

## MERCHANT AGREEMENT/ CONTRACT

Language: ENGLISH

Last Modified:

### **FIMI HUB DELIVERY SERVICES MERCHANT TERMS AND CONDITIONS**

MERCHANTS AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT ONCE THEY: 1) CLICK A BOX INDICATING ACCEPTANCE OR, 2) ATTACH THEIR SIGNATURE TO THE PRINTED VERSION OF THIS AGREEMENT OR 3) EXECUTE AN ORDER FORM OR ADDENDUM THAT REFERENCES THESE.

IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH AN INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS, IN WHICH CASE THE TERM “MERCHANT” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

### **GENERAL**

The Terms and Conditions are hereby accepted and agreed to by the company identified within the FIMI HUB DELIVERY SERVICES sign-up process and constitute a legally binding agreement by and between the Merchant and the Company. Upon acceptance of these Terms, Merchants may request access to the Marketplace, Non-Delivery, or Merchant Managed Delivery Sales Channels (each a “Sales Channel” as described in more detail herein) and/or product services such as Promotions Tools. Such request shall indicate Merchant’s acceptance of any applicable Sales Channel and/or terms for additional product

and services. These Terms may be subject to and/or incorporate the FIMI HUB Delivery Services Order Form. Merchant's access to and use of the FIMI HUB Services and Tools (as defined below) is subject to the Agreement and may be modified or updated by FIMI HUB Delivery Services from time to time, effective upon posting an updated version of these Terms and/or an applicable Product or Sales Channel Addendum on the FIMI HUB website. Merchant is responsible for updating contact information and regularly reviewing the Terms and any applicable Product or Sales Channel Addendum for updates and information from FIMI HUB Delivery Services. Continued use of the FIMI HUB Delivery Services after any such modifications or updates shall constitute Merchant's consent to such changes. Capitalized terms used but not otherwise defined in the Terms shall have the respective meanings ascribed to such terms in the applicable Order Form, Product or Sales Channel Addendum.

## 2. SERVICES.

### **2.1 Items and Services**

FiMi Hub and its affiliates make proprietary technology services that facilitate the marketing, sale and fulfilment of orders for Restaurant Items and other products from Merchants to Customers including on-demand lead generation, payment processing, marketing, advertising and promotional services, proprietary information services, onboarding, operational and other support services.

“Restaurant Items” are defined as foods and beverages that are typically sold by restaurants in a form intended for immediate consumption on-premises, for take-out, and/or delivery.

If a Merchant is eligible to offer the sale and fulfilment of alcoholic beverages through specified Sales Channels in designated Jamaican areas Merchant's sale of Alcohol Items via the FIMI HUB Delivery Services shall be subject to the Terms of Use for Alcohol Sales available here, as well as any Sales Channel Specific Terms.

The definition of Items shall include Alcohol Items as applicable and referenced within the Agreement. If any conflict between these Terms and the Alcohol Terms, the Alcohol Terms shall govern with respect to Alcoholic Items and these Terms shall govern with respect to Items.

## **2.2 Merchant Technology**

In connection with the FIMI HUB Services, FiMi Hub and its affiliates may also made available to Merchant a website, mobile application or other technology interface for Merchant to access and use the FIMI HUB Delivery Services ,which may include FiMi Hub's and its affiliates' proprietary technology platform, through which insights and analytics regarding Merchant's performance and history using the FIMI HUB Services are provided, and FiMi Hub and its affiliates' proprietary technology platform through which Merchant may, among other things, receive, accept and fulfil requests for Items from Customers.

## **2.3 FIMI HUB User and Merchant App**

FiMi Hub and its affiliates may also make available to Customers its proprietary technology that enables Customers to purchase Items from Merchant and request delivery services for said Items from Delivery People who retrieve such Items from Merchant and deliver such Items to such Customers. Delivery People are independent contractors, and as such, they reserve the right to refuse to accept any Item in their sole discretion.

## **2.4 Sales Channels**

Merchant may request access to sell and deliver Items via various services provided by FiMi Hub: Marketplace, Non-Delivery, and Merchant Managed Delivery. By electing to use a Sales Channel, Merchant agrees to accept any relevant Sales Channel as follows:

i) MARKETPLACE: Merchant may sell Items through the FIMI HUB Sales Channel, whereby Merchant's Items are presented in the App so as to allow Customers to access and request on-demand delivery services provided by Delivery People as defined herein.

