

Terms of Service  
- Canada  
RAD Services Merchants

**BEFORE YOU USE RAD SERVICES ("PLATFORM") PLEASE READ THESE TERMS CAREFULLY. BY EXECUTING THE SIGN-UP SHEET WITH RAD SERVICES OR USING THE PLATFORM, YOU, ANY ENTITIES THAT YOU REPRESENT AND ALL OF YOUR PARTICIPATING STORE LOCATIONS ("YOU" OR "MERCHANT") AGREE TO BE BOUND BY THESE TERMS IN ADDITION TO THE TERMS ON YOUR SIGN-UP SHEET.**

**SECTION 17 OF THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS THAT YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS THAT AROSE OR WERE ASSERTED BEFORE THE EFFECTIVE DATE OF THIS AGREEMENT. IN PARTICULAR, SECTION 17 SETS FORTH OUR ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND (2) YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS. THE ARBITRATION AGREEMENT COULD AFFECT YOUR RIGHT TO PARTICIPATE IN PENDING PROPOSED CLASS ACTION LITIGATION. PLEASE SEE SECTION 17 FOR MORE INFORMATION REGARDING THIS ARBITRATION AGREEMENT, THE POSSIBLE EFFECTS OF THIS ARBITRATION AGREEMENT, AND HOW TO OPT OUT OF THE ARBITRATION AGREEMENT.**

**1. Definitions.**

- a. **"Driver"** means independent third-party delivery contractor.
- b. **"Delivery API"** means the RAD application programming interface (API) that allows the Merchant to exchange information with RAD.
- c. **"RAD Data"** shall mean any information that RAD provides or makes accessible to Merchant through the RAD Platform, including without limitation Personal Information.
- d. **"RAD Marketplace"** means RAD's proprietary online communication platform where Customers can view and search for the menus of Merchants and/or place an order for Merchant Products via the RAD website or mobile application for delivery by a Drivers to the Customer or for pickup by Customer.
- e. **"Customer"** means the customer who places an order for Merchant Products through the RAD Platform or RAD Website.
- f. **"RAD Platform"** means RAD Marketplace.
- g. **"RAD Services"** means RAD Platform and RAD Website, as applicable.

- h. **"RAD Orders"** means orders for Merchant Products through the RAD Platform from Customers for delivery by Drivers.
- i. **"Merchant"** means the restaurant or other entity that has agreed to participate in the RAD Services and has executed this Agreement.
- j. **"Merchant Portal"** is an online website, through which Merchant may and regularly should review and confirm its transactions, fees and charges and account on the Platform.
- k. **"Merchant Products"** includes all products offered for take-out or delivery orders at Merchant Stores.
- l. **"Merchant Stores"** means the Merchant restaurant locations that participate in the RAD Services and includes: (i) Merchant Stores owned and operated by Merchant or its affiliates, and/or (ii) Merchant Stores owned and operated by Franchisees of Merchant or its affiliates.
- m. **"Merchant Term"** means the term of the agreement between RAD and Merchant for the RAD Platform.
- n. **"Order"** means a RAD Order.
- o. **"Order Equipment"** means and includes any equipment reasonably required by RAD for Merchant to receive and process Orders, including, without limitation, a tablet, fax machine, or other automated, electronic means of receiving Orders.
- p. **"Personal Information"** shall mean any information exchanged under this Agreement that (i) identifies or can be used to identify an individual (including without limitation, names, telephone numbers, addresses, signatures, email addresses or other unique identifiers); or (ii) that can reasonably be used to authenticate an individual (including without limitation, name, contact information, precise location information, access credentials, persistent identifiers and any information that may be considered 'personal data' or 'personal information' under applicable law).
- q. **"Commission Rate"** means the commission fees collected by RAD in exchange for promoting and featuring the Merchant and Merchant Store(s) on the RAD Platform, which is charged as a percentage of 15% of Merchant revenues transacted on the RAD Platform.
- r. **"Terms"** means the provisions herein.
- s. **"Third Party Platform"** means a technology interface, such as a middleware technology platform, other than the online order form and the Delivery API that enables Merchant to request delivery fulfillment and provide information necessary to enable such delivery fulfillment.

