

# Baristar Terms of Service

## Background

Welcome to Baristar! Baristar is owned and operated by Baristar Pty Ltd (ACN 664 526 836) (**we, us, our**). Please feel free to contact us at any time by email to [info@baristar.com.au](mailto:info@baristar.com.au).

Please read these Baristar Terms of Service (**Terms of Service**) carefully. They apply to all users of the Baristar App (**you, your**).

If you are a natural person who is a Business or Supplier under the age of 18, you will need a parent or legal guardian to explain these Terms of Service to you, to agree to these Terms of Service on your behalf and act as your guarantor.

Okay, let's get started...

## Operative Provisions

### 1 About Baristar

- 1.1. The Baristar solution comprises of the Baristar App and Services. We do not provide Supplier Services and Suppliers are not our employees. The Baristar App provides our customers who are business operators (each, a **Business**) and service providers who are independent contractors (each, a **Supplier**) with functionality that facilitates a Business's engagement with a Supplier for services required by the Business (**Supplier Services**).
- 1.2. Baristar is only available to Businesses and Suppliers who have accepted these Terms of Service and have registered an Account on the Baristar App that has not been suspended or terminated.
- 1.3. If you want to engage Suppliers via the Baristar App to supply services to your business, you must first register a Business account on the Baristar App (**Business Account**).
- 1.4. If you want to make yourself available as a Supplier via the Baristar App to supply services to Businesses, you must first register a Supplier account on the Baristar App (**Supplier Account**).

### 2 Baristar access for Businesses

- 2.1. If you are a Business, then by registering a Business Account on the Baristar App, you will be deemed to have accepted, and agreed to be bound by, these Terms of Service.
- 2.2. If you are a Business, subject to your Business Account not being terminated or suspended by us, and subject to your compliance with these Terms of Service and the Baristar Business Requirements:
  - (a) you and your Personnel will have a non-exclusive, non-sublicensable, revocable and non-transferable right to use the Baristar App for the purposes of:
    - (i) posting and removing Invitations for Supplier Applications and Service Offers; and
    - (ii) reviewing and responding to Supplier Applications;
    - (iii) issuing and withdrawing Service Offers;
    - (iv) entering into Service Agreements; and
    - (v) using any other functionality that

we make available to your Personnel who are logged into your Business Account in the Baristar App; and

- (b) upon the termination of, and for the duration of any suspension of, your Business Account, the rights granted under paragraph (a) will be revoked.

### 3 Baristar access for Suppliers

- 3.1. If you are a Supplier, by registering a Supplier Account on the Baristar App, you will be deemed to have accepted, and agreed to be bound by, these Terms of Service.
- 3.2. If you are a Supplier, subject to your Supplier Account not being terminated or suspended by us, and subject to your compliance with these Terms of Service and the Baristar Supplier Requirements:
  - (a) you and/or your Personnel will have a non-exclusive, non-sublicensable, revocable and non-transferable right to use the Baristar App for the purposes of:
    - (i) reviewing and responding to Invitations for Supplier Applications and Service Offers;
    - (ii) entering into Service Agreements; and
    - (iii) using the other functionality made available by us on the Baristar App to your Personnel who are logged into your Supplier Account; and
  - (b) upon the termination of, and for the duration of any suspension of, your Supplier Account, the rights granted under paragraph (a) will be revoked.

### 4 Supplier Profiles and Applications

- 4.1. Each Supplier can only submit Supplier Applications via the Baristar App on and from the Onboarding Completion Date.
- 4.2. In order for a Supplier to make itself available to supply Supplier Services to Businesses via the Baristar App, the Supplier must comply with the Baristar Supplier Requirements, and via its Supplier Account on the Baristar App complete its Supplier Profile including by:
  - (a) setting its location (**Supplier Location**);
  - (b) setting the maximum distance that the applicable Site may be from the Supplier Location for the Supplier to be notified via the Baristar App of Invitations for Supplier Applications (**Supplier Radius**);
  - (c) completing the details of the Supplier's relevant qualifications and experience; and
  - (d) enabling Available for Bookings Status on their Supplier Account.