## **2. FIMI HUB OBLIGATIONS**

Subject to the terms and conditions of this Agreement, FiMi Hub and its affiliates will make available the applicable FIMI HUB Services to Merchant, solely for use by Merchant at locations that are owned and operated by Merchant. Merchant shall provide FiMi Hub current and accurate Location information throughout the Term of this Agreement. In connection with the provision of FIMI HUB Delivery Services to Merchant, FiMi Hub and its affiliates, on behalf of Merchant, may respond to complaints by Merchant's customers about Items sold by Merchant via the FIMI HUB App. In addition, FiMi Hub may make available certain FIMI HUB Tools to Merchant, and Merchant may access and use those Tools solely in connection with Merchant's use of the FIMI HUB Services. For the avoidance of doubt, as between Merchant and FiMi Hub, FiMi Hub will retain sole and absolute control over the FIMI HUB App (and all elements of the user experience and user interface relating to the App), including with respect to: (i) the personalization of the FIMI HUB App for Customers; (ii) the prioritization and display of options available to Customers; (iii) the search functionality and results provided to Customers; (iv) the order fees charged to Customers for the delivery services provided by Delivery People; and (v) adding, removing or otherwise modifying any

feature or functionality made available through the App to optimize reliability or efficiency on the FIMI HUB App.

#### **4. MERCHANT OBLIGATION**

##### **4.1 Availability of Items**

Merchant will make Items available for purchase through the FIMI HUB App during its normal business hours and ensure the Available Items menu is accurate. Merchant will prepare, handle , store, label and package all Items in accordance with applicable laws and regulations, including without limitation all laws, rules and regulations governing time or temperature controls required for food safety (Food Safety Standards) and, if applicable, all applicable laws, rules, and regulations for the handling and labelling of Alcohol Items (Alcohol Safety Standards). Merchant will determine any quality, portion, size, ingredient or other criteria that apply to Items +and Merchant is responsible for ensuring that all Items meet the applicable Criteria. If Merchant fails to prepare or supply Items in accordance with Food or Alcohol Safety Standards or if any Item fails to meet the Criteria (each, a “Substandard Item”), FiMi Hub may, in its sole discretion, remove such Item from the App. Items that contain (or may contain) an endangered species may not be made available for purchase and will be removed from the App. Merchant represents and warrants that all nutritional information for Items, including calorie count or allergen information, that is made available through the App is, and at all times will remain, accurate. In addition, Merchant will ensure that the contents of its menu includes each Items Criteria (including any notifications about ingredients, nutritional information, allergen information, alcoholic content (if applicable), etc.) are accurate and comply with all applicable laws and regulations.

##### **4.2 Item Responsibility**

Merchant acknowledges and agrees that neither FiMi Hub nor the Delivery Person takes title to any Item at any time. Notwithstanding, Merchant shall be responsible for any reimbursement costs related to Customer refunds for Substandard Items or other related issues within Merchant's control (including any costs associated with retrieving any such Substandard Items or otherwise unsatisfactory Item(s), if applicable)), including by way of example, missing or incomplete Items, Items not cooked thoroughly, and Items not prepared in accordance with Merchant's internal standards. FiMi Hub may, in its sole discretion, deduct reimbursement costs from the payment FiMi Hub remits to Merchant in accordance with this Section 4. To the extent required by applicable law, and only for the purpose of the expedited provision of Items, Items are sold to Customers under Merchant's retail and food delivery license privileges.

#### **4.3 Devices**

If FiMi Hub supplies a tablet or other mobile device ("Device") to Merchant to use in connection with the availability of Items via the FIMI HUB App, Merchant agrees that: (i) Device(s) may only be used for the purpose of accepting orders via the FIMI HUB App, and (ii) Device(s) may not be transferred, loaned, sold or otherwise provided in any manner to any third party. Devices(s) will at all times remain the property of FiMi Hub and/or its affiliates, and upon expiration or termination of the Agreement, or the extended absence of all of Merchant's location(s) from the FIMI HUB App for longer than forty-five (45) days, Merchant will return all applicable Device(s) to FiMi Hub within ten (10) days. Merchant agrees that the loss or theft of a Device, the failure to timely return a Device, or any damage to a Device outside of normal wear and tear, may result in a fee ("Damage Fee"). Merchant agrees that FiMi Hub may deduct the reimbursement or Damage Fee from the Item Revenue prior to remittance of such Item Revenue to Merchant.