2. **The Parties' Relationship.** RAD provides an online marketplace platform using web-based technology that connects Merchants, Drivers) and Customers ("Platform"), as described in these Terms for RAD Platform and RAD's driver agreements. RAD is not a merchant, seller of goods, or delivery service; it is an online connection platform. Merchant and RAD agree they are independent businesses whose relationship is governed by the Sign-Up Sheet and these Terms. Nothing in the Parties' agreements, relationship or

transactions shall create or be construed as creating an agency, partnership, fiduciary or joint venture relationship between RAD and Merchant (or Merchant's employees, representatives or locations), RAD and Drivers, or RAD and Customers. Except as expressly set forth in the Sign-Up Sheet and these Terms, each Party shall be responsible for its own expenses, profits and losses.

### **3. RAD Platform Core Responsibilities:**

For Merchants that have agreed to participate in the RAD Platform, RAD and Merchant shall have the following responsibilities:

#### **a. RAD Core Responsibilities:**

RAD will, in a timely manner:

- i. Accept RAD Marketplace Orders from Customers;
- ii. Forward each RAD Marketplace Order to the relevant Merchant Store; and
- iii. Forward each RAD Marketplace Order to a Driver, so that the Driver can pick up the applicable Merchant Product(s) from the Merchant Store to deliver to the Customer.
- iv. Pay the Merchant in accord with the Parties' agreements, deduct the applicable Commission Rate, marketing fees (for identifiable orders), Annual Subscription fees, Activation Fees, and any other fees (in each case, as may be adjusted by RAD as required by any applicable statute, regulation, executive order, or other legal requirement that is either temporary or permanent in nature).

#### **b. Merchant Core Responsibilities:**

Merchant will, in a timely manner:

- i. Display Merchant's logo; a listing of the Merchant Stores; a menu of Merchant Products on the RAD Platform; and display the Merchant's in-store or take-out menu, including the price of each item on such menu;
- ii. Monitor Merchant's menu and store information on the RAD Platform, promptly make updates via the Merchant Portal to reflect the most up-to-date products, pricing and other information or immediately notify RAD of any errors or changes in writing;
- iii. Accept all RAD Marketplace Orders placed by RAD from Merchant's then-current menu;
- iv. Confirm all RAD Marketplace Orders from RAD;
- v. Prepare the Merchant Products for each RAD Marketplace Order for pickup by a Driver at the designated time;
- vi. Process RAD Marketplace Orders in the order in which they are received;
- vii. Notify RAD of any changes to the pricing, availability, description, or other characteristics of the Merchant Products;

viii. Notify RAD of its days and hours of operation, and remain open for business on RAD the same days and hours of operation as Merchant's in-store business; notify RAD of any changes to Merchant's hours of operations on holidays; and notify RAD if Merchant closes earlier than Merchant's standard hours of operation or plans to close earlier than Merchant's standard hours of operation;

ix. Notify all Merchant store staff members of the relationship with RAD immediately upon execution of this Agreement;

x. Provide the same utensils, napkins, bags and other materials that Merchant would typically provide in a standard take-out or delivery order; and

xi. On an ongoing basis, review and confirm the transactions, fees and charges on orders via the Merchant Portal, and promptly communicate to RAD any inaccuracies; and

#### **4. Refunds and Re-Orders:**

Refunds and re-orders will be addressed as follows:

a. **RAD Marketplace Order Refunds:** In the event that RAD, in its sole reasonable discretion, has to issue a refund, credit or re-order on an Customer's Order, Merchant will prepare the food to the same specifications as the original Order (in the case of a re-order) and bear the full cost of that refund, credit or re-order, as applicable, unless the refund, credit or re-order is due to the fault of the Driver or RAD.