### 5 Invitations for Supplier Applications

- 5.1. In order for a Business to issue Invitations for Supplier Applications via the Baristar App, the Business must be in compliance with the Baristar Business Requirements and via its Business Account on the Baristar App, must have completed its Business Profile.
- 5.2. Each Business can, on and from the Onboarding Completion Date, post invitations for offers from Suppliers on the Baristar App for the supply of certain

- Supplier Services required by the Business (an **Invitation for Supplier Applications**).
- 5.3. Each Invitation for Supplier Applications must include the following details in respect of the proposed Supplier Services:
- (a) the location at which they must be supplied (**Site**);
  - (b) the required Supplier Services;
  - (c) the start and end times during which they must be supplied (the **Service Period**);
  - (d) the applicable hourly rate that will be paid to the Supplier for the Supplier Services (**Service Rate**); and
  - (e) the total fee payable to the Supplier on completion of the Supplier Services (**Service Fees**).
- 6 Viewing an Invitation for Supplier Applications and Applying to provide Supplier Services**
- 6.1. Upon a Business posting an Invitation for Supplier Applications on the Baristar App, the Baristar App will, on behalf of the Business, issue a notification to Local Suppliers that an Invitation for Supplier Applications is available for review by them on the Baristar App and is currently open for applications from Local Suppliers.
- 6.2. Upon receiving notification of an Invitation for Supplier Applications via the Baristar App, each applicable Supplier is able to review the applicable Business Profile and Business Reviews and may, if they elect to do so, submit an application via the Baristar App to provide the applicable Supplier Services in response to the Invitation for Supplier Applications (a **Supplier Application**).
- 6.3. A Business will receive notification via the Baristar App when a Supplier submits a Supplier Application via the Baristar App in response to the Business' Invitation for Supplier Applications.
- 6.4. A Business may review Supplier Applications received in response to its Invitation for Supplier Applications, including each relevant Supplier Profile and Supplier Reviews, before selecting a Supplier to supply the applicable Supplier Services.
- 6.5. Upon the Business selecting its preferred Supplier for the supply of the applicable Supplier Services via the Baristar App, the Baristar App will issue to the Supplier, on behalf of the Business, an offer from the Business for the Supplier to supply the Supplier Services at the Site for the Service Period at the Service Rates and for the Service Fees set out in the Invitation for Supplier Applications (a **Service Offer**).
- 6.6. At any given time, a Business may only have one (1) pending Service Offer in respect of each Invitation for Supplier Applications.
- 6.7. A Supplier is free to accept or reject any Service Offer via the Baristar App.
- 6.8. If a Supplier rejects a pending Service Offer, the Business that issued the Service Offer may make another Service Offer in respect of the same Invitation for Supplier Applications.
- 6.9. A Business may withdraw a pending Service Offer at any time before it is accepted or rejected by a Supplier.
- 6.10. If you are a Business, you warrant that any person that makes or withdraws a Service Offer via your Business Account is authorised to do so on your behalf.
- 6.11. For the avoidance of doubt, both Invitations for Supplier Applications and Supplier Applications are invitations to treat and are not offers capable of acceptance.
- 7 Formation of a Service Agreement between a Business and Supplier**
- 7.1. If a Supplier accepts a Service Offer via the Baristar App, then:
- (a) no further Service Offers may be made by the Business in respect of the applicable Invitation for Supplier Applications;
  - (b) no further Supplier Applications may be made in respect of the applicable Invitation for Supplier Applications; and
  - (c) the Business and the Supplier will be deemed to have entered into a service agreement in respect of the provision of the Supplier Services at the Site, for the Service Period, at the Service Rate and for the Service Fees specified in the applicable Invitation for Supplier Applications (a **Service Agreement**).
- 7.2. If you are a Supplier, you warrant that any person who accepts or rejects a Service Offer via your Supplier Account is authorised to do so on your behalf.
- 7.3. If you are a Business, you warrant that any person who issues or withdraws an Invitation for Supplier Applications or a Service Offer via your Business Account is authorised to do so on your behalf.
- 8 Variation of an existing Service Agreement**
- 8.1. The Business or the Supplier may request that an existing Service Agreement be varied by providing a request in writing to the other party. A request for a variation must be agreed to in writing by both parties in order to have effect.
- 8.2. If you are a Business or Supplier, you must promptly (and in no event more than 24 hours after becoming aware of it) notify us if and when you have agreed a variation to an existing Service Agreement (**Notice of Variation**).
- 8.3. Any Notice of Variation must include full details of the variation to the Services Agreement agreed between the applicable Business and Supplier.
- 8.4. Each Business and Supplier Warrants that each Notice of Variation is true and correct.
- 9 Invoicing and Payment**
- 9.1. Subject to the supply of the Supplier Services at the Site during the Service Period by the Supplier in accordance with the applicable Service Agreement (as confirmed by the relevant Business via the Baristar App) we will:
- (a) on behalf of the Supplier, issue an invoice to the applicable Business in accordance with the applicable Service Agreement that sets out:
    - (i) an amount equal to the applicable Service Fees;
    - (ii) any applicable GST;
    - (iii) details of the applicable Supplier; and
    - (iv) details of the applicable Supplier Services supplied, including when they were supplied and the location of the Site; and
  - (b) issue an invoice from us to the applicable Business for an amount equal to the Facilitation Fee in respect of the applicable Service Agreement and any applicable GST, and make them both available to the Business via their Business Account on the Baristar App (each, a **Service Invoice**).