#### **4.4 Use Restrictions**

In connection with the access to and use of the FIMI HUB Delivery Services and Tools, Merchant will not (and will not allow any third party to): (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms used to provide the FIMI HUB Services (except to the extent applicable law prohibits reverse engineering restrictions); (ii) provide, lease, lend, disclose, or otherwise use or allow others to use, in each case, for the direct benefit of any third party, the FIMI HUB Tools or Services (except as otherwise authorized by FiMi Hub). Merchant will not (and will not allow any third party to) use the FIMI HUB Services or any other transactional, operational, performance or other data or information that is related to the sale of Items to Customers through the FIMI HUB App to directly or indirectly compete with FiMi Hub or its affiliates or the FIMI HUB Services.

#### **4.5 Item Restrictions**

The following restricted Items may not be featured or sold via the FIMI HUB App: people or animals of any size, illegal items, fragile items, dangerous items (like weapons, explosives, flammables, etc.), stolen goods, items containing endangered species or any items that Merchant does not have permission to offer. FiMi Hub may remove from—or otherwise limit your ability to post to—a Merchant's Available Items menu any Items FiMi Hub deems prohibited or inappropriate. For clarity, alcohol is only permitted on the FIMI HUB App if Merchant has agreed to FiMi Hub's separate Alcohol Order Form for specified States and through specific Sales Channels.

FiMi Hub may restrict the sale of Items via the FIMI HUB App based on physical attributes of such Items (e.g., weight (per Item or in aggregate), height, shape, or appropriateness for delivery).

#### **4.6 Gratuities**

For the sale of Items via the Non-Delivery and Merchant Managed Delivery Sales Channels, unless otherwise selected by Merchant, Merchant agrees to allow Customers to provide gratuities through the FIMI HUB App. It is the sole responsibility of the Merchant to comply with all applicable laws (including tax, gratuity, social security and employment laws where applicable) regarding the distribution of any gratuities.

#### **5.2 Retail Prices; Taxes**

FIMI HUB Services connect you with Customers who wish to purchase your Items. You are the “merchant”, “retailer”, or “seller” of all Items to be made available for sale via the FIMI HUB App. As such, you are responsible for determining and setting the retail price for each Item, and you are ultimately responsible for the collection and remittance of all applicable Sales Taxes, where required under applicable law. The term “Sales Tax” includes any sales, sellers use, transaction privilege, privilege, general excise, gross receipts, and similar transaction taxes, as well as any bottle, bag, plastic, or other similar fees. For the sake of clarity, the Retail Price for each Item excludes separately stated Sales Taxes.

Merchant hereby authorizes FiMi Hub to collect applicable Sales Taxes on Merchant's behalf based on information provided by Merchant through the FIMI HUB Tools. The FIMI HUB Tools' functionality may be based on interpretations of federal, state, and local laws and regulations and information provided by taxing authorities. Merchant's use of the FIMI HUB



Tools, including any communications with FiMi Hub, in no way constitutes the provision of legal or tax advice.

Merchant shall promptly notify FiMi Hub if it believes any charges (or lack of charges) for Sales Taxes were erroneous or inaccurate. If Sales Taxes charged by Merchant are not in accordance with (or in violation of) any law or regulation, FiMi Hub expressly reserves the right to, upon prior notice to Merchant, remove affected Items from Merchant's menu on the FIMI HUB App and/or deactivate Merchant from the FIMI HUB App.

### **5.3 Pricing**

Merchant may not make any Item available to Customers through the FIMI HUB App at a price that is higher than the price that Merchant charges in-store for similar Items. Merchant agrees that you will not make an Item available under this Agreement at a price higher than the amount Merchant is charging for similar Items through any comparable platform for food delivery services.

### **5.4 Appointment of Limited Payment Collection Agent**

Merchant is solely responsible for providing FiMi Hub with, and maintaining, accurate bank account information. Merchant hereby appoints FiMi Hub and its affiliates, as the case may be, as Merchant's limited payment collection agent solely for the purpose of: (i) accepting payment of the Retail Price of Items sold by Merchant via the FIMI HUB App plus any applicable Sales Tax collected on Merchant's behalf, via the payment processing functionality facilitated by the FIMI HUB Tools, and (ii) remitting the Retail Price plus Sales Tax collected on Merchant's behalf less the retained Fee and, if applicable, any refunds given to Customers on behalf of Merchant ("Item Revenue"). Further, Merchant agrees that payment collected on its behalf by FiMi Hub or its affiliates will be considered the same as

