

E-Foods Software Services Licence Terms

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Licence Terms.

Affiliate	in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party.
Authorised Users	means those employees, agents and independent contractors of the Customer and any Permitted Affiliate (who are authorised by the Customer to use the Services
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in the City of London are open for business.
Commencement Date	the commencement date for the Services identified in the Contract. If there is no commencement date identified in the Contract the Commencement Date shall be the first date upon which the Customer uses the Services (or any of them).
Confidential Information	information that is proprietary or confidential and is either clearly labelled as such or else which should reasonably be considered to be confidential because of its nature and the manner of its disclosure
Contract	the agreement between E-Foods and the Customer for the supply of the Services incorporating these Licence Terms. This agreement may take the form of a written agreement, an order form or by the Customer confirming its agreement to E-Foods' terms online.
Customer	the person, firm of company identified in the Contract as the Customer to which E-Foods will supply the Services.
Customer Data	the data inputted by the Customer, Authorised Users, or E-Foods on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services
Documentation	those documents, if any, made available to the Customer by E-Foods (a) online via the Website or (b) provided electronically to the customer by E-Foods, which in either case set out a specification of the Services and the user instructions for the Services.

E-Foods	E-Foods Limited (company number 04631608) whose registered office is at Willow House. Orbital 24, Oldham Street, Denton, Manchester, M34 3SU.
Enhancements	the development and implementation of improvements to the Software and or the Services
Fees	any applicable fees payable by the Customer for use of the Services as set out in the Contract.
Initial Term	the initial term, in any, specified in the Contract.
Intellectual Property Rights	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites
Licence Terms	these terms and conditions, as may be varied from time to time in accordance with clause 16.2.
Maintenance and Support	the Software maintenance and support services to be provided to the Customer by E-Foods as described in Schedule 2
Permitted Affiliate	an Affiliate of the Customer approved in writing as a recipient of the Services under the Contract and for whose acts and omissions the Customer shall be responsible.
Renewal Term	the Renewal Term, if any, specified in the Contract.
Services	the subscription services to be provided by E-Foods to the Customer in accordance with the Contract and these Licence Terms relating to the supply and support of the Software
Software	the online software applications identified in the Contract together with any other software applications to be made available from time to time by E-Foods to the Customer

via the Website, including all updates, error corrections and Enhancements

Term the duration of the Contract, as determined in accordance with clause 14.

Virus any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices

Website www.e-foods.co.uk, www.e-foods.freshmarkets.co.uk or www.catercloud.com , as identified in the Contract or such other web address as may be notified by E-Foods to the Customer from time to time for the purpose of accessing the Software

Year a period of 12 months from the Commencement Date and each successive 12 month period

1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 A reference to parties means the parties to the Contract collectively and "party" means either of them.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.

1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

2 **AUTHORISED USERS**

2.1 Subject to the Customer:

- 2.1.1 Paying all applicable Fees in accordance with clause 8; and
- 2.1.2 complying with the restrictions set out in this clause 2 and the other terms and conditions of the Contract

E-Foods hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Term solely for the purposes of the Customer's internal business operations.

2.2 The Customer shall and shall procure that the Authorised Users shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- 2.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.2.2 facilitates illegal activity;
- 2.2.3 depicts sexually explicit images;
- 2.2.4 promotes unlawful violence;
- 2.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.2.6 in a manner that is otherwise illegal or causes damage or injury to any person or property.

2.3 The Customer shall not and shall procure that the Authorised Users shall not:

- 2.3.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (a) and except to the extent expressly permitted under these terms and conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 2.3.2 access all or any part of the Services, the Software and Documentation in order to build a product or service which competes with the Services, the Software and/or the Documentation; or
- 2.3.3 use the Services, Software and/or Documentation to provide services to third parties without the prior consent of E-Foods; or

- 2.3.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- 2.3.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify E-Foods.
- 2.5 The rights provided under this clause 2 are granted to the Customer and its Authorised Users only.
- 2.6 The Customer is entering into the Contract and these Licence Terms on behalf of itself and its Authorised Users. The Customer shall be responsible for payment of any Fees incurred by its Authorised Users and shall ensure that its Authorised Users comply with these Licence Terms as though they were a party to them