- 9.2. Each Service Invoice is payable by the Business within 7 days of the date of the Service Invoice.
- 9.3. If the Business fails to pay any Service Invoice in accordance with clause 9.2, then, without limiting any of our other rights and remedies:
- (a) the Business shall pay interest on the overdue amount at the Default Rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and the Business shall pay the interest together with the overdue amount upon demand by us or the Supplier; and/or
  - (b) we may, without liability to the Business, suspend the Business Account of the Business and/or require any Suppliers to suspend any Service Agreements with the Business until the overdue Service Invoice(s) payable by the Business are paid in full.
- 9.4. Each Business must indemnify us from and against all and any costs, including solicitor, barrister and debt recovery fees and disbursements, that we incur in enforcing the Business' obligations to pay Service Invoices under this clause 9.
- 10 Service Agreements**
- 10.1. We are not a party to any Service Agreement. Service Agreements are entered into between Businesses and Suppliers when a Service Offer made by a Business is accepted by a Supplier via the Baristar App.
- 10.2. Each Service Agreement comprises of:
- (a) the applicable Service Offer;
  - (b) the Baristar Terms of Trade (unless otherwise agreed in writing between the Business and Supplier); and
  - (c) any Supplier Terms of Trade (unless otherwise agreed in writing between the Business and Supplier).
- 10.3. To the extent of any inconsistency between any two of the documents listed in clause 10.2(a) - 10.2(c), the document listed first will prevail.
- 10.4. We do not represent that the Baristar Terms of Trade or Supplier Terms of Trade are suitable for your purposes. They are each provided as an example only. You should obtain all relevant advice necessary to satisfy yourself that you are comfortable with the terms and conditions of a Service Agreement prior to entering into the Service Agreement.
- 10.5. You agree that:
- (a) we do not provide any staffing, labour hire, employment, hospitality or retail services of any kind;
  - (b) any Supplier Services provided by a Supplier to any Business are provided by the Supplier and not by us;
  - (c) we shall have no liability under any Service Agreement;
  - (d) we are not liable for the performance or non-performance of any Supplier Services;
  - (e) we may take steps to enquire with Suppliers as to whether they comply with the Baristar Supplier Requirements but we are not responsible for any qualifications, representations, goods or services of any Supplier and we are not responsible for any conditions, loss, damage, injury or death caused by any Supplier; and
- (f) we may take steps to enquire with Businesses as to whether they comply with the Baristar Business Requirements but we are not responsible for any conditions, loss, damage, injury or death caused by any Business or for any working conditions, working environment or a Business' compliance or non-compliance with occupational health and safety or industrial relations laws.
- 11 Disputes about Supplier Services**
- 11.1. You must promptly notify us if any Business or Supplier has breached, or is reasonably suspected to have breached, a Service Agreement.
- 11.2. We may assist a Business or Supplier to resolve a dispute concerning a Service Agreement or its related Supplier Services but we are not obliged to do so.
- 11.3. We have no liability in respect of any non-performance of a Service Agreement or in respect of any negligence, loss, damage, costs, fines, personal injury, death or other consequences associated with any Supplier Services or any Service Agreement.
- 12 Business and Supplier Accounts**
- 12.1. Accounts on the Baristar App:
- (a) cannot be shared or used by more than one Business or Supplier (as applicable); and
  - (b) cannot be used by any person who is an employee, officer or agent of a third party that competes with us.
- 12.2. Accounts are subject to the restrictions in clause 12.1 and any other restrictions on the number of your Personnel or types of your Personnel specified by us. You must manage your Personnel to ensure that all such restrictions are complied with.
- 12.3. You are responsible for all and any acts and omissions of your Personnel, as if they were your acts and omissions.
- 12.4. You may not use or permit any of your Personnel to access and/or use Baristar on your behalf except as expressly permitted under these Terms of Service and may not do or authorise the commission of any act that would or might invalidate or be inconsistent with our Intellectual Property Rights. Without limiting the foregoing provisions, you agree and acknowledge that except with our prior written consent, you must not, and must not permit any person or entity to:
- (a) use Baristar on your behalf who is not your Personnel;
  - (b) license, sublicense, resell, assign, transfer, distribute, or provide others with access to, the Baristar App or any part of it;
  - (c) "frame", "mirror" or serve the Baristar App or any part of it on any web server or other computer server over the Internet or any other network;
  - (d) copy, alter, make adaptations of, modify, vary, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, disassemble, decompile, reverse translate, reverse engineer, reverse compile or enhance the Baristar App or any part of it;
  - (e) store, transmit or distribute any virus or content or other material using the Baristar App or any part of it that is unlawful, harmful,

- threatening, defamatory, infringing, offensive or in breach of any person's rights;
- (f) use the Baristar App or any part of it in any way which is in breach of any right of any person or any Applicable Law;
  - (g) use the Baristar App or any part of it (or allow it or any part thereof to be used) (including any component of any graphical user interface or the look and feel of the Baristar App) for the purpose of developing, or contributing to the development of, any software competitive with the Baristar App; or
  - (h) alter, remove or tamper with any trademarks,
  - (i) any patent or copyright notices, or any confidentiality legend or notice, or any numbers, or other means of identification, used on or in relation to the Baristar App or any part of it.
- 12.5. You must not and must use reasonable endeavours to ensure that your Personnel do not, breach the AUP.
- 12.6. We may terminate and/or suspend your Business Account or Supplier Account (as applicable), where you and/or your Personnel:
- (a) repeatedly infringe the AUP; or
  - (b) commit a material breach of the AUP.
- 12.7. We may at any time modify any Account settings and/or configure, restrict or suspend any Account on the Baristar App, to prevent an actual or suspected breach of the AUP by any person.
- 12.8. You must notify us immediately if you become aware of, or suspect, any unauthorised use of any Account credentials.
- 12.9. You acknowledge that the integrity of the Baristar App is protected by technical protection measures to prevent Intellectual Property Rights, including copyright, in the Baristar App from being misappropriated (TPMs). You must not attempt and ensure that your Personnel do not attempt, to remove or circumvent any TPM in the Baristar App.
- 12.10. You must comply with, and ensure that your Personnel comply with, any security procedures, policies and standards that we notify you of from time to time with respect to the use of the Baristar App.
- 12.11. You must indemnify us in respect of all and any loss and damage that we may suffer as a result of your breach of this clause 12.

### 13 Business Obligations

- 13.1. If you are a Business:
- (a) you are responsible for all and any acts and omissions of your Personnel, as if they were your acts and omissions;
  - (b) you represent and warrant to us that on and from the Onboarding Completion Date until your Business Account is suspended, terminated or otherwise ceases, you shall at all times comply with the Baristar Business Requirements;
  - (c) you must promptly notify us if you or any Supplier have breached or is reasonably suspected to have breached a Service Agreement; and
  - (d) you must indemnify us from and against all and any loss and/or damage that we may suffer or incur as a result of your receipt or enjoyment of the benefit of, or failure to receive or enjoy the benefit of, any Supplier Services under a Service Agreement and for

all and any other claims that any person may make that relate to your receipt or non-receipt of fees due under a Service Agreement or any other matter in connection with a Service Agreement.

### 14 Supplier Obligations

- 14.1. Each Supplier is free to accept or reject any Service Offer via the Baristar App and is free to be employed by, or otherwise engaged to supply services to, any third party, including a competitor of Baristar.
- 14.2. If you are a Supplier:
- (a) you are responsible for all and any acts and omissions of your Personnel, as if they were your acts and omissions;
  - (b) you represent and warrant to us that on and from the Onboarding Completion Date until your Supplier Account is suspended, terminated or otherwise ceases, you shall at all times comply with the Baristar Supplier Requirements;
  - (c) you must promptly notify us if you or any Business have breached or is reasonably suspected to have breached a Service Agreement; and
  - (d) you must indemnify us from and against all and any loss and/or damage that we may suffer or incur as a result of your provision, or failure to provide, any Supplier Services under a Service Agreement and for all and any other claims that any person may make that relate to your performance, non-performance or fees charged under a Service Agreement or any other matter in connection with a Service Agreement.

### 15 Acceptable Use Policy

- 15.1. Business Personnel and Supplier Personnel must comply with this AUP and must not use, encourage, promote, facilitate, or instruct any person to breach this AUP.
- 15.2. Business Personnel and Supplier Personnel must act appropriately in all respects and must not display, store, distribute, transmit or otherwise make available any communication or content via the Baristar App and/or Services that contains abusive, offensive, harmful or objectionable language, that has the quality to defame or libel others, or that infringes on the privacy rights or other rights of any person.
- 15.3. Business Personnel and Supplier Personnel must not view, download, copy, send, post or access information that is illegal, fraudulent or obscene when using or accessing any of the Baristar App and/or Services and must not use them in any way prohibited by this AUP or which would otherwise cause us loss and/or damage and/or negatively affect our reputation, associated goodwill or cause us to fall into disrepute or dispute with any third party.
- 15.4. If you are the Personnel of a Business or Supplier, in the course of you using and/or accessing the Baristar App and/or any Service, the following are strictly prohibited:
- (a) accessing any other Business Account or Supplier Account other than your allocated Business Account or Supplier Account;
  - (b) uploading any content about a person to the Baristar App without the person's consent or using the Baristar App and/or Services to