payment made directly to Merchant. Merchant agrees that if Merchant does not receive payment from FiMi Hub or its affiliates, Merchant's only recourse will be against FiMi Hub and its affiliates. FiMi Hub and its affiliates may, from time to time, request information from Merchant to confirm Merchant's identity as may be necessary under any applicable compliance obligations before remitting any amounts to Merchant and may refuse to process amounts owed to Merchant if there exists a legal or regulatory risk or potential breach of law or regulation associated with such remittance to Merchant. Merchant agrees that FiMi Hub and its affiliates may describe or otherwise reflect the terms of this Section, in any terms of use, receipts, disclosures, or notices that may be deemed necessary or prudent. If reasonable, FiMi Hub may adjust the remittance of Item Revenue collected on Merchant's behalf for reasons including failure to fulfil an Item as ordered or making a correction on an Item. Merchant may identify any disagreements in connection with such adjustments through the FIMI HUB Tools. FiMi Hub and its affiliates reserve the right to collect any amounts in connection with such adjustments via a deduction from the remittance of Item Revenue collected on Merchant's behalf, by debiting the payment method or Merchant's bank account on record, or otherwise seeking reimbursement from Merchant by any lawful collection methods available. Merchant authorizes FiMi Hub and its affiliates to use any or all of the above methods to seek such adjustments and reimbursements. In more serious situations, such as fraud (including any charges for Items that Customers did not place) or Customer complaints, FiMi Hub and its affiliates reserve the right to cancel a payment entirely. By agreeing to these terms, Merchant gives FiMi Hub and its affiliates express consent to adjust payments collected on Merchant's behalf as set forth in this Section.

## **5.5 Additional Information**

FiMi Hub may, from time to time, require Merchant to provide certain additional information pertaining to particular Items or particular sales of Items for the proper determination,

calculation, collection, and remittance of Sales Taxes, or to comply with other applicable laws or regulations. Additional Information may include, but is not limited to: Stock Keeping Units, ingredients, temperature, container, weight, volume, quantities, serving/portion size, nutritional facts, inclusion of utensils, method of preparation (e.g., sliced), identity of preparer, whether the item is “ready-to-eat”, or intended use. Merchant is solely responsible for providing requested Additional Information to FiMi Hub in a timely manner. If Merchant fails to provide Additional Information in a timely manner in response to notification and request by FiMi Hub, FiMi Hub expressly reserves the right to temporarily remove affected Items from Merchant’s menu on the FIMI HUB App until such Additional Information is received.

## **6. REPORTING**

FiMi Hub may provide Merchant aggregate information regarding the number of Items picked up by Delivery People and sold by Merchant to Customers pursuant to an Agreement. FiMi Hub will also provide reasonable information regarding any refunds given to Customers, including the date of the transaction, the Item ordered, the reason for the refund and any other information FiMi Hub is permitted to provide under applicable privacy laws and terms with Customers. To the extent applicable, Merchant agrees that FiMi Hub may share Merchant’s transactional data regarding ordered meals, including sales data, with Merchant’s parent company or Franchisor.

## **7. INTELLECTUAL PROPERTY; MARKETING AND PROMOTIONAL ACTIVITIES**

### **7.1 Marks**

Subject to this Agreement, each party hereby grants to the other party (and, in the case of FiMi Hub, to its affiliates) a limited, non-exclusive and non-transferable license during the Term to use such party's respective Marks in the territory, on a royalty-free basis, in connection with the activities related to this Agreement or any other activities relating to the FIMI HUB Services. For purposes of this Agreement, the term "Marks" will mean the trademarks, service marks, trade names, copyrights, logos, slogans, content, media, materials, identifying symbols and indicia of the applicable party. All uses of a party's Marks by the other party will be in the form and format specified or approved by the owner of such marks. Other than as specifically set forth in this Agreement, neither party will use the other party's Marks without the prior, express, written consent of the other party (by email is sufficient). For the avoidance of doubt, however, any use or display of Merchant's Marks by FiMi Hub or its affiliates in connection with making Items available through the FIMI HUB App in the ordinary course of business will not require any such prior, express, written consent. Merchant further agrees that any use or display of FiMi Hub's Marks will conform to the current version of FIMI HUB App's Brand Guidelines. All goodwill related to the use of a party's Marks by the other party will inure to the benefit of the owner of such Marks. Except as expressly set forth herein, neither party will be deemed to grant the other party any license or rights under any intellectual property or other proprietary rights. All rights not granted are expressly reserved. Without limiting anything in the Agreement, Merchant represents and warrants that Merchant's Marks do not infringe, misappropriate, or otherwise violate any third party's intellectual property or other proprietary rights. Merchant agrees that FiMi Hub or its affiliates may remove Merchant's Marks from the FIMI HUB App if FiMi Hub or its affiliates receive notice or otherwise reasonably believe that such Merchant's Marks may infringe, misappropriate, or otherwise violate any intellectual property or other proprietary rights.