b. **Drive Order Refunds:** Merchant acknowledges and agrees that RAD shall be responsible only for facilitating the delivery of Merchant Product(s) to Customers. Merchant shall be solely responsible for any customer complaints regarding Merchant Product(s), including without limitation, complaints regarding the nature, quality, content, number, or packaging of Merchant Product(s). Merchant agrees not to refer any Customer complaints directly to RAD. Any complaints regarding the timeliness or quality of a Driver's delivery service shall be reported by Merchant to RAD. If the completion of a RAD Order is more than 45 minutes late and due to fault of RAD, RAD will reimburse Merchant for all or a portion of the delivery cost of the applicable RAD Order as determined by RAD. If Merchant elects to refund a Customer for any reason, such election shall not obligate RAD to provide a corresponding reimbursement to Merchant. In the event that a Merchant Product has been visibly damaged with proof from Customer, RAD may reimburse Merchant for all or a portion of the order subtotal. For the purposes of this agreement, "Merchant Product" is the actual food or beverage item, not the packaging that contains the Merchant Product. In no event shall RAD be obligated to issue any refunds directly to Customers.

5. **Order Equipment:** With respect to the RAD Platform, Merchant will install any equipment reasonably required by RAD for Merchant to receive and process Orders (including, without limitation, a tablet, fax machine, or other automated, electronic means of receiving Orders) ("Order Equipment"). Any Order Equipment provided by RAD will remain RAD's sole property and may be used solely for purposes related to

fulfilling Merchant's responsibilities under this Agreement. Merchant will inspect all hardware, and shall notify RAD in writing if any Order Equipment is missing or was damaged as soon as practicable after discovering such damage. RAD may restrict or rescind Merchant's right to use the RAD Platform at any time upon written notice to the Merchant. Merchant will be responsible for any damage to or loss of any Order Equipment provided by RAD (excluding ordinary wear and tear), which will be promptly reimbursed by Merchant (at the replacement cost thereof). RAD may recover the replacement cost of damaged or lost Order Equipment by deducting such amount from weekly payments payable to Merchant. Merchant agrees to pay all subscription fees and deposits reasonably charged by RAD for Order Equipment, and agrees RAD may deduct such fees and deposits from amounts payable by RAD to Merchant.

#### **6. Payment, Fees, Title and Taxes:**

Payment, fees, and taxes shall be addressed as follows:

- a. **RAD Platform:** RAD will pay for RAD Marketplace Orders fulfilled by Merchant each week on a consistent day of the week, subject to change with no less than 10 days' notice to Merchants by email or service notification. RAD shall be entitled to deduct from such payments the Commission Rate, marketing fees (for identifiable orders), Annual Fees (currently \$349), Activation Fees, subscription fees, and any other fees which RAD may notify you with at least 7 days advance written notice. Merchant agrees RAD may charge the Customer fees, including but not limited to a Delivery Fee, Service Fee, Surcharge Fee, and Small Order Fee where applicable in RAD's sole discretion. Merchant shall be responsible for all taxes, duties, and other governmental charges on the sale of Merchant Products and for remitting such taxes, duties, and other governmental charges to the appropriate authorities.
- b. Merchant agrees, on an ongoing basis, to review and confirm its transactions, fees and charges on orders and invoices via the Merchant Portal, and to promptly communicate to RAD in writing any claimed inaccuracies, so that RAD has the prompt opportunity to address and resolve any issues and so such issues do not persist, which RAD and Merchant agree is in the best interests of both parties and their commercial relationship. Merchant agrees to communicate to RAD any disagreement, non-conformity or any issue with any transaction, fee, charge or order within 60 days of the transaction, fee or order. Merchant shall be deemed to have acquiesced in and ratified, and to have waived any claim or objection regarding, each transaction, fee, charge and order if Merchant does not communicate a written claim or objection to RAD regarding such transaction, fee, charge or order within such 60-day period.
- c. Merchant agrees that Merchant holds title to the goods or products that Merchant provides through the Platform until the goods are picked up from Merchant, and that title passes from the Merchant to the Customer upon pickup at the Merchant's location. Merchant agrees that neither the Drivers nor RAD holds title to or acquires any ownership interest in any goods or products that Merchant prepares or provides through the Platform.