3 SERVICES

- 3.1 E-Foods shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of the Contract.
- 3.2 E-Foods shall use all reasonable endeavours to make the Services available in accordance with the Service Levels in Schedule 1.
- 3.3 E-Foods will, as part of the Services and at no additional cost to the Customer, provide the Customer with E-Foods' standard Maintenance and Support service as set out in Schedule 2.
- 3.4 E-Foods may suspend any or all of the Services (**Suspension**):
 - 3.4.1 after 7 days' notice of a breach of the terms of the Contract and failure to remedy the breach within that time;
 - 3.4.2 immediately if required to protect the Services or any part of them or E-Foods' other software services;
 - 3.4.3 on the instructions (or reasonably anticipated instructions) of the emergency services;
 - 3.4.4 to deal with a Maintenance Event, in accordance with Schedule 2; or
 - 3.4.5 immediately to the extent necessary to comply with a court order or judgement, or to comply with an order or instruction from a relevant regulatory authority (if any)

and any suspension shall not be a waiver of any right of termination.

3.5 Save as expressly set out in the Contract, any Enhancements made specifically at the request of the Customer will be charged and invoiced by E-Foods on a separate basis at its standard development rate (£850 per day per developer).

4 CUSTOMER DATA

4.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

4.2 E-Foods shall follow its archiving procedures for Customer Data as set out in its back-up policy available on the Website or as provided electronically to the Customer by E-Foods, as such document may be amended by E-Foods in its sole discretion from time to time (it being acknowledged that any such policy available online shall take precedence over the form of any other policy which may be provided to the Customer by E-Foods by other means). In the event of any loss or damage to Customer Data, E-Foods shall use all reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by E-Foods in accordance with the archiving procedure described in its back-up policy. E-Foods shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by E-Foods to perform services related to Customer Data maintenance and back-up).

4.3 E-Foods shall, in providing the Services, comply with its privacy and security policy relating to the privacy and security of the Customer Data available on the Website or as provided electronically to the Customer by E-Foods, as such document may be amended from time to time by E-Foods in its sole discretion (it being acknowledged that any such policy available online shall take precedence over the form of any other policy provided to the Customer by E-Foods by other means).

4.4 In clauses 4.5 ,4.6 and 4.7,

4.4.1 **Data Protection Legislation** means, as applicable, (i) the Data Protection Act 2018 and (ii) unless and until the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (iii) any successor legislation to the GDPR or the Data Protection Act 2018. **GDPR** means the General Data Protection Regulation (Regulation (EU) 2016/679), as amended from time to time;

4.4.2 **Business Contact Details** means the business contact information of personnel engaged by either party (and any Permitted Affiliates), specifically the name, business telephone number, business email address, business postal address and/or the job title of such personnel;

4.4.3 The expressions **personal data**, **controller**, **processor** and **process** bear the meaning given to that expression in GDPR.

- 4.5 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.6 The parties acknowledge and agree that
- 4.6.1 each party is a controller for the personal data it processes in connection with the Contract;
 - 4.6.2 each party is responsible for its own compliance with its data protection obligations under Data Protection Laws with regard to its processing of personal data; and
 - 4.6.3 the only personal data to be transmitted between the parties is Business Contact Data.
 - 4.6.4 If a party (the Disclosing Party) discloses Business Contact Data to the other party (the Recipient), the Disclosing Party shall ensure that such disclosure is lawful and the Recipient shall only process the Disclosing Party's Business Contact Data:
 - 4.6.5 to the extent necessary to perform its obligations under the Contract or as is otherwise necessary to comply with a legal obligation; and
 - 4.6.6 in compliance with Data Protection Legislation.
- 4.7 In the event that clause 4.6 becomes or will become inaccurate or incomplete before the termination of the Contract, the parties agree to negotiate in good faith to vary these Licence Terms as soon as reasonably practicable in order to: (i) reflect the personal data being transmitted between the parties; and (ii) ensure that the transmission and processing of such personal data complies with all applicable requirements under Data Protection Legislation.