## **7.2 No Development**

EACH PARTY ACKNOWLEDGES AND AGREES THAT THERE SHALL BE NO DEVELOPMENT OF TECHNOLOGY, CONTENT, MEDIA OR OTHER INTELLECTUAL PROPERTY BY EITHER PARTY FOR THE OTHER PARTY PURSUANT TO THIS AGREEMENT. Any development activities relating to any technology, content, media or other intellectual property must be the subject of a separate written agreement between FIMI HUB Delivery Services and Company prior to the commencement of any such activities.

## **7.3 Marketing**

FiMi Hub and its affiliates may showcase the availability of Merchant's Items via the FIMI HUB App through various promotional activities (e.g., through social media channels, websites, advertisements, or blogs). FiMi Hub (or a party designated by FiMi Hub acting on FiMi Hub's behalf) may take video and still images for marketing and other efforts related to the FIMI HUB App. Merchant agrees that App's Photographs (including all intellectual property rights therein) are and will remain the sole and exclusive property of FiMi Hub or its affiliates. Additionally, Merchant may provide videos, still image or other materials to FiMi Hub or its affiliates for use in connection with the display of Merchant's Items on the FIMI HUB App or the marketing and promotion of FIMI HUB Delivery Services and the availability of your Items via the FIMI HUB App. Merchant hereby grants FiMi Hub and its affiliates a non-exclusive, perpetual, fully paid-up and royalty free license to use and display such Merchant Marketing Materials in connection with Merchant's Items and other promotional activities relating to the FIMI HUB Delivery Services. Without limiting anything in the Agreement, Merchant represents and warrants that the Merchant Marketing Materials do not infringe, misappropriate, or otherwise violate any third party's intellectual property or

other proprietary rights. To the extent that the Merchant Marketing Materials contain any third party materials, Merchant is solely responsible for and will secure any and all rights, licenses, consents and permissions necessary for FiMi Hub to be able to use the Merchant Marketing Materials in accordance with this Section. Merchant agrees that FiMi Hub or its affiliates may remove Merchant Marketing Materials from the FIMI HUB App if FiMi Hub or its affiliates receive notice or otherwise reasonably believe that such Merchant Marketing Materials may infringe, misappropriate, or otherwise violate any intellectual property or other proprietary rights.

## **7.5 Publicity**

Except as may be expressly set forth in this Agreement or otherwise agreed by the parties in writing, neither party may issue a press release or otherwise refer to the other party in any manner with respect to this Agreement or otherwise, without the prior written consent of such other party.

## **8. PROPRIETARY INFORMATION; PERSONAL DATA; FEEDBACK**

### **8.1 Definition**

“Proprietary Information” means any confidential, proprietary or other non-public information disclosed by or on behalf of one party (“Discloser”) to the other (“Recipient”), whether disclosed verbally, in writing, or by inspection of tangible objects, and includes transactional, operational, performance and other data or information that is related to the sale of Merchant’s Items to Customers through the FIMI HUB App and the terms and conditions of this Agreement. Proprietary Information will not include information that: (i) was previously known to the Recipient without an obligation of confidentiality; (ii) was acquired by the Recipient without any obligation of confidentiality from a third party with the right to make such disclosure; or (iii) is or becomes publicly available through no fault of the Recipient. Each Recipient agrees that

