

# Master Services Agreement

THIS AGREEMENT GOVERNS YOUR PURCHASE AND USE OF MENUSIFU SYSTEM AND SERVICES.

BY ACCEPTING THIS AGREEMENT, BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT INCORPORATES THESE TERMS AND CONDITIONS OR BY USING ANY MENUSIFU SYSTEM OR SERVICES PROVIDED OR OTHERWISE MADE AVAILABLE BY MENUSIFU, INC. ("MENUSIFU"), YOU (AS DEFINED IN EACH ORDER FORM) AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE MENUSIFU SYSTEM OR SERVICES.

You may not access Menusifu System or Services if you are Menusifu's direct competitor, except with Menusifu's prior written consent. In addition, you may not access the Menusifu System or Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

## 1. DEFINITIONS

**"Agreement"** means this Master Services Agreement.

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity. You agree to confirm the Affiliate status of an entity upon request by Menusifu. In the event an Affiliate ceases to comply with this definition, this Agreement will terminate solely as it relates to the former Affiliate in accordance with the termination provisions in Section 14.

**"Confidential Information"** means all information disclosed by the Disclosing Party to the Receiving Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Menusifu's Confidential Information includes Menusifu Software, Menusifu System, Services and Documentation; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**"Content"** means information obtained by Menusifu from publicly available sources or third-party content providers and made available to you through the Menusifu System or pursuant to an Order Form, as more fully described in the Documentation.

**"Developed Software"** means the software programs or modifications to the Menusifu System developed by Menusifu for you per your specific requests including object code and source code (if any) for such Developed Software and any related Documentation. Menusifu shall own all right, title and interest in any Developed Software.

**"Disclosing Party"** means the party disclosing Confidential information.

**“Documentation”** means all on-line and paper help material and all of the user, technical, and training guides (in whatever media) associated with the Menusifu System and made available to you. Documentation shall be accurate in all material respects but shall be subject to amendment from time to time to conform with functionality contained in new releases of the Menusifu Software.

**“Force Majeure Event”** means any act of God, a natural disaster such as earthquake, flood, embargo, riots, sabotage, utility or transmission disruption, fire or any other similar event beyond such party’s control, or actions or decrees of governmental bodies not the fault of the affected party.

**“Hardware”** means any hardware products of the Menusifu System, including any hardware and accessories ordered by you and provided to you by Menusifu under an Order Form.

**“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**“Maintenance Services”** means the support and maintenance services provided by Menusifu to you pursuant to this Agreement and your Order Form(s).

**“Menusifu Software”** means the computer programming code (including object code and any source code) for a software program or functionality that is either installed on Hardware provided by Menusifu or made available by Menusifu (including associated Menusifu Web-based, offline or mobile components). Menusifu Software includes but not limited to Software Updates, Software Upgrade and Developed Software but excluding Content and Non-Menusifu Software.

**“Menusifu System”** means the means the Menusifu Software together with the Hardware that are purchased by you directly from Menusifu under an Order Form and provided to you by Menusifu. Menusifu System does not include Content and Non-Menusifu Software.

**“Non-Menusifu Software”** means a Web-based, mobile, offline or other software process or functionality that is provided by you or a third party and interoperates with Menusifu System, including, for example, an application that is developed by or for you, or the software delivered with the Menusifu System but which require you to agree to a separate license with a third party (such as a "pop up", "shrink wrap", "click" or other license) prior to your use.

**“Order Form”** means an ordering document, in either electronic or written form, specifying the Menusifu products and/or services to be provided hereunder that is entered into between you and Menusifu or any of Menusifu Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, you agree to be bound by the terms of this Agreement as if it were an original party hereto.

**“Other Services”** means all technical and non-technical services performed or delivered by Menusifu, including, without limitation, implementation services and other professional services, training and education services but excluding SaaS Services and Maintenance Services. Other Services will be provided on a time and material basis at such times or during such periods, as may be specified in your Order Form(s) and mutually agreed to by the parties.

