



MERCHANT AGREEMENT

Entered into by and between

MY MOCO (PTY) LTD, Trading as COFFEE MONSTER
Reg no. 2017/394802/07

Having its registered address at:
P.O.Box 653624, Benmore, 2010

(Hereinafter referred to as “**My Moco**”)

AND

COMPANY NAME
Reg. No:

V1.1

22 August 2019

A. INTRODUCTION

1. This Agreement is a legal agreement between the My Moco (“My Moco”) and the MERCHANT.
2. The parties therefore agree to contract on the terms and conditions as set out hereunder.

B. TERM, TERMINATION AND SUSPENSION:

1. This Agreement shall commence on the date of signature and continue until terminated by either party in accordance with clause 2 below.
2. Either party may terminate this Agreement:
 - 2.1 for a material breach of the other party where such breach is not resolved within 14 (fourteen) days of written notice of such breach; and
 - 2.2 any time, for any or no reason, upon 30 (thirty) days prior written notice to the other party (without penalty or liability).
3. MY MOCO may suspend or terminate access to the Platform immediately or remove some or all of the MERCHANT’s content in its sole discretion, if My Moco reasonably believes that MERCHANT or any third party:
 - 3.1 is engaged in any activity that may harm My Moco, its systems, or any third-party systems; or
 - 3.2 is engaged in fraudulent or illegal activity or any other activity that could result in legal liability to My Moco or any third party; or
 - 3.3 disreputes My Moco’s reputation in any way.

Any such suspension may continue until the activity causing the suspension has been resolved and My Moco has received satisfactory assurances that it will not recur.

4. Upon termination of this Agreement the MERCHANT shall be paid any outstanding amounts owed in term of this Agreement.

C. DUTIES AND RESPONSIBILITY OF MY MOCO

1. MY MOCO is a technology provider via its Platform and facilitates a market place for merchants to connect with customers. MY MOCO is not a merchant or logistics company and in all respects the execution of the customer transaction remains the responsibility of the MERCHANT.
2. MY MOCO shall bear no responsibility or liability to the end user customer nor the merchant.
3. MY MOCO shall use its reasonable endeavours to make the APPLICATION available 24 hours a day, every day during the year, but gives no warranties that it shall always

be available. The APPLICATION is made available to the merchant “voetstoots” and on an “as is” basis.

4. MY MOCO will regard this agreement between itself and the merchant as one of utmost good faith, as will the merchant.

D. REGISTRATION AND MAINTENANCE OF ACCOUNT

1. MY MOCO requires the merchant to create an account, which includes a unique sign-in name (“Sign-In Name”) and password (“Password”). A separate My Moco account will need to be opened for every franchise of the MERCHANT. It is also a possibility that certain additional information that will assist in authenticating you when you log into the Platform. When creating the account, you must provide true, accurate, current, and complete information. You are solely responsible for the confidentiality and use of your account, as well as for any use, misuse, or communications entered through the Platform. You will promptly inform My Moco of any need to deactivate or change your account and My Moco will not be liable for any loss or damage caused by any unauthorised use of your account.
2. MY MOCO may require additional information, authorisations, and permissions from you after registration in order to provide you access to and usage of the Platform and perform its other obligations under this Agreement. When requested by My Moco, you shall promptly provide all such information, authorisations, and permissions in accordance with its request. When doing so, you shall provide true, accurate, current, and complete information. Failure to provide the same may result in the loss of some features of the Platform or immediate termination of your account. To the extent where any personal information is provided by you, My Moco shall make every effort to protect such information in the same manner it protects its other sensitive information and shall use such information only to service your account.

E. WARRANTIES: DUTIES AND RESPONSIBILITY OF THE MERCHANT

3. The MERCHANT undertakes and warrants that:
 - 3.1 The MERCHANT will prepare food of the highest standard which is fit for the purpose for which it is intended;
 - 3.2 The MERCHANT will NOT produce and or offer to sell through their menu with MY MOCO any product which is illegal or may put MY MOCO in any position that may affect it negatively from a legal perspective. Should this be the case, the MERCHANT indemnifies MY MOCO against any possible legal action and MY MOCO does not accept any liability should this be the case and any damages will be for the account of the MERCHANT.
 - 3.3 The MERCHANT will not upload any text, pictures or any copy onto the MY MOCO platform that include profanities or any copy that may bring MY MOCO or the MERCHANT into disrepute.