it will not disclose to any third parties other than Representatives, or use in any way other than as necessary to perform this Agreement, the Discloser's Proprietary Information. Each Recipient will ensure that Proprietary Information will only be made available to Recipient's affiliates and Recipient's and Recipient's affiliates officers, directors, employees and agents who have a need to know such Proprietary Information and who, prior to any disclosure of such Proprietary Information, are bound by written obligations of confidentiality with respect to such Proprietary Information that are no less stringent than those set forth in this Agreement (each, a "Representative"). Recipient will cause its Representatives to comply with the terms of this Agreement and will be solely responsible for any breach of this Agreement by any of its Representatives. Each Recipient will not, and will not authorize others to, remove or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of the Discloser's Proprietary Information. The foregoing prohibition on use and disclosure of Proprietary Information will not apply to the extent: (i) the Discloser has authorized such use or disclosure (and Merchant hereby authorizes FiMi Hub and its Affiliates to disclose the terms of this Agreement to Merchant's franchisees and/or franchisor as applicable in connection with executing contracts that reference this Agreement) and (ii) a Recipient is required to disclose certain Proprietary Information of the Discloser as a matter of law or by order of a court, provided that the Recipient gives the Discloser prior written notice of such obligation to disclose and reasonably assist in obtaining a protective order prior to making such disclosure. Upon expiration or termination of this Agreement and as requested by Discloser, each Recipient will deliver to the Discloser (or destroy at the Discloser's election) any and all materials or documents containing the Discloser's Proprietary Information, together with all copies thereof in whatever form.

## **8.2 Privacy**

Merchant agrees to use, disclose, store, retain or otherwise process Personal Data solely for the purpose of providing Items under this Agreement. Merchant will maintain the accuracy and integrity of any Personal Data provided by FiMi Hub and in Merchant's possession, custody or control. Merchant agrees to retain Personal Data provided to Merchant by FiMi Hub solely by using the software and tools provided by FiMi Hub.

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

## **8.3 Passwords**

Merchant is responsible for maintaining the integrity of information related to Merchant's access and use of the FIMI HUB App, tools and related Services, including any password, login or key information. Merchant represents and warrants that Merchant will not share such information with any third party.

## **8.4 Data Re-Identification Restriction**

Without limiting any other provision of this Agreement, including any provision in this Section 8, Merchant will not merge any of the data collected or otherwise obtained in connection with this Agreement, including any Personal Data, with other data collected from any source or otherwise use any of the data collected or otherwise obtained in connection with this Agreement, including any Personal Data, for the purpose of re-identification, targeted marketing, or any other similar purpose.

## **8.5 Feedback**



Merchant may, but is not obligated to, provide or otherwise make available to FiMi Hub or its affiliates certain feedback, suggestions, comments, ideas, or other concepts relating to FiMi Hub's and its affiliate's products and services ("Feedback"). However, to the extent that Merchant provides or otherwise makes available Feedback to FiMi Hub or its affiliates, Merchant hereby grants to FiMi Hub and its affiliates a perpetual, irrevocable, worldwide, royalty free, fully sub licensable right to use and otherwise exploit such Feedback.

## **9. RATINGS**

Merchant acknowledges and agrees that, after receiving Item(s), a Customer may be prompted by the FIMI HUB App to provide a rating of such Item(s) and, at such Customer's option, to provide comments or feedback related to the Customer's experience with Merchant and the relevant Item(s) on the FIMI HUB App ("Customer Feedback"). FiMi Hub and its affiliates reserve the right to use, share, and display Customer Feedback in any manner in connection with the business of FiMi Hub and its affiliates without attribution to or approval of Merchant. Merchant acknowledges that FiMi Hub and its affiliates are distributors (without any obligation to verify) and not publishers of Customer Feedback, provided that FiMi Hub and its affiliates reserve the right to edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other Personal Data, violate any privacy or other applicable laws, or FiMi Hub's or its affiliates' content policies.

## **10. REPRESENTATIONS AND WARRANTIES; DISCLAIMER**

### **10.1 Representations and Warranties**

Each party hereby represents and warrants that: (i) it has full power and authority to enter into this Agreement and perform its obligations hereunder; (ii) it is duly organized,

validly existing and in good standing under the laws of the jurisdiction of its origin; (iii) it has not entered into, and during the Term will not enter into, any agreement that would prevent it from complying with or performing under this Agreement; (iv) it will comply with all applicable laws and regulations in the performance of this Agreement and any activities hereunder (including all applicable consumer protection, data protection and privacy laws and, in the case of Merchant, all applicable Food Safety Standards); and (v) the Marks used or provided by one party to the other pursuant to this Agreement shall not infringe or otherwise violate the intellectual property rights, rights of publicity, or other proprietary rights of any third party. In addition, Merchant further represents and warrants that to the extent Merchant has franchisees who participate in any activities under this Agreement, Merchant will ensure that such franchisees will comply with, and be subject to, the applicable provisions of this Agreement when participating in such activities.