7. **Payment Processing:** Payment processing services for Merchants on the RAD Platform are provided by Stripe and are subject to the Stripe Connected Account Agreement, which includes the Stripe Services Agreement. By agreeing to these Terms, Merchant agrees to be bound by the Stripe Connected Account Agreement and the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of RAD enabling payment processing services through Stripe, Merchant agrees to provide RAD accurate and complete information about Merchant's representative and its business, and Merchant authorizes RAD to share it and transaction information related to Merchant's use of the payment processing services provided by Stripe. Stripe has been audited by a PCI-certified auditor and is certified to PCI Service Provider Level 1.

#### **8. Merchant Content and Trademark; Photographs of Menu Items:**

a. During the Merchant Term, Merchant grants to RAD a royalty-free, non-exclusive, limited, revocable, non-transferable, non-sublicensable right and license to use and display the Merchant Content, as defined below, in the provision of services to Merchant, including listing Merchant as a merchant on the RAD Platform, referencing Merchant as a RAD partner; and to promote RAD's products and services. As used herein, "Merchant Content" includes, without limitation, menus, photographs (either provided by Merchant or on Merchant's website), trademarks, logos and other materials provided by Merchant to RAD.

b. If photographs of Merchant's menu items are not available or if they do not meet RAD's requirements, as reasonably determined by RAD, then Merchant consents to RAD, at the Merchant's cost, (i) engaging a professional photographer to take photographs of Merchant's menu items (ii) enhancing the quality of Merchant's existing photographs or

(iii) using stock photos of the menu item, and displaying such photographs on the RAD Platform as representations of Merchant's menu items; provided that Merchant may contact RAD to have such photographs removed from the Merchant's store listing and, in such event, RAD will comply in a timely manner.

#### **9. Confidential Information:**

a. The term "Confidential Information" shall mean any confidential or proprietary business, technical or financial information or materials of a party ("Disclosing Party") provided to the other party ("Receiving Party") in connection with this Agreement, whether orally or in physical form, and shall include the terms of this Agreement. Without limiting the foregoing, RAD Data is the Confidential Information of RAD.

b. Confidential Information does not include information that: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed to the Receiving Party in connection with this Agreement; (ii) was or becomes public domain other than by the fault of the Receiving Party; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not at the time under any obligation to maintain its confidentiality; or (iv) the Receiving Party can demonstrate by documentary records was independently developed by the Receiving Party without access to, use of or reference to any Confidential Information.

c. The Receiving Party shall: (i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations in accordance with this Agreement; (ii) except subject to its compliance with Section 9(d), not disclose or permit access to Confidential Information other than to its or any of its employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors and legal advisors (“Representatives”) who need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Agreement, and prior to any such disclosure are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section; and (iii) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most/similarly sensitive information and in no event less than a reasonable degree of care.

d. If the Receiving Party is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall promptly notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9(c) and provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole expense, in opposing or seeking protective limitations on disclosure.

## **10. Data Privacy and Security:**

1. **General:** Merchant agrees not to access, collect, store, retain, transfer, use, disclose, or otherwise process in any manner RAD Data, including without limitation Personal Information, except as required to perform under this Agreement. Merchant shall keep RAD Data secure from unauthorized access and maintain the accuracy and integrity of RAD Data in Merchant’s custody or control by using appropriate organizational, physical and technical safeguards. If Merchant becomes aware of any unauthorized access to RAD Data, Merchant will immediately notify RAD, consult and cooperate with investigations and potentially required notices, and provide any information reasonably requested by RAD. Merchant agrees to implement and use security procedures, protocols or access credentials as reasonably requested by RAD and will be responsible for damages resulting from Merchant’s failure to comply. Merchant will not allow any third party to use the RAD Platform and will be responsible for damages resulting from sharing Merchant’s login credentials with unauthorized third parties or otherwise permitting unauthorized access to Merchant’s account. Merchants may not allow any third party to copy, modify, rent, lease, sell, distribute, reverse engineer, or otherwise attempt to gain access to the source code of the RAD Platform; damage, destroy or impede the services provided through the RAD Platform; transmit injurious code; or bypass or breach any security protection on the RAD Platform.
2. **Delivery API:** During the Term, RAD grants to Merchant a non-exclusive, royalty-free, non-assignable, non-transferable, non-sublicensable, revocable, limited, fully paid-up license to access the Delivery API solely to transmit information to facilitate the RAD Services. Merchant will not and will not permit or authorize any third party to (i) sell, license, rent, resell, lease, assign (except as permitted herein), transfer, or otherwise commercially exploit the Delivery API; (ii) circumvent or disable any security or other technological features or measures of, or otherwise gain or attempt to gain unauthorized access to the Delivery API; (iii) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code or the underlying ideas, algorithms, structure, or organization of the Delivery API; (iv) use the Delivery API in any manner or for any purpose that violates any law or regulation; and (v) use the Delivery API for a reason other than as specifically

