

# CHOWLY INC. TERMS AND CONDITIONS

This Services Agreement (“**Agreement**”) is entered into and effective upon the first day of use of Chowly Inc integration services and the user of the Chowly Inc. integration services. (the “**CUSTOMER**”). Each of Chowly and Customer may be referred to herein as a “**Party**” or collectively as the “**Parties**.”

In consideration of the mutual promises below and other good and valuable consideration the sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **1. Services**

Chowly will provide Customer with local and online software applications for mapping information from restaurant orders placed through third-party online ordering software (**TOOS**) to Customer’s point of service order system (the “**Software**”) and consulting services necessary to customize the local mapping application for Customer (collectively, the “**Offerings**”). The Parties understand and agree that the purchase, subscription, and subsequent use of any Offerings are subject to the terms and conditions of this Agreement.

## **2. Term**

Subject to the terms of Section 5, this Agreement is effective as of the Effective Date and shall remain in effect until terminated by either party as specifically described herein.

## **3. License**

(a) Grant of License. Subject to the terms and conditions of this Agreement, Chowly grants to Customer a limited, nonexclusive, non-transferable, non-sublicensable right to use the Offerings. All proprietary rights, including intellectual property rights in the Offerings will remain the property of Chowly as applicable.

(b) Use. Chowly provides the Offerings solely and exclusively for Customer’s own internal business use. “Internal business use” shall mean use and access directly related to Customer’s business and confined solely to Customer’s own servers and within Customer’s place of business. Customer represents and warrants that it is not engaged in, and will not engage in, the operation of any illegal business and

will not use, or permit anyone else to use, the Offerings for any illegal purpose. Customer shall make no use of the Offerings except in compliance with the terms of this Agreement.

(c) Third Party Authorization. Customer is solely responsible for obtaining all required authorizations from TOOS for data received through the Offerings that require TOOS authorization.

(d) Use of Offerings. Customer shall not reverse-engineer, disassemble, decompile, copy, distribute, transfer, reproduce, or archive any of the Offerings or data provided by Chowly. Chowly will have the right to require Customer to cease its use of the Offerings immediately if, in the sole reasonable judgment of Chowly, Chowly believes that Customer’s use is outside the scope of the permitted use as set forth in this Agreement.

## **4. Intellectual Property**

(a) Chowly Ownership Rights. Customer acknowledges and agrees that, as between Customer and Chowly, Chowly exclusively owns all rights, title, and interest in, to and related to the Offerings, as such may be modified, upgraded and/or enhanced from time to time, including, without limitation, all ownership and intellectual property rights therein, including, patents, copyrights, trademarks, trade secrets, rights of publicity, rights of privacy, sui generis database rights, moral rights, and other intellectual property or proprietary rights anywhere in the world. Customer further acknowledges and agrees that, as between Customer and Chowly, the Offerings are and shall remain the sole and exclusive property of Chowly. Customer acknowledges and agrees that the right, title, and interest in and to the Offerings shall remain the property of Chowly. Chowly reserves all rights not expressly granted to Customer herein.

(b) Customer Ownership Rights. Subject to Chowly’s ownership in and to the Offerings as described in Section 4(a), Chowly acknowledges that Customer shall own the Derived Data and all proprietary rights therein.

(c) Trademarks; Attribution. Neither Party may use any trademark service marks, names, logos, or other

identifiers of the other Party without the prior written consent of the relevant Party, except, however, Customer may use Chowly's name for the purpose of source attribution.

## **5. Termination**

This Agreement will terminate upon any of the following conditions:

(a) By providing notice of termination at least 45 days in advance to the other Party, and, where Customer terminates the Agreement, by uninstalling and destroying all copies of the Software in its possession.

(b) Upon the bankruptcy, liquidation, dissolution, or cessation of ongoing operations of Chowly.

(c) Chowly may terminate this Agreement immediately and without notice upon any attempt by Customer to assign use or access to the Software to any person or entity that is not a party to this Agreement without Chowly's prior written consent, which is not to be unreasonably withheld.

## **6. Fees and Terms of Payment**

(a) Fees. For its services, Customer agrees to pay Chowly all fees as outlined on the onboard documentation executed by all parties. All locations covered under this agreement are subject to a \$35 (thirty five dollar) minimum fee per location.

(b) Due dates of payments. Customer agrees to pay Chowly its Initial Fee upon execution of this Agreement. Customer further agrees to pay Chowly Monthly Fees within thirty (30) days of the date of each monthly invoice.

(b) Taxes. All fees stated in this Agreement are exclusive of any sales, use and other applicable taxes or duties, however designated, including without limitation, withholding taxes, royalties, know-how payments, customs, privilege, excise, sales, use, value-added and property taxes (collectively "Taxes"). In addition to the fees, Customer shall pay any applicable taxes, except for those taxes based on the income of Chowly. Customer will not withhold any Taxes from any amounts due to Chowly.

(c) Additional Services. Customer may elect to receive additional Offerings during the Term of this Agreement. In such an event, Chowly is not obligated to deliver such additional Offerings and Customer is not obligated to pay for such additional Offerings until the Parties agree in writing as to the scope of the additional Offerings, the fees to be paid for such additional Offerings, and any additional terms that may be necessary. Such written agreement shall be in accordance with Section 10(e) of this Agreement.

(d) Fee Increases. Chowly may, by providing Customer with written notice at least thirty (30) days prior to the end of a monthly invoicing period, change the fees for all or any portion of the Offerings. Such fee changes will become effective on the first day of the subsequent monthly invoicing period.

## **7. Support and Modification of Data Offerings**

(a) Support. Chowly will provide on-going assistance to Customer with regard to technical, administrative and service-oriented issues relating to the utilization, transmission and maintenance of the Offerings as Customer may reasonably request and Chowly may reasonably accommodate. Support for technical, administrative and service related matters may be requested via email at [support@chowlyinc.com](mailto:support@chowlyinc.com).

(b) Modification of Offerings. Chowly may modify the format, content, or delivery of the Offerings from time to time and at any time for technical reasons.

## **9. Indemnification**

Customer shall indemnify and hold Chowly and its shareholders, directors, officers, employees and agents, harmless from and against any and all liabilities, damages, awards, settlements, losses, claims, and expenses, including reasonable attorneys' fees and costs of investigation ("**Damages**"), due to any claim by a third party arising from or in connection with Customer's gross negligence, willful misconduct, breach of any of its representations, warranties, covenants, or obligations in this Agreement, or any use of the Data Offerings that is not in accordance with this Agreement.

## **10. General**

(a) Controlling Law. This Agreement shall be governed by and construed in accordance with the

laws of the State of Illinois, without regard to its conflict of law principles.

(b) Attorneys' Fees and Costs. Should either Party, through any court of competent jurisdiction or otherwise, successfully enforce any of the terms and conditions of this Agreement against the other Party, the losing Party agrees to pay to the prevailing Party its costs, including reasonable attorneys' fees.

(c) Notices. Whenever any ordinary day to day communication shall be given by one Party to the other, such communication shall be delivered to Customer by Chowly sending an email to the email address provided by Customer for the delivery of notices as set forth herein and to Chowly by Customer sending an email to support@Chowly.com, or by sending an email to such other email address as either Party may specify in a notice given hereunder. Notice shall be deemed given on the day of delivery using EST. For the notice to be effective, the subject line of each email notice provided hereunder must state in bold letters: **NOTICE UNDER CHOWLY, INC. SERVICES AGREEMENT.**

All notices (other than in connection with ordinary day to day communication) shall be provided in writing and addressed to Customer as the address listed in this Agreement, or via email provided on the onboard documentation.

(d) Assignment. Neither Party shall assign this Agreement in whole or in part without the prior written consent of the other Party.

(e) Amendments. This Agreement may not be amended, modified, or suspended unless expressly agreed to in writing by both Parties.

(f) Waivers. The failure of either Party at any time or times to require full performance of any provision hereof will in no manner affect the right of such Party to enforce the same at a later time.

(f) Counterparts. This Agreement may be signed in counterparts, each of which will be an original, but all of which, together, will constitute one and the same instrument.

(g) Severability. If a court of competent jurisdiction declares any provision of this Agreement to be invalid, unlawful or unenforceable as drafted, the Parties intend that such provision be amended and construed in a manner designed to effectuate the purposes of the provision to the fullest extent permitted by law. If such provision cannot be so amended and construed, it shall be severed, and the remaining provisions shall remain unimpaired and in full force and effect to the fullest extent permitted by law.

(h) Sole Agreement. This Agreement (together with the Exhibit incorporated by reference herein) constitutes the complete understanding of the Parties, and supersedes all prior agreements, discussions, negotiations, promises, proposals, representations, and understandings (whether written or oral) between the Parties, with regard to the subject matter hereof.

(i) Survival. The provisions of Sections 4, 8, 9, and 10 will survive the termination of the Agreement.