## **10.2 DISCLAIMER**

EXCEPT AS SET FORTH HEREIN, EACH PARTY MAKES NO REPRESENTATIONS, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS SERVICES OR PRODUCTS OR ANY PORTION THEREOF, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

## **12. LIMITS OF LIABILITY**

EXCEPT FOR LIABILITY ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, INDEMNIFICATION OBLIGATIONS OR A BREACH

OF CONFIDENTIALITY OBLIGATIONS: (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CLAIM FOR ANY INDIRECT, WILLFUL, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, FOR LOSS OF BUSINESS PROFITS, OR DAMAGES FOR LOSS OF BUSINESS OF MERCHANT OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, OR LOSS OR INACCURACY OF DATA OF ANY KIND, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) EACH PARTY'S TOTAL CUMULATIVE LIABILITY OF EACH AND EVERY KIND UNDER THIS AGREEMENT WILL NOT EXCEED \$100,000. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

#### **14. SUPPLEMENTAL TERMS**

Merchant will comply with the applicable then-current Community Guidelines, currently available. In addition, supplemental terms may apply to Merchant's use of the FIMI HUB App and Customer and Merchant Services, such as use policies or terms related to certain features and functionality, which may be modified from time to time (collectively, with the Community Guidelines, "Supplemental Terms"). Supplemental Terms are in addition to, and will be deemed a part of, the Agreement. Supplemental Terms will prevail over the Agreement in the event of a conflict. FiMi Hub will use good faith efforts to provide Merchant with written notice of any material updates to the Supplemental Terms, and, if Merchant does not agree to comply with the terms of any such update, Merchant may, as its sole and exclusive remedy, terminate this Agreement and cease use of the FIMI HUB

App and Services. By continuing to use the FIMI HUB App, tolls or Services, Merchant will be deemed to accept the Supplemental Terms. Notwithstanding anything to the contrary, the terms and conditions of UFIMI HUB Delivery Services then-current Privacy Policy, will apply to FiMi Hub's collection, use and processing of Personal Data.

## **15. TERM AND TERMINATION**

This Agreement will commence on the Effective Date and, unless earlier terminated as provided below, will continue for a period of one (1) year from the Effective Date ("Initial Term") and will automatically renew for successive one (1) year periods (each, a "Renewal Term" and together with the Initial Term, the "Term"). Either party may terminate this Agreement, in whole or in part (i.e., with respect to any Sales Channel), in the event of a material breach by the other party with two (2) days' prior written notice thereof by the non-breaching party. Either party may terminate this Agreement, in whole or in part (i.e., with respect to any Sales Channel), at any time without cause by giving sixty (60) days' prior written notice of termination to the other party, with the exception being that should either party attempt to terminate this Agreement during an active Promotion period, such termination will not take effect until such Promotion period has ended. Notwithstanding the foregoing, the termination of this Agreement will not relieve either party of its obligations to fulfil any promotional offer that has been redeemed by Customers in accordance with its terms. In addition, FiMi Hub may suspend or otherwise terminate this Agreement on written notice in the event of a Brand Matter. A "Brand Matter" means an event involving Merchant that, in FiMi Hub's reasonable judgment, causes it or its affiliates to have significant concern for the reputation of its respective Marks or brand, including matters related to the alleged violation of any applicable retail food or other health or safety code. All payment obligations and Sections 1, 3.3, 7.1, 8-13,

this last sentence of 15, 16-17 and 19 will survive the expiration or termination of this Agreement.

## **16. NOTICE**

Any and all notices permitted or required to be given hereunder will be sent to the address listed below, or such other address as may be provided, and deemed duly given: (a) upon actual delivery, if delivery is by hand; or (b) one (1) day after being sent by overnight courier, charges prepaid; or (c) by electronic mail to the designated recipient. Notices to FiMi Hub should be provided to FiMi Hub, using contact details including addresses that will be given to merchant. Notices to Merchant should be provided to the address provided by Merchant. The parties agree that all legal documents (including complaints and subpoenas) directed to FiMi Hub will be served on FiMi Hub's registered agent for service of process.

## **17. DISPUTE RESOLUTION AND ARBITRATION**

### **17.1 Arbitration**

Any dispute, whether contractual or otherwise, arising out of or in connection with this Agreement or these dispute resolution procedures, including any question regarding its existence, performance, validity, or termination, will be referred to and finally resolved by arbitration administered in accordance with its Arbitration Rules and Procedures in Jamaica. The parties agree that the arbitrator, and not any local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Agreement, including any claim that all or any part of this Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether this Agreement is unconscionable or illusory and any defence to arbitration, including waiver, delay, laches, or estoppel. In the event of a dispute, controversy or claim arising out of or

relating in any way to this Agreement, the complaining party shall notify the other party in writing thereof. Within thirty (30) days of such notice, representatives of both parties shall attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining party shall seek remedies exclusively through arbitration. Furthermore, the parties agree:

i) The Arbitrator's award will be final and binding and judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof, provided that any award may be confirmed in a court of competent jurisdiction. I) A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified by the rules governing arbitration.

ii) The language to be used in the arbitral proceedings will be English.