5 THIRD PARTY WEBSITES AND PROVIDERS

- 5.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. E-Foods makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not E-Foods. E-Foods recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. E-Foods does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.
- 5.2 For the purpose of its own internal business operations, and with the prior consent in writing of E-Foods, the Customer may link to the Website, provided that it does so in a

way that is fair and legal and is not likely to damage E-Foods' reputation or suggest any form of association, approval or endorsement on E-Foods' part where none exists. Any such link must be to a Website owned and controlled by the Customer or a Permitted Affiliate and must be to the Website homepage and no other part of the Website. E-Foods reserves the right to withdraw linking permission at any time without notice.

6 E-FOODS' OBLIGATIONS

6.1 E-Foods undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care and that it will use all reasonable endeavours to perform the Services in accordance with the Service Levels as set out in Schedule 1.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to E-Foods' instructions, or modification or alteration of the Services by any party other than E-Foods or E-Foods' duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, E-Foods will, at its expense, use all reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, E-Foods:

6.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Software and Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

6.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities not procured by E-Foods as part of its day to day operations, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 E-Foods warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

7 CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

7.1.1 comply with all applicable laws and regulations with respect to its activities under the Contract;

7.1.2 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;

- 7.1.3 ensure that its network and systems comply with any relevant specifications provided by E-Foods from time to time; and
- 7.1.4 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to E-Foods' data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8 FEES AND PAYMENT

- 8.1 Save where the Contract expressly states that the Services are free to use, the Customer shall pay any applicable Fees to E-Foods in accordance with this clause 8 and the Contract.
- 8.2 Any bona-fide dispute regarding Fees must be notified to E-Foods within 14 days of the issue of the disputed invoice.
- 8.3 If E-Foods has not received payment in respect of any non-disputed invoice or non-disputed portion of an invoice within 7 days of its due date, and without prejudice to any other rights and remedies of E-Foods:
 - 8.3.1 E-Foods may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and E-Foods shall be under no obligation to provide any or all of the Services while the non-disputed invoice(s) concerned remain unpaid; and
 - 8.3.2 E-Foods may charge interest which shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of National Westminster Bank PLC from time to time.
- 8.4 All amounts and fees stated or referred to in the Contract:
 - 8.4.1 shall be payable in pounds sterling; and
 - 8.4.2 are exclusive of value added tax, which shall be added to E-Foods's invoice(s) at the appropriate rate.
- 8.5 E-Foods shall be entitled to increase the Fees:
 - 8.5.1 on the expiry of the Initial Term and each Renewal Term by giving to the Customer not less than 60 days' notice in writing of the proposed change; or
 - 8.5.2 at any time should the Customer's usage of the Services change in any material way by notice in writing to the Customer of the change.

9 PROPRIETARY RIGHTS

- 9.1 The Customer acknowledges and agrees that E-Foods and/or its licensors own all Intellectual Property Rights in the Services, the Software (including without limitation all Intellectual Property Rights in the platform design and underlying techniques,

database designs and the business and logic embedded within the Software), the Documentation and any Enhancements (whether or not made at the request of or paid for by the Customer) . Except as expressly stated herein, the Contract does not grant the Customer or any of the Authorised Users any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Software, the Documentation or in any Enhancements.

9.2 E-Foods confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

10 **CONFIDENTIALITY**

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute E-Foods's Confidential Information.

10.6 E-Foods acknowledges that the Customer Data is the Confidential Information of the Customer.

10.7 This clause 10 shall survive termination of the Contract, however arising.

10.8 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11 INDEMNITY

11.1 The Customer shall defend, indemnify and hold harmless E-Foods against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's and the Authorised User's use of the Services and/or Documentation (including any breach of clauses 2.2 and 2.3), provided that:

11.1.1 the Customer is given prompt notice of any such claim;

11.1.2 E-Foods provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

11.1.3 the Customer is given sole authority to defend or settle the claim.

11.2 E-Foods shall defend the Customer, its officers, directors and employees against any claim that the Services, the Software or the Documentation infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

11.2.1 E-Foods is given prompt notice of any such claim;

11.2.2 the Customer provides reasonable co-operation to E-Foods in the defence and settlement of such claim, at E-Foods's expense; and

11.2.3 E-Foods is given sole authority to defend or settle the claim.

11.3 In the defence or settlement of any claim, E-Foods may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract without any additional liability or obligation to pay damages or other additional costs to the Customer.