- 3.4 MY MOCO reserves the right to take any MERCHANT off-line with immediate effect and without issuing any notice should 2.1.2 and / or 2.1.3 above be breached
4. The MERCHANT undertakes that it will use the APPLICATION (“The Software”) exactly in the manner instructed by MY MOCO:
- 4.1 For on demand orders, it will use its reasonable endeavours to deliver the prepared order in the fastest possible time to its customers once the relevant order has been passed to the MERCHANT.
- 4.2 The MERCHANT will at all times during its agreed opening times with MY MOCO, ensure that it fields all orders through The Software by taking all reasonable care to use the order alert mechanism and respond to orders. Should the MERCHANT be unable to perform this duty, the onus is on the MERCHANT to close its web store/s in the fastest time possible.
- 4.3 The MERCHANT will close its store in the APPLICATION at the end of its Trading hours each day, and open the store in the APPLICATION at the commencement of Trade.
5. The onus is on the MERCHANT to train staff members responsible for operating the App and processing orders. However, should the MERCHANT require help in this regard, someone from MY MOCO will be available to assist.
6. The MERCHANT will not do anything to bring into disrepute MY MOCO’s service;
7. The MERCHANT confirms that it has read this agreement in full prior to signing this agreement, and understands the obligations to MY MOCO;
8. The MERCHANT acknowledges that MY MOCO has the sole right to use the names “COFFEE MONSTER” and “MY MOCO” as well as its logos and trading name.
9. The MERCHANT acknowledges that MY MOCO hereby grants to it the right to use the systems, procedures and know-how and the APPLICATION peculiar to MY MOCO.
10. The MERCHANT acknowledges that the right to use the APPLICATION is not exclusive, and that MY MOCO has granted and will grant to others in future the same rights to carry on the same business.
11. The MERCHANT undertakes that, after termination of this agreement, it will not, during the course of this agreement and after the termination thereof, disclose, exhibit or reproduce the APPLICATION and any know-how imparted to it by MY MOCO.

F. PLACING OF ORDERS

1. All orders to the MERCHANT will be submitted via the APPLICATION (“The Software”) to that merchant’s APPLICATION. And where applicable to its POINT OF SALE system. A copy of the order may also be e-mailed to an address specified by the MERCHANT at the request of the MERCHANT. The Software submission to the MERCHANT portal will constitute the order, and MY MOCO will refer the MERCHANT back to that submission in the event that there are any discrepancies relating to the applicable order.

2. MY MOCO bears no responsibility and cannot be held accountable should the MERCHANT's point of sale system, internet connectivity, or internet connected devices, malfunction in any way.

G. CHARGEBACKS

1. Definition: A CHARGEBACK occurs when the bank reverses a CUSTOMER credit card payment in part or in full due to lack of order fulfilment.
2. In the event of a CHARGEBACK placed on MY MOCO, MY MOCO will pass this debit on to the MERCHANT as part of the monthly settlement.
3. The responsibility for settlement of the CHARGEBACK dispute lies exclusively with the MERCHANT.

H. REFUNDS

1. The MERCHANT will refund customers directly for any orders that need to be refunded.

I. DATA PROTECTION

1. Each party shall:
 - 1.1 Maintain all registrations and notifications under Data Protection Legislation which are required for the performance of its obligations under this agreement; and
 - 1.2 In the performance of its obligations under this agreement, comply with Data Protection Legislation.
2. Each party confirms to the other party that it shall not (and ensure that its employees shall not):
 - 2.1 Process any personal information in respect of which the other party is the Responsible Party in any manner or for any purpose other than as set out in the agreement and only to the extent as strictly necessary to perform its obligations under this agreement and/or as required by law, except to the extent specifically required to do otherwise by the other party who is the Responsible Party in respect of the personal information in question in writing; and/ or
 - 2.2 Cause in respect of the personal information in question to breach or contravene the Protection of Personal Information Act (POPIA).
3. Each party agrees to notify the other in the event of non-compliance or breach of the provisions of POPIA.

4. The parties specifically record that all personal information shall constitute confidential information of the party who is the Responsible Party in respect of the personal information in question.
5. Neither party shall transfer personal information received from the other party without prior written consent of the party who is the Responsible Party insofar as the personal information in question is concerned.
6. Each party shall indemnify and keep the other party fully indemnified against any and all liability, loss, damages, costs (including legal costs) and expenses that party may incur or suffer as a result of any breach of the indemnifying party's obligations set out in this clause.