**“Receiving Party”** means the party receiving Confidential information.

**“SaaS Services”** refers to the specific Menusifu’s internet-accessible service identified in your Order Form(s) that provides use of Menusifu Software that is hosted by Menusifu or its service provider and made available to you over a network on a term-use basis.

**“Services”** means any SaaS Services, the Maintenance Services or Other Services you purchase or subscribe under an Order Form and provided by Menusifu upon your payment of such services.

**“Software Update”** means a relatively minor release or version upgrade to an existing Menusifu Software that adds minor features or corrects bugs.

**“Software Upgrade”** means a new version of the existing Menusifu Software that offers a significant change or

improvement over the current version and can be purchased via a new Order Form.

“**User**” means your employees, representatives, consultants, contractors or agents who are authorized to use Menusifu System and/or the Services and have been supplied with user identifications and passwords by you or on your behalf. Each User must complete training and qualification requirements reasonably required by Menusifu.

“**Your Data**” means any data, information or material originated by you that you submit or provide in the course of using the Menusifu System or the Services.

“**Your System**” means a deployment server utilized to install and/or deploy the Menusifu Software or Menusifu System by you or Menusifu at your request, and your personal computers (including operating system), network computers, iPads, Windows terminals and other similar hardware or display devices used by Users to access and use the Menusifu System.

## **2. LICENSE GRANT.**

Subject to the terms and conditions in this Agreement, Menusifu grants to you a non-exclusive, non-transferable, worldwide license to access and use the Menusifu Software either installed on Hardware provided by Menusifu or for download directly or through a third party and/or a website for use of the Menusifu System indicated in any Order Forms executed from time to time by the parties. When you download or use any Menusifu Software, you agree that you will use the Menusifu Software only for the purposes of the Menusifu System. Menusifu represents that it possesses all rights and interests in the Menusifu System necessary to enter into this Agreement. You have the right to use only the Menusifu System selected on any Order Form to this Agreement and shall have no right to use any other Menusifu System that are delivered to you but not selected and expressly licensed hereunder.

## **3. RESTRICTIONS.**

You will not directly or indirectly: (i) make any Menusifu System or Documentation or Content available to anyone other than your Users, or use any Menusifu System or Documentation or Content for the benefit of, anyone other than you, unless expressly stated otherwise in an Order Form; (ii) copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Menusifu System except as permitted herein or in an Order Form or the Documentation; (iii) sell, resell, license, sublicense, distribute, make available, rent or lease any Menusifu System or Documentation or Content in a service bureau or outsourcing offering. Without limiting the foregoing, you will not act as a payment intermediary, aggregator or service bureau or otherwise resell the Menusifu System on behalf of any third party. This means that you may not use the Menusifu System to handle, process or transmit funds for any third party. You also may not use the Menusifu System to process cash advances; (iv) use a Menusifu System or Non-Menusifu Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (v) use a Menusifu System or Non-Menusifu Software to store or transmit Malicious Code; (vi) interfere with or disrupt the integrity or performance of any Menusifu System or third-party data contained therein; (vii) attempt to gain unauthorized access to any Menusifu System or Documentation or Content or its related systems or networks; (viii) permit direct or indirect access to or use of any Menusifu System or Documentation or Content in a way that circumvents a contractual usage limit, or use of any of Menusifu System in a manner that violates Menusifu’s acceptable use, or to access or use any of Menusifu intellectual property except as permitted under this Agreement, an Order Form, or the Documentation; (ix) modify, copy, translate or create derivative works based on a Menusifu System or any part, feature, function or user interface thereof; (x) disassemble, reverse engineer, or decompile a Menusifu System, or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Menusifu System; or (xi) use or access Menusifu System to (a) build a competitive product or service using similar ideas, features, functions or graphics of the Menusifu System, (b) build or support and/or assist a third party in building or supporting, products or services competitive to Menusifu, or (c) determine whether the Menusifu System are within the scope of any patent.