### **17.2 Waiver of Jury Trial**

Each party hereby waives to the fullest extent permitted by applicable law, any right it may have to a trial by jury of any arbitrable claim under this Agreement and in connection with the enforcement of an arbitral award rendered pursuant to this agreement.

Each party (i) certifies that no representatives, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of such litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party hereto have been induced to enter into this Agreement.

### **18. DIVERSITY AND INCLUSION.**

Merchant will not, in its use of the FIMI HUB Services or Tools under this Agreement, discriminate against any customer, employee, contractor or other person or individual on the basis of race, colour, gender, pregnancy, marital status, familial status, sexual orientation, gender identity or expression, religion, ancestry, national origin, disability, or

age except that programs may target beneficial services for specific participant groups, as agreed upon between FiMi Hub and Merchant. Merchant acknowledges and agrees that upon FiMi Hub's receipt of evidence of Merchant's discrimination under any of these categories, FiMi Hub will have the right to immediately terminate this Agreement following notice to Merchant.

## **19. ADDITIONAL TERMS**

The territory of this Agreement is Jamaica, and all payments issued under this Agreement must be in Jamaican dollars. Merchant agrees to receive calls, SMS messages and other communications, including those made available by autodialer, sent by or on behalf of FiMi Hub or its affiliates. In this Agreement, "including" means "including, without limitation," and examples are illustrative and not the sole examples of a particular concept. The failure of either party to enforce, at any time or for any period of time, the provisions hereof, or the failure of either party to exercise any option herein, will not be construed as a waiver of such provision or option and will in no way affect that party's right to enforce such provisions or exercise such option. This Agreement may not be assigned, transferred, delegated or subcontracted, in whole or in part, by a party without the prior written consent of the other party, provided that each party may assign this Agreement, upon written notice to the other party, (a) to an affiliate of such party, or (b) in connection with the sale of all or substantially all of such party's equity, business or assets to which this Agreement relates; provided that in the event of any such transfer by Merchant, Merchant explicitly consents that any such transferee will have access to and control of all Merchant accounts related to such transfer, including its accounts with FiMi Hub, access to historical reporting information about Items related to such transfer, and other account data relating to such transfer. In the event of a change of ownership involving Merchant's Location(s), the parties will need to execute a Change of

Ownership form and Merchant acknowledges and agrees that the Location will not be able to accept or process any Customer orders on the FIMI HUB Customer App until the Change of Ownership is executed. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of each party hereto and its respective successors and assigns. Any purported assignment, transfer, delegation or subcontract in violation of this Section will be null and void. In the event any provision of this Agreement is determined to be invalid or unenforceable by ruling of an arbitrator or a court of competent jurisdiction, the remainder of this Agreement (and each of the remaining terms and conditions contained herein) will remain in full force and effect. Any delay in or failure by either party in the performance of this Agreement will be excused if and to the extent such delay or failure is caused by occurrences beyond the control of the affected party including decrees or restraints of Government, acts of God, strikes, work stoppage or other labour disturbances, war or sabotage (each being a "Force Majeure Event"). The affected party will promptly notify the other party upon becoming aware that any Force Majeure has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement. Nothing in this Agreement will be deemed to create any joint venture, joint enterprise, or agency relationship among the parties (except as otherwise expressly set forth above), and no party will have the right to enter into contracts on behalf of, to legally bind, to incur debt on behalf of, or to otherwise incur any liability or obligation on behalf of, the other party hereto, in the absence of a separate writing, executed by an authorized representative of the other party. Each party will be solely responsible for its employees and contractors used in connection with such party's performance obligations under this Agreement. This Agreement contains the full and complete understanding and agreement between the parties relating to the subject matter



hereof and supersedes all prior and contemporary understandings and agreements, whether oral or written, relating such subject matter hereof. This Agreement may be executed in one or more counterparts and by exchange of electronically signed counterparts transmitted by PDF format, each of which will be deemed an original and all of which, when taken together, will constitute one and the same original instrument.