal costs in accordance with the arbitrator's authority. Except where prohibited by applicable law, Merchant waives any right Merchant may have to commence or participate in any class action against TouchBistro related to any Claim and, where applicable, Merchant also agrees to opt out of any class proceedings against TouchBistro. Without limiting the foregoing, Merchant and TouchBistro will not have the right to participate in a representative capacity or as a member of any class pertaining to any Claim or other matter related to the TouchBistro Services Agreement. If Merchant has a Claim, Merchant should give written notice of arbitration by registered mail to TouchBistro's head office. If TouchBistro has a Claim, it will give Merchant notice of arbitration at Merchant's address provided in Merchant's Registration Data. Arbitration will be conducted by one arbitrator pursuant to the commercial arbitration laws and rules under Arbitrations Act of Ontario in effect on the date of the notice in the Province of Ontario. To the extent arbitration as described above is prohibited by applicable law, Merchant agrees that all Claims shall be heard and resolved in a court of competent subject matter jurisdiction located in Toronto, Ontario. Merchant consents to the personal jurisdiction of such courts over Merchant, stipulates to the fairness and convenience of proceeding in such courts and submits to their exclusive jurisdiction, and covenants not to assert any objection to proceeding in such courts.

Notwithstanding the foregoing, TouchBistro shall be entitled, at its election, to apply to a court of competent jurisdiction: (i) for interim or permanent injunctive relief, a mandatory order, restraining order, or other like relief to restrain an actual or threatened breach of the TouchBistro Services Agreement and TouchBistro's rights under it by any party and specifically but not limited to protection of the intellectual property, information technology, brand, trademarks, and other proprietary material of TouchBistro or its suppliers or licensors; and (ii) to collect any outstanding amounts that Merchant owes to TouchBistro.

20. Term and Termination/Modification of License

The term of the TouchBistro Services Agreement shall commence on the Quote Created Date and shall continue for such number of months following the Effective Date as is specified in the Sales Quote beside the heading "Initial Term" (the "Initial Term"). Upon expiration of the Initial Term and unless otherwise stated in the Sales Quote, the term of the TouchBistro Services Agreement will automatically renew for a period equivalent to the period of the Initial Term unless terminated by Merchant or TouchBistro by delivery of written notice to the other party at least thirty (30) days prior to the end of the then current term. Unless otherwise provided, TouchBistro Services and access to Content are purchased as subscriptions.

Except as otherwise expressly set forth herein, Merchant may not terminate this Agreement prior to the expiration of the then current term. Notwithstanding any provision of the Terms, TouchBistro reserves the right, without notice and in its sole discretion, without any liability to Merchant to (a) terminate Merchant's license to use TouchBistro Services, or any portion thereof (including any use of any third-party services) and the rights of any third party authorized by Merchant to access Merchant's TouchBistro account and User Content through TouchBistro Services; (b) block or prevent Merchant's future access to and use of all or any portion of TouchBistro Services or Content (including any use of any third-party services) and the rights of any third party to which Merchant has granted access to Merchant's TouchBistro account and User Content through the TouchBistro Services; (c) change, suspend or discontinue any aspect of TouchBistro Services or Content; and (d) impose limits on TouchBistro Services or Content. Merchant's sole remedy in such circumstances shall be limited to and not exceed the return of the pro rata amount of any pre-paid fees applicable to the balance of the term of any then current subscription period.

When Merchant's TouchBistro account is terminated, Merchant Content will, shortly thereafter, cease to appear on TouchBistro Services, except for User Content submitted to Social Media Areas, which may remain on the Social Media Areas after termination. TouchBistro may also retain an archival copy of Merchant's User Content after termination, and Merchant hereby grant us a non-exclusive, perpetual, irrevocable license to maintain such archival copy for our internal business purposes. If the TouchBistro Services Agreement expires or terminates for any reason, any representation or warranty Merchant makes in the Terms, and Section 2, 3, 6, 12, 13, 16-22, any other term of the Terms that by their nature is should survive termination or expiration shall survive indefinitely.

21. Default

In the event that Merchant defaults under any obligations owed to TouchBistro under the Merchant's TouchBistro Services Agreement, in addition to any and all other rights and remedies which have in law or in equity, TouchBistro may terminate the Merchant's TouchBistro Services Agreement, in which event, (i) if Merchant was provided with an Incentive (as disclosed in the Merchant's Sales Quote), Merchant shall be liable to repay, and shall forthwith repay to TouchBistro, the entire amount of the Incentive; and (ii) Merchant shall be liable to pay, and shall forthwith pay to TouchBistro, the entire amount of any software license fees, hardware fees or payments and other amounts which would have been payable by Merchant to TouchBistro during the balance of the then current term of the Merchant's TouchBistro Services Agreement, had the said agreement not been terminated.

In addition to the foregoing, in the event that Merchant defaults under any obligations owed to TouchBistro under the Merchant's TouchBistro Services Agreement, it is expressly agreed that (a) if Merchant is a party to an HPP Agreement, throughout the term of the HPP Agreement, TouchBistro shall maintain the right to remotely disable any iPads which form part of the subject matter of the HPP Agreement; and (b) if the default occurs during the Initial Term and the Merchant was provided an Incentive for hardware (as disclosed in the Merchant's Sales Quote), TouchBistro shall maintain the right to remotely disable any iPads which form part of the subject matter of the Merchant Services Agreement.

22. Miscellaneous

If any provision of the Terms shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from the Terms and shall not affect the validity and enforceability of any remaining provisions. TouchBistro may assign any or all of its rights hereunder to any party without Merchant's consent. Merchant is not permitted to assign any of Merchant's rights or obligations hereunder without the prior written consent of TouchBistro, and any such attempted assignment will be void and unenforceable. TouchBistro shall be free to perform all or any part of the TouchBistro Services Agreement through one or more subcontractors. The TouchBistro Services Agreement constitutes the entire agreement between Merchant and TouchBistro regarding Merchant's use of TouchBistro Services or any associated third-party services, and supersedes all prior or contemporaneous communications whether electronic, oral or written between Merchant and TouchBistro regarding Merchant's use of them. Merchant has reviewed, understood and accepted the terms and conditions set forth in the TouchBistro Services Agreement and has either consulted with legal counsel prior to its execution or has knowingly forgone its right to consult with legal counsel prior to such execution. The parties hereto confirm that it is their wish that this Agreement and all documents relating thereto, including notices, be drawn up in the English language (except if another language is required under any applicable law). Les parties aux présentes confirment leur volonté que cette entente de même que tous documents, y compris tous avis, s'y rapportant soient rédigés en langue anglaise, si une autre langue est requise en vertu d'une loi applicable.