## **4. RESPONSIBILITIES.**

### **4.1 Menusifu’s Responsibilities.**

4.1.1 Provision of Menusifu System. Menusifu will (i) make the Menusifu System, Content, Documentation and

Services available to you pursuant to this Agreement and any applicable Order Forms, (ii) provide Services to you if applicable, (iii) use commercially reasonable efforts to make the online support available 24 hours a day, 7 days a week, except for: (a) planned downtime if applicable (of which Menusifu shall give advance electronic notice), and (b) any Force Majeure Event, internet service providers' failure or delay, or other reasons out of Menusifu's reasonable control.

- 4.1.2 **Implementation and Training.** Menusifu provides free online support for the implementation of and free online training for the Menusifu System upon your purchase. Any onsite implementation and training will be billed in accordance with the then current implementation invoicing policy.
- 4.1.3 **Protection of Your Data.** Menusifu will maintain administrative and technical safeguards for protection of the security, confidentiality and integrity of your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of your Data by Menusifu personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 10.2 (Compelled Disclosure) below, or (c) as you expressly permit in writing.
- 4.1.4 **Menusifu Personnel.** Menusifu will be responsible for the performance of Menusifu personnel (including Menusifu employees and contractors) and their compliance with Menusifu obligations under this Agreement, except as otherwise specified herein.

## **4.2 Your Responsibilities.**

- 4.2.1 **Assistance.** You shall provide commercially reasonable information and assistance to Menusifu to enable Menusifu to deliver your purchase in your Order Form(s). You acknowledge that your Menusifu's ability to deliver the Menusifu System and the Services in the manner provided in this Agreement may depend upon the accuracy and timeliness of your information and assistance. You agree to notify provide fifteen (15) days advance written notice to Menusifu for any type of the changes of (i) your restaurant location; (ii) your restaurant ownership; or (iii) a reallocation of the Menusifu System or your System on which Menusifu System is installed.
- 4.2.2 **Compliance with Laws.** You shall comply with all applicable local, state, national and foreign laws in connection with your use of the Menusifu System and the Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data. You acknowledge that Menusifu exercises no control over the content of the information transmitted by you or Users through the Services. You shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- 4.2.3 **Unauthorized Use; False Information.** You shall: (i) notify Menusifu immediately for any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to Menusifu immediately and use reasonable efforts to stop any unauthorized use of the Menusifu System and the Services that is known or suspected by you or any User, and (iii) not provide false identity information to again access to or use the Menusifu System and the Services.
- 4.2.4 **User Access.** You shall be solely responsible for the acts and omission of your Users. Menusifu shall not be liable for any loss of data or functionality caused directly or indirectly by your Users.
- 4.2.5 **Your Input.** You are solely responsible for collecting, inputting and updating all Your Data and for ensuring that Your Data does not (i) include anything that actually or potentially infringes or misappropriates the copyrights, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious.
- 4.2.6 **License from You.** Subject to the terms and conditions of this Agreement, you shall grant to Menusifu a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Your Data solely as necessary to provide the Services to you.

- 4.2.7 Ownership and Restrictions. You retain ownership and intellectual property right in and to your Data. Except to the extent you or any Users make any of your Data accessible to other users or the public through the MenuSifu System, your Data will be deemed to be your Confidential Information. Notwithstanding anything else in this Agreement, MenuSifu may monitor your Users' use of the MenuSifu System and use your Data in an aggregated and anonymous manner, compile statistical and performance information related to the provision and operation of the MenuSifu System and may make such information publicly available, provided that such information does not incorporate and/or identify your Confidential Information. MenuSifu and its licensors retain all ownership and intellectual property rights to the Services, MenuSifu Software, and anything developed and delivered under this Agreement, unless otherwise provided in your Order Form(s). Third party technology that may be appropriate or necessary for use with some Services or MenuSifu Software is specified in the Documentation or the Order Form(s) as applicable. Your right to use such third party technology is governed by the terms of the third party technology license agreement specified by MenuSifu and not under this Agreement.
- 4.2.8 Suggestions. MenuSifu shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the MenuSifu System and the Services any suggestions, enhancement requests, recommendation or other feedback provided by you, including Users, relating to the operation of the MenuSifu System and the Services.
- 4.2.9 Your Marks. You hereby grant MenuSifu a nonexclusive right and license to use and display your name, logo and similar indicia ("Your Marks") on MenuSifu's website and marketing collateral identifying you as a customer of MenuSifu. MenuSifu obtains no rights in the your Marks except for the limited right described in the preceding sentence, and you retain all right, title and interest in your Marks. All use of your Marks by MenuSifu will inure to you.

## **5. FEES, INVOICE, PAYMENT AND TAXES.**

- 5.1 Fees. In consideration any MenuSifu System and/or Services purchased by you, you will pay all fees specified in each Order Form ("Fees"). Except as otherwise specified herein or in an Order Form, all Fees are non-cancelable and non-refundable.
- 5.2 Invoicing. You are responsible for providing complete and accurate billing and contact information to MenuSifu and notifying MenuSifu of any changes to such information. If you provide ACH information to MenuSifu, you authorize MenuSifu to debit your account all Fees listed in the Order Forms. If an Order Form specifies that payment will be made by a credit card, you will provide MenuSifu with valid and updated credit card information, or alternative document reasonably acceptable to MenuSifu. You may be subject to additional transactional or service fees by credit card payment. MenuSifu will invoice you in advance in accordance with the relevant Order Form before MenuSifu delivers the MenuSifu System and/or Services.
- 5.3 Payment. You agree to pay for all uncontested amounts due under each Oder Form upon your receipt of MenuSifu invoices. All amounts stated in and payable as specified in the applicable Order Form and shall be paid in U.S. Dollars or in such other currency as agreed to in writing by the parties. Unpaid invoices that are not the subject of a written good faith dispute are subject to a finance charge of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, plus all reasonable expenses of collection.
- 5.4 Taxes. In addition to the charges due under this Agreement or Order Forms, and even if you provide a tax exemption number or affidavit of exemption, You shall be responsible for all taxes (including sales, use, property, excise, value added and gross receipts but not including taxes based on MenuSifu's net income) and import duties and fees levied on MenuSifu Software, Hardware and/or Services provided under this Agreement. You agree that if any of the foregoing is paid by MenuSifu, you shall reimburse MenuSifu for the amount paid plus any related expenses incurred and interest assessed. In the event that you are required by any withholding tax or other similar law to deduct any amount from the amounts due to MenuSifu under this Agreement, you agree that you will pay a sufficiently higher amount so that the net amounts received by MenuSifu after such withholding equal what was invoiced.
- 5.5 Future Functionality. You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by MenuSifu regarding

future functionality or features.

- 5.6 Audit. Upon Menusifu’s written request, not more frequently than annually and at its own expense, may audit your use of the Menusifu System and the Services. Any such audit shall be conducted during regular business hours at your facilities and shall not unreasonably interfere with your business activities. If a certificate of an audit reveals that you have underpaid fees to Menusifu for any Menusifu System, you shall be invoiced for such underpaid fees at Menusifu’s then-current list prices for the actual number of Menusifu System under your use. If the underpaid fees exceed ten percent (10%) of the fees paid, then you also shall pay Menusifu reasonable costs of conducting the audit.

## 6. TERM AND TERMINATION

- 6.1 Term. Your purchase of Menusifu Software, Hardware or Menusifu System, or your subscription of any Services shall have the term specified in the applicable Order Form(s). Whereas indicating that your purchase is subject to one-time payment, such purchase shall be deemed as an “buy-out” and shall be delivered upon your full payment. Whereas indicating that your purchase is a subscription of Maintenance Services or SaaS Services on an annual or monthly basis, the term shall be the period defined in the Order Forms(s) unless earlier terminated in accordance with this Agreement (“**Initial Term**”) and shall be automatically renewed on an annually or monthly basis (“**Renewal Term**”) as specified in the Order Form(s).
- 6.2 Termination for Convenience. For your subscription of Services on an annual or monthly basis, either party may terminate this Agreement at any time for convenience upon thirty (30) days prior written notice to the other party, provided, however, you can termination this Agreement before the Initial Term expires only upon you full payment of the remainder monthly subscription fees to fulfill the full subscription fees due for the Initial Term to Menusifu.
- 6.3 Termination with Cause. Each party may terminate this Agreement for cause (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. For subsection (i), both parties agree that your non-payment or delayed payment may constitute a material breach, unless such non-payment or delayed payment is expressly excused by Menusifu.
- 6.4 Suspension. Menusifu reserve the right to suspend delivery of or your use of the Menusifu System and Services upon written notice to you if (i) you fail to make any payment due within thirty (30) days after Menusifu has provided you with notice of such failure, irrespective of your purchase is “buy-out” or subscription of Services with terms; (ii) you provide any inaccurate, untrue or incomplete information or fail to comply with the Menusifu account registration requirements; (iii) Menusifu determines that you are incurring excessive chargebacks; (iv) Menusifu reasonably concludes that your or your Users’ use of the Manusifu System or the Services is causing immediate and ongoing harm to Menusifu or others, or (e) you violate Sections 2 (LICENSE), 3(RESTRICTIONS), 4.2 (YOUR RESPONSIBILITIES) or 9 (CONFIDENTIALITY). Any suspension by Menusifu of the Menusifu System and Services under the preceding sentence will not relieve you of your payment obligations under this Agreement. Menusifu may, without limiting its other rights and remedies, accelerate your unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable. It is Menusifu’s sole discretion to resume the delivery of or your use of the Menusifu System and Services within a reasonable time once Menusifu receives your payment of the balance.
- 6.5 Effect of Termination. (i) Upon any termination or expiration of an Order Form or this Agreement, your right to access and use the Menusifu System and Services covered by that Order or all Order Forms will terminate and all Menusifu System and supporting materials will be returned to Menusifu within ten (10) days, or destroyed and an affidavit supplied to Menusifu certifying destruction. (ii) Notwithstanding the foregoing, at your request if received within thirty (30) days of termination of the Order Form or Agreement for any reason other than termination by Menusifu for your uncured material breach, Menusifu will permit you to access the Menusifu System solely to the extent necessary for you to retrieve a file of your Data then in Menusifu’s possession if applicable. You acknowledge and agree that Menusifu has no obligation to retain your Data and

that MenuSifu will have the right to irretrievably delete and destroy your Data after thirty (30) days following the termination of this Agreement. You agree you will continue to permit MenuSifu access to your bank account if provided until all amounts due under this Agreement are paid in full. (iii) If MenuSifu terminates this Agreement due to a material breach by you, then you shall immediately pay to MenuSifu all amounts then due under this Agreement and to become due during the remaining term of this Agreement, but for this termination. If you terminate this Agreement due to a material breach by MenuSifu, then MenuSifu shall immediately repay to you all pre-paid amounts for any unperformed Services scheduled to be delivered after the termination date.

- 6.6 Surviving Provisions. The sections and subsections titled “FEES, INVOICE, PAYMENT AND TAXES”, “PROPRIETARY RIGHTS AND LICENSES”, “CONFIDENTIALITY”, “EXCLUSIVE REMEDIES”, “DISCLAIMERS”, “LIMITATION OF LIABILITY”, “INDEMNIFICATION,” “SURVIVING PROVISIONS” and “GENERAL PROVISIONS” will survive any termination or expiration of this Agreement.

## 7. NON-MENUSIFU PROVIDERS

- 7.1 Non-MenuSifu Software. MenuSifu or third parties may make available of (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-MenuSifu Software and implementation and other consulting services. Any acquisition by you of such products or services, and any exchange of data between you and any Non-MenuSifu provider, product or service is solely between you and the applicable Non-MenuSifu provider. MenuSifu does not warrant or support Non-MenuSifu Software or other Non-MenuSifu products or services, whether or not they are designated by MenuSifu as “certified” or otherwise, unless expressly provided otherwise in an Order Form.