- (c) violate all or any legal rights of any person or company or other entity in any jurisdiction; using the Baristar App and/or Services (including any intentional access, creation, modification, transmission, distribution or storage of information, data or material) in breach of the *Privacy Act 1988* (Cth) or any other applicable data protection laws in any relevant jurisdiction;
  - (d) using the Baristar App and/or Services in relation to crimes such as theft and fraud;
  - (e) using the Baristar App and/or Services in breach of any laws, including but not limited to, laws relating to the protection of copyright, trade secrets, patents or other intellectual property and laws relating to spam or privacy;
  - (f) unauthorised copying of copyrighted material including, but not limited to, the installation of any copyrighted software for which you do not have an active licence;
  - (g) using the Baristar App and/or Services in connection with the provision of negligent or unlawful services;
  - (h) exporting software, technical information, encryption software or technology, in violation of domestic and international export control laws;
  - (i) any form of computer hacking or introduction of malicious programs into our or any of our suppliers' networks, computers or servers (e.g., viruses, worms, Trojan horses, e-mail bombs, broadcast attacks or any other flooding techniques);
  - (j) revealing your Account password to others, or allowing use of the Baristar App and/or Services by others, who are not authorised to do so including attempting to probe, scan or test the vulnerability of an Account or the Baristar App;
  - (k) using the Baristar App and/or Services to offer or distribute fraudulent goods or services;
  - (l) using the Baristar App and/or Services to upload, store, display or transmit content that is invasive, defamatory and/or obscene;
  - (m) using the Baristar App and/or Services to carry out security breaches or disruptions of network communication is strictly prohibited. Security breaches include, but are not limited to, accessing data of which you are not an intended recipient or logging into a server or account that you are not expressly authorized to access or corrupting any data. For the purposes of this paragraph, "security breaches" includes, but is not limited to, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes (except for the legitimate use of aliases and anonymous remailers, which is permitted);
  - (n) using the Baristar App and/or Services to execute any form of network monitoring or crawling which will intercept data not intended for you without permission;
  - (o) using the Baristar App and/or Services to circumvent Account authentication or security of any of our hosts, networks or accounts or those of our customers or suppliers;
  - (p) using the Baristar App and/or Services to interfere with or deny service to anyone;
  - (q) using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any persons' use of the Baristar App and/or Services;
  - (r) sending unsolicited email messages through or to users of the Baristar App and/or Services in breach of the *Spam Act 2003* (Cth);
  - (s) using the Baristar App and/or Services to send any form of harassment via email or any other form of messaging, whether through language, frequency, or size of messages;
  - (t) using the Baristar App and/or Services to send email to any email address, with the intent to spam or harass;
  - (u) operating network services like open proxies, open mail relays, or open recursive domain name servers;
  - (v) using the Baristar App and/or Services to create or forward "chain letters", "Ponzi" or other "pyramid" schemes of any type; and
  - (w) use of the Baristar App and/or Services in breach of any person's privacy (such as by way of identity theft or "phishing").
- 16 Technical Support**  
16.1. If you require technical support in connection with the Baristar App, please send an email to us at [info@baristar.com.au](mailto:info@baristar.com.au) and we will endeavour to resolve the issue within a reasonable time.
- 17 Customer Data**  
17.1. Each party acknowledges that the information (in any form, including reports) generated from the Baristar App (**Output**) is reliant on and formulated from, among other things, information that Business Personnel and/or Supplier Personnel enter into the Baristar App about a Business, Site, Supplier, Personnel or any Supplier Services supplied or agreed to be supplied by a Supplier at a Site (together, **Customer Data**).
- 17.2. Each party must not and will not rely on any Output as its sole source in making any decisions or compliance with Applicable Laws.
- 17.3. If you are a Business or Supplier, you warrant and represent that:
- (a) Customer Data entered into Baristar by your Personnel and the collection, processing, storage and/or disclosure of it by us as part of our provision of the Baristar App, the Services or as otherwise required by Applicable Law will not breach any Applicable Law or any right of any person; and
  - (b) you will ensure at all applicable times that the use, hosting, transmission, modification, processing, collection, holding and disclosure of the Customer Data by us in accordance with our Privacy Policy does not breach any Applicable Law or any person's rights, and that all relevant consents have been obtained by you as lawfully required for us and our Personnel to collect, hold, disclose and otherwise process any Personal Information in the course of performing our obligations or exercising our rights under these Terms of Service or pursuant to Applicable Law.