provided or intended under this Agreement. Each Party agrees not to perform any action with the intent of introducing to the other Party's systems, products, or services (including the Delivery API) any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature.

11. **Termination:** Merchant may terminate this Agreement for any reason at any time upon seven (7) days prior written notice. RAD may terminate this Agreement or any promotion under this Agreement for any reason at any time upon written notice. Email shall suffice for written notice. Neither Merchant nor RAD will be required to pay any fee in connection with a termination by either party, or be liable to the other as a result of termination of this Agreement for any damages, for the loss of goodwill, prospective profits or anticipated income, or for any expenditures, investments, leases or commitments made by either Merchant or RAD.

12. **Modifications:** RAD reserves the right, at its sole discretion, to change, suspend, or discontinue the Platform (including without limitation, the availability of any feature or content) at any time. RAD may, at its sole discretion, remove Merchant Products or Stores from the RAD Platform if RAD determines that such Merchant Product or Merchant Store could subject RAD to undue regulatory risk, health and safety risk, or other liability. RAD also may revise these Terms from time to time. RAD will notify Merchants of material revisions via a service notification or an email to the email address associated with your account. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms.

### **13. Representations and Warranties; Additional Responsibilities; Warranty Disclaimer:**

1. Each party represents and warrants that it has the full right, power, and authority to enter into and perform its obligations under this Agreement without breaching any obligation to any third party.
2. Each party represents and warrants that it will comply with all applicable laws and regulations in its performance of this Agreement, including without limitation (i) all applicable data protection and privacy laws, and (ii) all applicable laws related to third party intellectual property and other proprietary rights.
3. Merchant further represents, warrants and agrees that (i) it will comply with all applicable laws, rules, standards and regulations relating to licenses, health, food packaging and accessory items (including but not limited to food-ware, plasticware, and other disposable restaurant supplies), and food safety and sanitation, (ii) it has informed RAD of any required consumer-facing warnings, charges, opt-in requirements, and instructions associated with Merchant Product(s) and it will inform RAD of any such warnings, charges, opt-ins, and instructions that become required in the future, (iii) it will disclose common allergens in any Merchant's menu items listed on the RAD Platform, (iv) it will only list menu items or products for sale, product descriptions, and prices on the RAD Platform, (v) it will not include any age-restricted products (including but not limited to alcohol and tobacco) in Merchant's menus on the RAD Platform or request delivery of any age-restricted products through the RAD Platform without first entering into a separate agreement with RAD memorializing the promotion, sale and delivery of such products in compliance with the laws of the applicable jurisdiction in which such products will be sold, (vi) it will not disclose any information related to a Driver or a Customer to a third party (except as required to comply with law or pursuant to a court order), (vii) it will comply with the guidelines RAD publishes that govern any content Merchant posts on the RAD Platform or Merchant Portal, and (viii) it will comply with its obligations under this Agreement.



4. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, RAD HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE RAD PLATFORM, THE DELIVERY API, EQUIPMENT OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, SATISFACTORY QUALITY OR RESULTS, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Merchant acknowledges that the operation of the Platform may from time to time encounter technical or other problems and may not necessarily continue uninterrupted or without technical or other errors and RAD shall not be responsible to Merchant or others for any such interruptions, errors, or problems or an outright discontinuance of the Platform nor for any guarantee of results with respect to the RAD Services or Platform. Both Parties acknowledge that neither party has any expectation or has received any assurances for future business or that any investment by a party will be recovered or recouped or that such party will obtain any anticipated amount of profits by virtue of this Agreement.

14. **Indemnification:** Each party (the “**Indemnifying Party**”) will defend, indemnify, and hold harmless the other party, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, and agents (the “**Indemnified Party**”) from and against any and all claims, damages, losses and expenses (including reasonable attorney’s fees) (collectively “**Losses**”) with respect to any third-party claims arising out of or related to: (i) any bodily injury (including death) or damage to tangible or real property to the extent caused by the Indemnifying Party’s personnel and, in the case of RAD, Drivers (or, in the case of Merchant as the Indemnifying Party, caused by the Merchant Products); (ii) any claims that the Indemnifying Party breached its representations, warranties or covenants set forth in Section 9 and Section 10, and Section 13 of this Agreement; (iii) the violation of the intellectual property of the third party by the Indemnifying Party’s logos, trademarks, trade names, menus, documentation, or other intellectual property (collectively, “**Materials**”); or

(iv) in the case of Merchant as the Indemnifying Party, Merchant’s failure to distribute tips as required by applicable law. In addition, Merchant will defend, indemnify and hold harmless RAD from any and all Losses related to any violation or alleged violation of any applicable retail food or other health and safety code, rule, or regulation related to Merchant Product(s), except to the extent such Losses were caused directly by the gross negligence or willful misconduct of RAD. In each case the Indemnified Party shall provide the Indemnifying Party with (a) prompt notice of any claims such that the Indemnifying Party is not prejudiced by any delay of such notification, (b) the option to assume sole control over defense and settlement of any claim, and (c) reasonable assistance in connection with such defense and settlement (at the Indemnifying Party’s expense). The Indemnified Party may participate in the defense or settlement of such a claim with counsel of its own choice and at its own expense; however, the Indemnifying Party shall not enter into any settlement agreement that imposes any obligation on the Indemnified Party without the Indemnified Party’s express prior written consent. RAD assumes no liability, and shall have no liability, for any infringement claim based on Merchant’s access to and/or use of the RAD Platform following notice of such an infringement claim; any unauthorized modification of the RAD Platform by Merchant; or Merchant’s

combination of the RAD Platform with third party programs, services, data, hardware, or other materials which otherwise would not result in such infringement claim.

15. **Limitation of Liability:** EXCEPT WITH RESPECT TO DAMAGES ARISING FROM VIOLATIONS OF LAW OR WILFUL MISCONDUCT, UNPAID AMOUNTS OWED TO RAD BY MERCHANT , AND AMOUNTS PAYABLE TO THIRD PARTIES UNDER SECTION 14 (INDEMNIFICATION), TO THE EXTENT PERMITTED BY APPLICABLE LAW, (I) NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER THIS AGREEMENT, FOR INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, LOST REVENUES, HARM TO GOODWILL, OR THE COSTS FOR PROCURING REPLACEMENT SERVICES, WHETHER BASED ON TORT, CONTRACT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (II) EACH PARTY'S MAXIMUM AGGREGATE LIABILITIES RELATED TO OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY ONE PARTY TO THE OTHER PARTY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

16. **Insurance:** During the term of the Agreement and for one year after, each party will maintain adequate insurance in amounts not less than as required by law or that is common practice in such party's business. Upon request, each party will provide the other with current evidence of coverage. Such insurance shall not be cancelled or materially reduced without thirty (30) days prior written notice. In no event shall the limits of any insurance policy be considered as limiting the liability of a party under this Agreement.

17. **Dispute Resolution:** PLEASE READ THE FOLLOWING SECTION CAREFULLY. IT REQUIRES YOU TO ARBITRATE DISPUTES WITH RAD AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF. THIS SECTION 17 OF THIS AGREEMENT SHALL BE REFERRED TO AS THE "ARBITRATION AGREEMENT".