11.4 In no event shall E-Foods, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

11.4.1 a modification of the Services, the Software or Documentation by anyone other than E-Foods; or

11.4.2 the Customer's use of the Services, the Software or Documentation in a manner contrary to the instructions given to the Customer by E-Foods; or

- 11.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from E-Foods or any appropriate authority.
- 11.5 The foregoing and clause 12.5 state the Customer's sole and exclusive rights and remedies, and E-Foods's (including E-Foods's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 12 **LIMITATION OF LIABILITY**
 - 12.1 This clause 12 sets out the entire financial liability of E-Foods (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
 - 12.1.1 arising under or in connection with the Contract;
 - 12.1.2 in respect of any use made by the Customer of the Services, the Software and Documentation or any part of them; and
 - 12.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
 - 12.2 Except as expressly and specifically provided in the Contract:
 - 12.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services, the Software and the Documentation by the Customer, and for conclusions drawn from such use. E-Foods shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to E-Foods by the Customer in connection with the Services, or any actions taken by E-Foods at the Customer's direction;
 - 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
 - 12.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
 - 12.3 Nothing in the Contract excludes the liability of E-Foods:
 - 12.3.1 for death or personal injury caused by E-Foods's negligence; or
 - 12.3.2 for fraud or fraudulent misrepresentation.
 - 12.4 Subject to clause 12.2 and clause 12.3 E-Foods shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

12.5 E-Foods' total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the greater of: (i) total Fees paid during the 12 months immediately preceding the date on which the claim arose, and (ii) £5,000.

13 ALLERGEN AND NUTRITIONAL INFORMATION

All food allergen, nutritional and any other information provided as part of or in consequence of the Services is made available on the following basis:

13.1 such information is not intended as legal, regulatory or compliance advice from E-Foods. The Customer is responsible for verifying the information (in particular, all allergen and nutritional information) and ensuring this information, the way the information is used or communicated and any products which display that information comply with applicable food safety, labelling, and hygiene legislation and guidance. Any assumptions E-Foods has made when linking allergen and nutritional information to ingredients must be thoroughly checked by the Customer before publishing this information on its menus or otherwise relying on the same;

13.2 E-Foods is unable to give any warranty as to allergen and nutritional information provided by third party suppliers or companies providing such information and does not accept any liability for any inaccuracies or incorrect information supplied by any such third parties;

13.3 where the Customer has engaged E-Foods or its Affiliates to handle their data entry, unless specific allergen and nutritional information has been supplied by the Customer, E-Foods will use its reasonable endeavours to link the appropriate generic data for products in their raw, uncooked state. However food products are constantly being reformulated and this information may change and E-Foods is unable to guarantee the accuracy of allergen or nutritional information associated with a supplied ingredient or the pre-loaded data that is associated with the store cupboard data; and

13.4 profitability and VAT calculations are estimates only and should be verified by the Customer.

14 TERM AND TERMINATION

14.1 The Contract shall, unless otherwise terminated in accordance with clause 14.2, commence on the Commencement Date and shall continue for the Initial Term, if any, as set out in the Contract. Where a Renewal Term has been agreed in the Contract, the Contract will automatically renew for successive periods equal to the Renewal Term (each being a "Renewal Term") unless either party gives not less than 30 days' notice to terminate, such notice to expire at the end of the Initial Term or a Renewal Term. If there is no Initial Term stated in the Contract then either party may terminate the Contract at any time by giving to the other party not less than 30 days' notice to terminate.

- 14.2 Without affecting any other right or remedy available to it, E-Foods may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default for 14 days or more;
 - 14.2.2 the Customer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 14.2.3 the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - 14.2.4 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts;
 - 14.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 14.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer;
 - 14.2.7 a receiver or administrative receiver is appointed over the assets of the Customer;
 - 14.2.8 the Customer, being an individual, is subject to a bankruptcy petition or order;
 - 14.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.4 to clause 14.2.8 (inclusive);
- 14.3 On termination of the Contract for any reason:
- 14.3.1 all licences or rights granted to the Customer under the Contract shall immediately terminate;
 - 14.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - 14.3.3 E-Foods may destroy or otherwise dispose of any of the Customer Data in its possession unless E-Foods receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer

Data. E-Foods shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by E-Foods in returning or disposing of Customer Data; and

14.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15 **FORCE MAJEURE**

E-Foods shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of E-Foods or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified promptly of such an event and its expected duration.