J. PAYMENT TERMS

1. The MERCHANT will be liable to My Moco for an initial set up fee as negotiated at time of take-on and revised annually on the anniversary date of the contract.
2. The MERCHANT will be liable to My Moco for monthly service fee as negotiated at time of take-on and revised annually on the anniversary date of the contract.
3. The My Moco service fee payable by the MERCHANT to My Moco is a **commission percentage** charged on the value of the purchase, as negotiated at time of take-on and which percentage may be re-negotiated annually on the anniversary date of the contract.
4. Payment by the User of all goods will be made directly to My Moco through the App. MY MOCO will thereafter make payment to the MERCHANT once its service fee and any possible refund, that may be due to a User for whatever reason, has been deducted as agreed.
5. MY MOCO offers a loyalty program whereby the User is entitled to 1 (one) free coffee once they have purchased 10 (ten) coffees. The User will redeem the free coffee from the MERCHANT of their next purchase. Payment for this free coffee will be covered by the MERCHANT providing the coffee.
6. MY MOCO will pay the service fee for all orders placed from a Monday to a Sunday in a weekly cycle. These payments are made and a summary statement emailed weekly on the following Monday (+ 7 days after last order within payment cycle).
7. The MERCHANT must provide My Moco with an online in-store menu and pricing as well as a high-resolution image of the MERCHANT's logo for use on the App. The MERCHANT is responsible for ensuring the menu and prices are correctly reflected on the App.

8. MY MOCO takes up to 48 (forty eight) hours to make major menu or pricing updates. Minor changes however can be completed in a shorter time period. The MERCHANT must inform My Moco of any changes at least 48 (forty eight) hours prior to such changes taking effect on the App.

K. INTELLECTUAL PROPERTY

1. The contents of the App, including any material, information, data, software, icons, text, graphics, lay-outs, images, sound clips, advertisements, video clips, trade names, logos, trade-marks, designs and service marks which are displayed on or incorporated in the App ("App content") are protected by law, including but not limited to copyright and trade mark law. The App content is the property of My Moco.
2. You will not acquire any right, title or interest in or to the App or the App content.
3. Any use, distribution or reproduction of the App content is prohibited unless expressly authorised by an authorised My Moco representative or otherwise provided for in law.
4. The MERCHANT owns and shall own all right, title, and interest in and to its content and trademarks, including all copyrights and other intellectual property rights relating thereto (the "MERCHANT Intellectual Property"). MY MOCO will have no rights with respect to the MERCHANT Intellectual Property other than those expressly granted hereunder. In addition, the MERCHANT shall own all data; provided, however, the MERCHANT hereby irrevocably grants My Moco a perpetual, royalty free, non-exclusive, use of such data to perform its obligations hereunder and for any purpose set forth in My Moco's Privacy Policy

L. WARRANTIES AND REPRESENTATIONS

1. Each party represents and warrants that it has the full right, power, and authority to enter into this Agreement, to discharge its obligations hereunder.
2. Each party represents and warrants that it shall at all times have and comply with all legal and safety requirements as required under the Laws of South Africa for the delivery of the services.

3. The MERCHANT further represents and warrants that:

3.1 it shall periodically update the prices on the Platform to ensure that all menu information and pricing on the App are accurate and correct;

3.2 it shall properly process all orders and make them available to the User within 10 minutes of the User's arrival as provided for on the App.

3.3 the timeliness and quality of the orders shall be of the highest standard and as favourable as those extended to its other customers not using the Platform.

M. LIMITATION OF LIABILITY

1. MY MOCO cannot be held liable for any inaccurate information published and/or any incorrect prices displayed on the App, save where such liability arises from the gross negligence or wilful misconduct of My Moco or its authorised representatives.

2. MY MOCO shall not be liable for any direct, indirect, incidental, special or consequential loss or damages which might arise from your use of or reliance upon the app, or the content contained in the app, or your inability to use the app and/or unlawful activity on the app and/or any linked third party website or mobile application. Should it be found that My Moco is liable to you, such liability shall be limited to the price of the goods relating to that particular order.

3. MY MOCO further makes no representations or warranties (implied or otherwise) that, amongst others, the content and technology available on or provided by means of our Platforms are free from errors or omissions, or that our Platforms will always be available and error free.

4. You hereby indemnify My Moco against any loss, claim or damage, which may be suffered by yourself or any third party arising in any way from your use of the app and/or any linked third party website or mobile application.

5. It is your responsibility to satisfy yourself that the service available from and through our Platforms will meet your individual requirements and will be compatible with your hardware and or software.

N. INDEMNITY

1. The use of the App is entirely at your own risk and you assume full responsibility for any risk or loss resulting from such use or reliance on any information on the App.