1. Merchant and RAD mutually agree to this arbitration agreement, which is governed by the applicable arbitration statute in the province in which Merchant performs the majority of the services covered by this Agreement (the "Applicable Provincial Arbitration Statute") and shall apply to any and all claims arising out of or relating to this Agreement, the termination of this Agreement, and all other aspects of Merchant's relationship with RAD, past, present or future, whether arising under federal, provincial or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and human rights claims, provincial and local statutes or regulations addressing the same or similar subject matters, and all other federal, provincial or local claims arising out of or relating to Merchant's relationship or the termination of that relationship with RAD. The parties expressly agree that this Agreement shall be governed by the Applicable Provincial Arbitration Statute even in the event Merchant and/or RAD are otherwise exempted from the Applicable Provincial Arbitration Statute. Any disputes in this regard shall be resolved exclusively by an arbitrator, except as explicitly set out below in Section XI (6).

2. If either Merchant or RAD wishes to initiate arbitration, the initiating party must notify the other party in writing via registered mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought.

3. Arbitration Class Action Waiver. Merchant and RAD mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action, or to award relief to anyone but the individual in arbitration ("Arbitration Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the ADRIC Rules, as defined below, any claim that all or part of this Arbitration Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Arbitration Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Arbitration Class Action Waiver that is enforceable shall be enforced in arbitration. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. Any arbitration shall be governed by the ADR Institute of Canada, Inc. ADRIC Arbitration Rules ("ADRIC Rules"), except as follows:

- a. The arbitration shall be heard by one arbitrator selected in accordance with the ADRIC Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
- b. unless applicable law provides otherwise, in the event that RAD and Merchant have agreed to this Mutual Arbitration Provision, RAD and Merchant shall pay the applicable filing fees and other similar and usual administrative costs, as are common to both court and administrative proceedings. The parties shall equally pay any additional costs uniquely associated with arbitration, such as payment of the costs of the ADR Institute of Canada, Inc. and the Arbitrator, as well as room rental. The current fee schedule under the ADRIC Rules is available at the following link: <https://adric.ca/case-administration-services/>.
- c. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery (including oral discovery) sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
- d. Except as provided in the Arbitration Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the substantive law of the province in which Merchant performs the majority of the services covered by this Agreement and the laws of Canada applicable that province, as applicable.
- e. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the applicable rules of civil procedure governing such motions in the province in which Merchant performs the majority of the services covered by this Agreement.
- f. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.

- g. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
- h. Either Merchant or RAD may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.

5. Notwithstanding anything to the contrary in this Mutual Arbitration Provision, nothing in this Mutual Arbitration Provision prevents either party from making a report to or filing a claim, application or charge with the applicable governmental or administrative agency or tribunal, including, as applicable, the applicable Ministry of Labour, human rights commission or tribunal, and labour relations board (cumulatively, “administrative agencies”) if the terms of applicable legislation entitle you to do so and preclude exclusive pre-dispute recourse to arbitration. This Mutual Arbitration Provision also does not prevent federal, provincial or local administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision, if the terms of applicable legislation preclude exclusive pre-dispute recourse to arbitration. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable legislation before bringing a claim in arbitration. RAD will not retaliate against Merchant for filing a claim with an administrative agency. Disputes between the parties that may not be subject to pre-dispute arbitration agreement, including as provided by applicable legislation, are excluded from the coverage of this Mutual Arbitration Provision.

6. The ADRIK Rules may be found at [www.adric.ca](http://www.adric.ca) at the following link: <https://adric.ca/rules-codes/arbrules/or> by asking RAD's General Counsel to provide a copy.