- 7.2 Non-MenuSifu Software and Your Data. If you choose to use a Non-MenuSifu Software with a MenuSifu System, you grant MenuSifu permission to allow the Non-MenuSifu Software and its provider to access your Data as required for the interoperation of that Non-MenuSifu Software with the MenuSifu System if/when applicable. MenuSifu is not responsible for any disclosure, modification or deletion of your Data resulting from access by such Non-MenuSifu Software or its provider, [or providing any technical support and Maintenance Services for any dysfunctions caused by or resulting from any Non-MenuSifu Software’s access and interoperation with MenuSifu System.](#)

- 7.3 Interoperation with Non-MenuSifu Software. The MenuSifu System or the Services may contain features designed to interoperate with Non-MenuSifu Software. To use such features, you may be required to obtain access to such Non- MenuSifu Software from their providers, and may be required to grant MenuSifu access to your account(s) on such Non-MenuSifu Software. MenuSifu cannot guarantee the continued availability of such MenuSifu System or the Services features, and may cease providing them without entitling you to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-MenuSifu Software ceases to make the Non-MenuSifu Software available for interoperation with the corresponding MenuSifu System or the Services features in a manner acceptable to MenuSifu.

## 8. PROPRIETARY RIGHTS AND LICENSES

- 8.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, MenuSifu and its Affiliates, licensors and Content providers reserve all of our/their right, title and interest in and to the MenuSifu System, Services and Content, including all of our/their related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

- 8.2 Ownership. MenuSifu owns or has rights to use all intellectual property rights in and to the MenuSifu System (including all derivatives or improvements thereof). The MenuSifu Software provided under this Agreement has substantial monetary value and is proprietary to MenuSifu. The MenuSifu Software contains trade secrets, inventions, ideas, data, source and object codes, and other works of authorship protected by copyright and trade secret laws, and may be the subject of one or more pending patent applications or issued patents. All enhancements and modifications made by MenuSifu which are provided under Software Updates, Software Upgrades and Developed Software provisions of this Agreement will remain proprietary to MenuSifu. The

Menusifu System and Services may also include copyrighted and proprietary material of third parties for which Menusifu has been granted a right to use and distribute. Menusifu and any third-party suppliers shall retain ownership of all rights, title and interest to their respective portions of the Menusifu System and Services, and all releases thereof. Menusifu will be free to use, disclose, reproduce and otherwise exploit any and all suggestions, enhancements requests, feedback, recommendations or other input provided by you or any other party relating to the Menusifu System and Services as Menusifu sees fit, entirely without obligation or restriction of any kind. Any rights not expressly granted herein are reserved by Menusifu.

## **9. CONFIDENTIALITY.**

- 9.1 Confidentiality Obligations. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, Menusifu may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-Menusifu Software providers to the extent necessary to perform Menusifu's obligations to you under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- 9.2 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **10. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

- 10.1 Warranty. Menusifu represents and warrants that the Menusifu Software and the Services, when properly installed, used and implemented in accordance with its Documentation, will perform materially in accordance with the applicable Documentation in effect at the effective date of this Agreement. Notwithstanding for forgoing, any Hardware sold by Menusifu to you hereunder will be covered by Menusifu's Refund and Limited Warranty Policy made available at <http://Menusifu.com/company/Legal/Menusifu-limited-warranty>.
- 10.2 Exclusive Remedies. For any breach of a warranty, your sole and exclusive remedy shall be as provided in Sections 6 and 10.1.
- 10.3 Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, MENUSIFU AND ITS THIRD-PARTY PROVIDERS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE MENUSIFU SYSTEM, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF YOUR ABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. MENUSIFU AND ITS THIRD-PARTY PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, SUITABILITY, ACCURACY OR COMPLETENESS OF THE MENUSIFU SYSTEM, THE SERVICES OR THE RESULTS YOU MAY OBTAIN BY USING THE MENUSIFU SYSTEM. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MENUSIFU AND ITS THIRD-PARTY PROVIDERS DO NOT REPRESENT OR WARRANT THAT (A) THE OPERATION OR USE OF THE MENUSIFU SYSTEM OR THE SERVICES



WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE; OR (B) THE QUALITY OF THE MENUSIFU SYSTEM OR THE SERVICES WILL MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGE THAT NEITHER MENUSIFU NOR ITS THIRD-PARTY PROVIDERS CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE MENUSIFU SYSTEM MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. MENUSIFU IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE OR LOSS OF PROFIT RESULTING FROM SUCH PROBLEMS. WITHOUT LIMITING THE FOREGOING, MENUSIFU DOES NOT WARRANT OR GUARANTEE THAT ANY OR ALL SECURITY ATTACKS WILL BE DISCOVERED, REPORTED OR REMEDIED, OR THAT THERE WILL NOT BE ANY SECURITY BREACHES BY THIRD PARTIES. EXCEPT WHERE EXPRESSLY PROVIDED OTHERWISE BY MENUSIFU, THE MENUSIFU SYSTEM, SERVICES AND CONTENT ARE PROVIDED TO YOU ON AN "AS IS" BASIS, EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## **11. LIMITATION OF LIABILITY**

NEITHER PARTY (NOR ANY LICENSOR OR OTHER SUPPLIER OF MENUSIFU) SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS, PROFITS, DATA OR USE OF ANY SERVICE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), EVEN IF FORSEEABLE OR THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), SHALL EXCEED THE FEE PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE. The forgoing limitations shall not apply to the parties' obligations (or any breach thereof) under Sections titled "Restrictions" "Indemnification" or "Confidentiality".

## **12. INDEMNIFICATION**

12.1 Menusifu's Indemnity to You. Menusifu will indemnify, defend and hold harmless you and your directors, officers, employees, affiliates and agents from and against any and all third party claims brought against you by a third party alleging that the use of the Menusifu Software as contemplated hereunder infringes the copyright or misappropriates the trade secret rights of such third party, and Menusifu will pay all costs (including reasonable attorneys' fees) and damages finally awarded against you by a court of competent jurisdiction as a result of any such claim or payable by you pursuant to a settlement agreement to which Menusifu agrees in writing in settlement of such claim; provided, that you (a) promptly gives written notice of the claim to Menusifu; (b) gives Menusifu sole control of the defense and settlement of the claim; and (c) provides to Menusifu, at Menusifu's cost, all reasonable assistance. If the Menusifu Software become, or in Menusifu's opinion are likely to become, the subject of an infringement or misappropriation claim, Menusifu may, at its option and expense, either (i) procure for you the right to continue exercising the rights made available hereunder; (ii) replace or modify the Menusifu Software so that they become non-infringing or non-misappropriating; or (iii) refund to you the portion of the fees paid in advance by you for any unused portion of the then-current term of the Menusifu Software, if any, whereupon Menusifu may terminate this Agreement upon written notice to you. Notwithstanding the foregoing, Menusifu will have no obligation under this Section 12.1 or otherwise with respect to any infringement or misappropriation to the extent that it is based upon (i) the Content, Your Data or Your System, (ii) the modification of Menusifu Software or Services not authorized by Menusifu, or (iii) use of Menusifu Software or the Services other than in accordance with the Documentation and this Agreement. This Section 12.1 represents the sole and exclusive remedy of you and the entire liability and obligation of Menusifu with respect to infringement and misappropriation.

12.2 Your Indemnity to Menusifu. You will indemnify, defend and hold harmless Menusifu and its directors, officers, employees, affiliates and agents from and against any and all third-party proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and

expenses and all reasonable collection costs, incurred by Menusifu, its directors, officers, employees, Affiliates and agents to the extent resulting from or arising out of (i) your use of the Menusifu System or the Services, other than those attributable to Menusifu's gross negligence or willful misconduct for which Menusifu is responsible as set forth in Section 12.1 above, (ii) Menusifu's processing and service activities on behalf of you, (iii) the business of you, (iv) any sales transaction conducted by Menusifu on behalf of you, (v) any noncompliance with any applicable laws and rules by you or your employees, (vi) any alleged or actual compromise, unauthorized access, disclosure, theft or unauthorized use of a card or customer information, regardless of cause, on your systems, (vii) any infiltration, hack, breach or violation of the processing system of you or any other third-party processor or system, (viii) your, or any employees' or customers', breach or nonperformance of any provision of this Agreement, (ix) your or its employee's reliance on any report or other information generated through the Menusifu Software; or (x) any Tax assessment.