2. Whilst My Moco takes reasonable measures to ensure that the content is accurate and complete, no representations or warranties, whether express or implied, as to the quality, timeliness, operation, integrity, availability or functionality of the App or as to the accuracy, completeness or reliability of any information on the App. If any

such representations or warranties are made by My Moco's representatives, it shall not be bound thereby.

3. MY MOCO disclaims liability for all damage, loss or expense, whether direct, indirect or consequential in nature, arising out of or in connection with your access to or use of the App and/or any content therein, unless otherwise provided by law.
4. In addition to the indemnities contained elsewhere in this Agreement, My Moco also makes no warranty or representation, whether express or implied, that the information or files available on the App are free of viruses, spyware, malware, trojans, destructive materials or any other data or code which is able to corrupt, destroy, compromise, disrupt, disable, harm, jeopardise or otherwise impede in any manner the operation, stability, security functionality or content of your computer system, computer network, hardware or software in any way. You accept all risk associated with the existence of such viruses, destructive materials or any other data or code which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation or content of a computer system, computer network, any handset or mobile device, or your hardware or software, save where such risks arise due to the gross negligence or wilful misconduct of My Moco, its employees, agents or authorised representatives.
5. As far as the law allows, you agree to defend, indemnify and hold us, our directors and employees harmless from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including legal costs on the attorney-client scale) of any nature whatsoever as a result of:
 - your use of our platforms; and
 - your violation of the rights of any third party, including without limitation any intellectual property right or other rights.
6. The clause will survive termination, modification or expiration of this agreement.

O. PUBLICITY

1. MY MOCO shall have the right, but not the obligation, to publicly announce in any and all media, including on the Platform and through social media, that you are a client of My Moco and a user of the Platform.
2. In addition, upon the reasonable request of My Moco, the parties shall jointly issue at least 1 (one) press release/social media post (or more, if mutually agreed by the parties) announcing their relationship. The specific timing and content of each such press release/social media post shall be mutually determined by the parties.

P. NOTICES

1. MY MOCO hereby selects P.O Box 653624, Benmore, 2010 as its address for the service of all formal notices and legal processes in connection with this agreement (“legal address”). MoCo may change this address by providing notice tot the vendor within 7 (seven) days of the change.
2. You hereby select the email address and the MERCHANT premises as your legal address, but you may change it by giving My Moco not less than 7 (seven) days’ notice in writing.
3. Notices must be sent either by hand, prepaid registered post or email and must be in English.
4. All notices sent –
 - 4.1 by hand will be deemed to have been received on the date of delivery;
 - 4.2 by prepaid registered post, will be deemed to have been received 10 days after the date of posting; and
 - 4.3 by email before 16h30 on a business day will be deemed to have been received, on the date of successful transmission of the email. All emails sent after 16h30 or on a day which is not a business day will be deemed to have been received on the following business day, unless the contrary is proved.

Q. GOVERNING LAW AND JURISDICTION

1. This agreement and/or any dispute arising from or in connection with it shall be governed and interpreted in accordance with the laws of the Republic of South Africa.
2. Your continued use of the App will constitute your consent and submission to the jurisdiction of any competent court in South Africa regarding all proceedings, transactions, applications or the like instituted by either party against the other, arising from this Agreement.

M. GENERAL

1. You may not cede, assign or otherwise transfer your rights and obligations in terms of this Agreement to any third party.
2. No party will be liable to any other party for any delay or failure in performing its obligations in terms of this agreement due to an event beyond its control, including but not limited to, an act of God, fire, flood, earthquake or war.
3. Any failure on the part of you or My Moco to enforce any right in terms hereof shall not constitute a waiver of that right.

4. If any term or condition contained herein is declared invalid, the remaining terms and conditions will remain in full force and effect.
5. No variation, addition, deletion, or agreed cancellation of the Agreement will be of any force or effect unless in writing and accepted by or on behalf of the parties hereto.
6. No indulgence, extension of time, relaxation or latitude which either you or My Moco (the "grantor") may show, grant or allow to the other of them (the "grantee") shall constitute a waiver by the grantor of any of the grantor's rights and the grantor shall not thereby be prejudiced or stopped from exercising any of its rights against the grantee which may have arisen in the past or which might arise in the future.
7. No agency, partnership, joint venture, or employment is created as a result of this agreement, and neither party has any authority of any kind to bind the other party in any respect whatsoever.
8. This Agreement contains the whole agreement between you and My Moco and no other warranty or undertaking is valid, unless contained in this Agreement.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS