



## Store Owner License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY.

ZippyYum, LLC ("ZIPPYYUM") is willing to provide you access to and use of its remote restaurant ordering application and related services ("Service") subject to the condition that you accept all of the terms and conditions contained in this user agreement ("Agreement").

In order for this Agreement to be effective and to utilize the Service, Operator must register with ZIPPYYUM, which process will create an Operator account. During the registration process, you will be asked to check a box next to "Accept Agreement" and click on "Submit" button to evidence your electronic signature and to reflect the acceptance of this Agreement. Operator's acceptance means that you have read this Agreement, understand it and agree to be legally bound by its terms and conditions. If you don't agree to the terms and conditions you should not click on "Accept Agreement" and cease registration process. This Agreement shall become effective when you click the "Submit" button ("Effective Date").

### Registration/Service

- Registration. In order to access the Service, Operator will register with ZIPPYYUM and create an account. The registration process will identify Operator as a valid Subway franchisee, collect credit card payment information, and allow Operator to identify the stores ("Stores") that will utilize the Service. The Operator will also identify available menu items and associated pricing.
- Service. The Service allows consumers to pre-order food and drinks and other menu items (each menu item, a "Product") from one or more of the Stores by using the ZIPPYYUM proprietary application ("Application"). Upon placing the initial order using the Service, a consumer will be eligible for a promotional discount, which the Operator will honor and is described below.
- Use of Service. The consumer will access and use the Service by use of a wireless communication device ("Device") to transmit data via a carrier ("Carrier") to place orders for the purchase of Products at a particular Store. The Operator agrees to provide electronic devices that will be able to receive orders for Product placed by a consumer using the Service.
- License. Subject to the terms and conditions of this Agreement and the payment of applicable fees, ZIPPYYUM grants Operator a non-transferable, revocable, non-exclusive, license to access and use the Service for receipt of consumer orders for Product placed with a particular Store. In connection with Operator's access to and use of the Service, Operator agrees that it will not: (a) violate any law, statute, ordinance, or regulation; (b) infringe ZIPPYYUM's or any third party's copyright, patent,

trademark, trade secret or other intellectual property rights, or rights of publicity or privacy; (c) block or hinder receipt of transmitted orders or interfere with the use of the Service; or (d) reverse engineer the Application or Service.

- Availability of Service. Operator acknowledges and agrees that: (i) the availability of SMS, mobile data networks, and the Internet may affect its ability to access or use the Service; (ii) the delivery and receipt of electronic messages is not guaranteed; (iii) ZIPPYYUM is not responsible for the act or omission of any Carrier (including failure to deliver any communication in timely fashion), any limitations imposed by such Carrier, or such Carrier's ability or inability to support the Service; (iv) ZIPPYYUM is not responsible for any limitations of the Internet; (v) ZIPPYYUM is not responsible for any error made by the consumer in using the Service; and (vi) ZIPPYYUM is not responsible and will not be liable for any inability to access or use the Service, or any errors, non-conformities, or other problems with the Service, arising from, related to, or caused in whole or in part by any event, circumstance, act or omission outside of ZIPPYYUM's control. Operator acknowledges that the Service may not be error free or always operate as intended.
- Modification of Service. ZIPPYYUM reserves the right, in its sole discretion, to modify the Service from time to time and without notice, including changing features or functions. ZIPPYYUM shall have no liability to Operator for any modification or discontinuation of the Service. If you object to any such changes, Operator's sole recourse shall be to cease using the Service.
- Unauthorized Use of Service. You acknowledge and agree that the Service is for Operator's use only. You acknowledge and agree that you may not distribute, sell, resell, interfere with or exploit for any commercial purposes any portion of the Service. ZIPPYYUM is not liable for any claims, actions, damages, or other liability incurred as a result of any unauthorized use of the Service. Operator shall not attempt, or support others' attempts, to circumvent, reverse engineer, decrypt, or otherwise alter or interfere with the Service.
- Product; Product Pricing. ZIPPYYUM is not responsible for the pricing of the Products. In order to modify Product pricing, Operator shall access its account and revise Product pricing. Operator acknowledges that ZIPPYYUM is not responsible for the Products, the preparation of the Products or the delivery of the Products at the restaurant. Operator further acknowledges that the information provided by the Service as to calorie content of each Product is an estimate based on standard serving size and would vary based on actual serving size of each Product. Operator acknowledges that the purpose of the Service is to facilitate the pre-ordering of Products.

## **Account Balances, Fees and Charges**

- Monthly Service Fee. Operator will pay ZIPPYYUM a monthly maintenance fee. The first two months of the Service, following the effective date, will be without charge. Following the first two months, each Store will be charged based on the number of orders placed per month, as follows:
  - If Store has less than 10 orders, Service is free of charge for all transactions that are less than or equal to \$20.00. Any orders above \$20.00 will be charged according to the fees described below.

- If Store has 10 orders or more, all orders after the first 10 will be charged according to the following rules:
    - All orders that are less than or equal to \$2.99 are free of any fees.
    - Orders that are higher than \$2.99 but less than or equal to \$14.00 will have a fee of \$0.25 per transaction.
    - Orders that are higher than \$14.99 but less than or equal to \$39.99 will have a fee of \$0.50 per transaction
    - Orders that are higher than \$39.99 will have a fee of \$1.00 per transaction
  - Monthly fees per store will be capped at \$50.00.
- Account Balance. Operator will maintain a prepaid account balance. For each store you own, you authorize ZIPPYYUM to replenish your account by charging \$25.00 or the average of your monthly usage, whichever is greater, each time the account falls below the \$10.00 minimum balance. You agree that ZIPPYYUM may determine your average monthly usage based on actual transaction volume at each Store. ZIPPYYUM will charge you a fee for electronic payments denied by your bank or financial institution. ZIPPYYUM will also charge you a fee for account suspension.