7. **Merchant's Right to Opt Out of Arbitration Provision. Arbitration is not a mandatory condition of Merchant's contractual relationship with RAD, and therefore Merchant may submit a statement notifying RAD that Merchant wishes to opt out and not be subject to this MUTUAL ARBITRATION PROVISION.** In order to opt out, Merchant must notify RAD in writing of Merchant's intention to opt out by sending a letter, by Registered Mail, to RAD Services, 25 Point Pleasant Ln, Prince Edward, Ontario, Canada, K0K2T0. Any attempt to opt out by email will be ineffective. The letter must state Merchant's intention to opt out. In order to be effective, Merchant's opt out letter must be postmarked within 30 days of the effective date of this Agreement. The letter must be signed by Merchant himself/herself, and not by any agent or representative of Merchant's. The letter may opt out, at most only one Merchant, and letters that purport to opt out multiple Merchants will not be effective as to any. No Merchant (or his or her agent or representative) may effectuate an opt out on behalf of other Merchants. If Merchant opts out as provided in this paragraph, Merchant will not be subject to any adverse action from RAD as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If Merchant does not opt out within 30 days of the effective date of this Agreement, Merchant and RAD shall be deemed to have agreed to this Mutual Arbitration Provision. Merchant has the right to consult with counsel of Merchant's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).

8. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

**18. Litigation Class Action Waiver: To the extent allowed by applicable law, separate and apart from the Mutual Arbitration Provision found in Section 17, Merchant agrees that any proceeding to litigate in court any dispute arising out of or relating to this Agreement, whether because Merchant opted out of the Arbitration Provision or any other reason, will be conducted solely on an individual basis, and Merchant agrees not to seek to have any controversy, claim or dispute heard as a class action, a representative action, a collective action, a private attorney-general action, or in any proceeding in which Merchant acts or proposes to act in a representative capacity (“Litigation Class**

**Action Waiver”). Merchant further agrees that no proceeding will be joined, consolidated, or combined with another proceeding, without the prior written consent of all parties to any such proceeding. If a court of competent jurisdiction determines that all or part of this Litigation Class Action Waiver is unenforceable, unconscionable, void or voidable, the remainder of this Agreement shall remain in full force and effect.**

19. **Franchisees:** Franchisees operating a branded restaurant or store concept licensed by Merchant may participate in the Program pursuant to the terms and conditions of this Agreement provided that the individual franchisee: (1) is in compliance with its franchise agreement; and (2) unless the parties mutually agree otherwise in writing, all Merchant owned branded restaurant(s) and store concept(s) shall be included and subject to the terms hereunder.

20. **Communications from RAD:** Merchant agrees to accept and receive communications from RAD, its affiliated companies and/or Drivers, including via email, text message, calls, and push notifications to the cellular telephone number Merchant provides to RAD. Merchant acknowledges that Merchant may receive communications generated by automatic telephone dialing systems and/or which will deliver prerecorded messages sent by or on behalf of RAD, its affiliated companies and/or Drivers. Merchant may opt out of such communications in Merchant’s Account Settings or by replying “STOP” from the mobile device receiving such messages.

21. **Legal Fees:** In any legal action, including arbitration, to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable legal fees and costs from the other party.

22. **General Provisions:** As set forth on the Sign-Up Sheet between Merchant and RAD, the Sign-Up Sheet and these Terms constitute an integrated Agreement between the parties, which supersedes all prior agreements and communications of the parties, oral or written, with respect to the subject matter hereof. The rights and obligations set forth in these Terms, which by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of these Terms shall so survive and extend. This Agreement is governed by and interpreted in accordance with the laws of the Province of Ontario without regard to the conflicts of laws principles thereof. Merchant agrees that, except as set forth above in Section 17 ("Dispute Resolution"), the parties hereby consent to exclusive jurisdiction in the courts of the Merchant's location. Merchant may not assign this Agreement in whole or in part without RAD's prior written consent. RAD may freely assign this Agreement. This Agreement is binding upon, and inures to the benefit of, the employees, representatives, agents, affiliates, franchisors, franchisees, and permitted successors and assigns of each party, but shall not confer any rights or remedies upon any third party. If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

RAD-RURALAREADELIVERY SERVICES INCORPORATED

[MERCHANT LEGAL NAME]

Per: 

Per: \_\_\_\_\_

Name: **Michelle Holmes**

Name:

Title: **President**

Title:

I have authority to bind the Corporation.

I have authority to bind the Corporation.