16 **VARIATION**

16.1 Subject to clause 8.5 and 16.2, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.2 E-Foods may vary these Licence Terms on giving to the Customer not less than 30 days' notice in writing of the proposed changes.

17 **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18 **SEVERANCE**

If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall

apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19 ENTIRE AGREEMENT

19.1 The Contract, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

19.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

20 ASSIGNMENT

The Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. E-Foods may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

21 THIRD PARTY RIGHTS

The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22 NOTICES

22.1 Any notices required to be given under the Contract shall be in writing and signed by or on behalf of the party sending it. A notice sent by email shall be deemed to be signed for the purposes of this clause if the name of the sender appears in a signature position after the body of the email.

22.2 Any notice referred to in clause 22.1 may be served by delivering it by hand and delivered personally or by first class post or by email.

22.3 Any notice sent by email should be sent to the following email addresses:

E-Foods:

andynorth@e-foods.co.uk for the attention of: Andy North Commercial Director

The Customer:

Any email address identified in the Contract for the Customer or any email address notified by the Customer from time to time for the purpose of receiving communications and/or notices.

22.4 Any notice served by:

- 22.4.1 personal delivery, shall be deemed served at the time of delivery;
 - 22.4.2 first class post, shall be deemed served at the start of the second Business day after posting;
 - 22.4.3 email shall be deemed served on the day of transmission (or the next Business day if sent after 17:00 in the place of receipt in which case it shall be deemed to be received on the next Business Day in the place of receipt.
- 22.5 Any party may change any details of its address or email address by notice in the manner described above.

23 **GOVERNING LAW AND JURISDICTION**

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

SERVICE LEVELS (AVAILABILITY) ARRANGEMENTS

1 SERVICE AVAILABILITY

E-Foods shall provide at least a 98.0% uptime service availability level (**Uptime Service Level**) during normal working hours. This availability refers to an access point on E-Foods hosting provider's backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider's backbone network, as the Customer is responsible for its own internet access. Availability does not include Maintenance Events as described in paragraph 1 of Schedule 2, Customer-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by E-Foods to perform the Services), or outages or disruptions attributable in whole or in part to force majeure events within the meaning of clause 15 of the Agreement.

2 AVAILABILITY MEASUREMENT

Availability measurement shall be carried out by E-Foods and is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by total possible uptime minutes in the month. E-Foods shall keep and shall send to the Customer, on reasonable request, records of its availability measurement activities under the Contract.

SCHEDULE 2

MAINTENANCE AND SUPPORT

1 MAINTENANCE EVENTS

- 1.1 E-Foods will use its reasonable endeavours to ensure that any maintenance that is likely to result in the interruption of the Services (**Maintenance Events**) is not performed during **Normal Business Hours** (Mon-Fri 9am-5pm excluding UK public holidays). E-Foods may interrupt the Services outside Normal Business Hours for scheduled maintenance. E-Foods may interrupt the Services to perform emergency maintenance at any time. E-Foods shall at all times endeavour to keep any service interruptions to a minimum.
- 1.2 E-Foods will where possible notify the Customer of any Maintenance Events that may affect the availability of the Services.

2 MAINTENANCE

- 2.1 Maintenance includes all regularly scheduled error corrections, Software updates and those upgrades limited to improvements to features. Support for additional features developed by E-Foods, as requested by the Customer, may be purchased separately.
- 2.2 E-Foods shall maintain and update the Software. Should the Customer determine that the Software includes a defect, the Customer may at any time file error reports. During maintenance periods, E-Foods may, at its discretion, upgrade versions, install error corrections and apply patches to the Services. E-Foods shall use all reasonable endeavours to avoid unscheduled downtime for maintenance and shall use its reasonable endeavours to inform the Customer in advance of any planned downtime.

3 SOFTWARE SUPPORT SERVICES

- 3.1 E-Foods shall provide the Customer with Remote Technical Support (**RTS**) in connection with the Services. RTS is via e-mail and provided in English only. RTS is available during Normal Business Hours.
- 3.2 The Customer may submit support requests at any time to itsupport@e-foods.co.uk or support@catercloud.com
- 3.3 Responses to such requests shall be within Normal Business Hours.