## Privacy and Confidentiality

In providing the orders for Products, Operators will receive certain personal information such as consumer name, email address, phone number, and credit card information. Operator agrees to use this information solely to process orders utilizing the service and for no other purpose. Operator will maintain the confidentiality of this non-public consumer information.

## Termination

ZIPPYYUM may suspend your ability to use the Service or may terminate this Agreement effective immediately and without notice to you if: (a) ZIPPYYUM receives repeated faulty or unfulfilled orders for Products; (b) Operator fails to make timely payment of any amounts when due; or (c) ZIPPYYUM reasonably believes you have violated this Agreement. YOU AGREE THAT ZIPPYYUM SHALL NOT BE LIABLE TO YOU FOR ANY TERMINATION OF THIS AGREEMENT OR OF YOUR ACCESS TO THE SERVICE. You may terminate this Agreement and discontinue your participation in and access to the Service at any time by delivering written or electronic notice to ZIPPYYUM at [support@Zippyyum.com](mailto:support@Zippyyum.com). Upon termination of this Agreement for any reason, your right to use the Service shall immediately cease, ZIPPYYUM WILL REMOVE THE Store from the Application, and all amounts owed by Operator to ZIPPYYUM as of the effective date of termination will be charged to the credit card on file. Sections 2, 3, 4, 5 6, 7, 8, 10, and 11 shall survive termination or expiration of this Agreement for any reason.

## Disclaimer of Warranties

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND. ZIPPYYUM EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO,

THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR TITLE. ZIPPYYUM MAKES NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. ZIPPYYUM MAKES NO WARRANTY REGARDING ANY DEALINGS WITH OR TRANSACTIONS ENTERED INTO WITH ANY OTHER PARTIES THROUGH THE SERVICE, INCLUDING THE CONSUMERS.

### **Limitation of Liability**

ZIPPYYUM WILL NOT BE LIABLE FOR PAYMENTS BY CONSUMER WHO UTILIZES THE SERVICES. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL ZIPPYYUM OR ITS MANAGERS, MEMBERS, EMPLOYEES, AFFILIATES OR AGENTS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, ARISING OUT OF OR RELATED TO YOUR USE OF THE SERVICE OR WEBSITE, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, STATUTE OR OTHERWISE. THE AGGREGATE LIABILITY OF ZIPPYYUM TO YOU FOR ALL CLAIMS ARISING FROM OR RELATED TO THE WEB SITE OR THE SERVICE IS LIMITED TO ONE HUNDRED DOLLARS (\$100). Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations and disclaimers may not apply to Operator. To the extent that we may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of our liability shall be the minimum permitted under such applicable law.

### **Indemnification**

Operator agrees to indemnify, defend and hold harmless ZIPPYYUM, its agents, employees, representatives, licensors, affiliates, managers, members, and partners, from and against any and all claims, liabilities, damages, losses, costs, expenses, fees (including reasonable attorneys' fees and court costs) resulting or arising from any third-party claim in connection with (a) the processing of orders transmitted through the Service; (b) the Products provided to consumers; (c) Operator's violation of this Agreement; or (d) Operator's violation of any rights of any third party.

### **Intellectual Property**

The Service and the Application contain or comprise intellectual property that is owned by ZIPPYYUM and/or third parties, including without limitation the trademark "Subway" and related logos, content, and images. All such material is protected by relevant intellectual property laws, including patent, trademark, copyright and/or trade secret laws. Without limiting anything herein, the content of the Service or the functions and features of the Application may not be used, copied, modified, reproduced, republished, posted, transmitted, sold, offered for sale, publicly performed, publicly displayed, or redistributed in any way without the prior written permission of ZIPPYYUM. Operator agrees to abide by all intellectual property notices, information or restrictions contained in this Agreement, the ZIPPYYUM website or attached to any communication from ZIPPYYUM.

## **Modification of Agreement**

This Agreement may be amended from time to time. If ZIPPYYUM amends, supplements, or modifies this Agreement, such change will only apply prospectively. If you object to any such changes, your sole recourse shall be to cease using the Service and terminate this Agreement within 30 days after delivery of the written or electronic notice email to Operator. Operators continued use after that date shall indicate Operator's acknowledgment of such changes and agreement to be bound by the revised Agreement, inclusive of such changes. The term "Agreement" will include all subsequent amendments.

## **Force Majeure**

Neither party is in breach of this Agreement for any cessation, interruption, or delay in the performance of its obligations hereunder (other than payment obligations) due to causes beyond its reasonable control including, without limitation: earthquake, flood, fire, storm, or other natural disaster, act of God, labor controversy or threat thereof, civil disturbance or commotion, acts or threats of terrorism, disruption of the public markets, war, or armed conflict.

## **Miscellaneous**

This Agreement and the relationship between Operator and ZIPPYYUM shall be governed by the laws of the State of California, without giving effect to any choice of laws or principles that would require the application of the laws of a different country or state. Any legal action, suit, or proceeding arising out of or relating to this Agreement, or your use of the Service, must be instituted exclusively in the federal or state courts located in Orange County, California and in no other jurisdiction. Operator consents to personal jurisdiction and venue in, and agree to service of process issued or authorized by, any such court. ZIPPYYUM may provide you with notices by email. ZIPPYYUM's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and that the other provisions of this Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. The Agreement constitutes the entire, exclusive and final statement of the Agreement between Operator and ZIPPYYUM with respect to the subject matter herein, superseding any prior agreements or negotiations between Operator and ZIPPYYUM with respect to the Service. Operator may not transfer or assign any rights or obligations it has under this Agreement without ZIPPYYUM's prior written consent.