### **13. GENERAL PROVISIONS**

- 13.1 **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between you and Menusifu regarding your use of Menusifu System, Services, Documentation and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in your purchase order or in any other of your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.
- 13.2 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 13.3 **Notices.** All notices shall be in writing and either i) sent by certified mail, postage prepaid, return receipt requested or ii) sent via email or iii) delivered by courier to the address written in the related Order Form or such other address as notified in writing to the other party. Notice shall be deemed to be made on the date received under i) or ii) and date delivered under iii). If you have a dispute with Menusifu and wish to provide a notice under this Agreement, or become subject to insolvency or other similar legal proceedings, you will promptly send written notice to Menusifu, Inc. at 339 5th Ave. Suite 500, Manhattan, NY 10016. Attn: Legal Department.
- 13.4 **Arbitration.** All disputes involving this Agreement, except actions arising under the patent and copyright provisions of the U.S. Code, shall be submitted to a panel of three (3) arbitrators appointed and operating under the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association. Such panel shall include only persons with experience in the areas of information technology or computer software licensing, installation or implementation. Each party shall choose one (1) arbitrator, and the third arbitrator shall be chosen by the two (2) arbitrators selected by the parties. The arbitration hearing will be confidential and its location will be chosen by the party not initiating the arbitration or action. The written decision of the arbitrators shall be final, binding and convertible to a court judgment in any appropriate jurisdiction.
- 13.5 **Governing Law and Jurisdiction.** All disputes involving the subject matter of this Agreement, except actions arising under the patent and copyright provisions of the U.S. Code, shall be determined under the law of the State of New York without regard to its conflict of laws provisions and to the exclusive jurisdiction of the courts of New York, New York.
- 13.6 **Force Majeure.** Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this Agreement due to any Force Majeure Event, which shall not constitute a breach of the Agreement. Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance or observance of the affected obligations for as long as such circumstances prevail, and such party continues to attempt to recommence performance or observance to the greatest extent possible without delay.

- 13.7 Export Controls. The Menusifu System, Documentation, Content and other technology Menusifu makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. You shall not permit Users to access or use any Menusifu System or Documentation or Content in a U.S. embargoed country or in violation of any U.S. export law or regulation. You shall indemnify, defend and hold harmless Menusifu from any loss, liability, cost or expense (including reasonable legal fees) related to any action arising from your failure to comply with this section.
- 13.8 Anti-Corruption. You agree that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Menusifu's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you learn of any violation of the above restriction, you will use reasonable efforts to promptly notify Menusifu at info@menusifu.com.
- 13.9 Subcontractors. You understand that Menusifu's business partners are independent entities and, except to the extent they are acting as subcontractors pursuant to an effective consulting agreement, Menusifu is not liable for nor bound by any acts of such business partners.
- 13.10 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (together with all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired to sell substantially all of its assets to, or undergo a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, Menusifu will refund to you any prepaid fees allocable to the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assignees.
- 13.11 Relationship. The parties hereto are independent contractors and neither party nor its employees, directors, agents, or consultants shall hold itself out to be or allow itself to be considered as an agent or employee of the other party.
- 13.12 Publicity. Neither party shall publicly announce or disclose the terms and conditions of this Agreement except that Menusifu may refer to you as Menusifu's customer in sales calls, customer lists.
- 13.13 Other Documents. Any of your purchase order or other instrument accompanying either an Order Form to this Agreement or your payment is for your internal use only.

**This Agreement, including its terms and conditions and its Order Forms and Addenda is a complete and exclusive statement of the agreement between the parties, which supersedes all prior concurrent proposals and understandings, whether oral or written and all other communications between the parties relating to the subject matter of this Agreement. This Agreement shall not be effective until the Order Form is executed by you and accepted by Menusifu.**