- 17.4. If you are a Business or Supplier, as between you and us, you are solely responsible for the accuracy, legality and quality of all Customer Data entered into Baristar by your Personnel, for any claims arising in respect of Customer Data entered into Baristar by your Personnel and for obtaining any permissions, consents, licences, rights and authorisations necessary for us and our suppliers to use, host, modify, hold, transmit, process, store and disclose Customer Data entered into Baristar by your Personnel in connection with the Baristar App and/or Services.
- 17.5. If you are a Business or Supplier, you must indemnify us in respect of any loss and damage that we incur in respect of any claim that the transmission, storage, hosting, disclosure, access or use of Customer Data entered into Baristar by your Personnel by us or our suppliers, or the processing thereof by us or our suppliers in accordance with our Privacy Policy, infringes the Intellectual Property Rights or other rights of any person or breaches any Applicable Law.
- 18 Intellectual Property Rights**
- 18.1. Nothing in these Terms of Service constitutes or creates an assignment of any Intellectual Property Rights.
- 18.2. If you are a Business or Supplier, as between you and us, you own all Intellectual Property Rights in your Customer Data.
- 18.3. Each Business and Supplier with an Account is deemed to have granted a license to us on a perpetual, non-exclusive, non-transferable, royalty-free basis to use its Customer Data to provide the Baristar App and Services in accordance with these Terms of Service (**Data Licence**).
- 18.4. If you are a Business or Supplier, as between you and us, we own all Intellectual Property Rights in:
- (a) the Baristar App (including any Source Code and Object Code, databases and database structures incorporated into the Baristar App) and Services;
  - (b) all content made available in or via the Baristar App;
  - (c) the Documentation; and
  - (d) Output
- (except to the extent that it comprises of Customer Data) (**Our Intellectual Property Rights**).
- 18.5. If you are a Business or Supplier, you must not directly or indirectly do anything that would or might invalidate, jeopardise, limit, interfere with or put in dispute Our Intellectual Property Rights.
- 18.6. If you are a Business or Supplier, you hereby assign to us all and any Intellectual Property Rights in all and any comments in connection with the Baristar App and Services and all and any Intellectual Property Rights in all and any requests for new features, that you may make or disclose to us regarding the Baristar App and Services (each, an **Improvement Suggestion**). Each such comment and Improvement Suggestion becomes our sole and exclusive property. This assignment is effective as soon as you make the comment or disclose the Improvement Suggestion to us including where applicable under section 197 of the *Copyright Act 1968* (Cth) and in equity.
- 18.7. If you are a Business or Supplier, you irrevocably consent, and must extract from your Personnel a freely given consent, to the infringement by us and any third party we authorise, of all Moral Rights that you and/or your Personnel may have in any Improvement Suggestions.
- 18.8. If you are a Business or Supplier, you must not:
- (a) use any of our trademarks, domain names, business names, company names, product names, service names, product or app names or other marks (collectively, **Marks**); or
  - (b) contest any Mark, apply for registration of any Mark or use or apply for registration of any trademark, trade name, business name, company name or domain name which is or incorporates any element that is confusingly similar to any Mark.
- 18.9. If you are a Business or Supplier, you have no rights in respect of any Marks or their associated goodwill. All such rights and goodwill inure for the benefit of, and are (and will remain) vested in, us or its licensors.
- 18.10. If you are a Business or Supplier, nothing in these Terms of Service give you any rights to access any Source Code in or underlying the Baristar App or Services or any associated database.
- 19 Confidentiality**
- 19.1. A Receiving Party may not, at any time without the Disclosing Party's prior written consent, use or disclose any Confidential Information of the Disclosing Party, other than to exercise its rights or perform its obligations under these Terms of Service or to comply with Applicable Law.
- 19.2. Clause 19.1 does not apply to information:
- (a) that is independently developed, obtained or known by a party, without any obligation of confidence to the Disclosing Party;
  - (b) that the Receiving Party can prove was already known to it at the time of disclosure to it by the Disclosing Party;
  - (c) that is in the public domain, except where due to a breach of any obligation of confidence; or
  - (d) that a party must disclose under the rules of any stock exchange on which it or its holding company is listed.
- 19.3. If you are a Business or Supplier, you agree that we may use your name, logo and a general description of the Baristar App and Services delivered to you, in any of our marketing materials or websites.
- 20 Apple and Google Terms**
- 20.1. These Terms of Service are between you and us and not between you and Apple Inc. (**Apple**), or you and Google Inc. (**Google**). As between us and Apple, and as between us and Google, we are solely responsible for any product warranties pertaining to the Baristar App, whether express or implied by law, to the extent not otherwise effectively disclaimed under these Terms of Service.
- 20.2. In the event of any failure of the Baristar App to conform to any applicable warranty and where the warranty relates to your use of a version of the Baristar App downloaded through the Apple App Store you may notify Apple, and Apple will refund the purchase price for the App to you (if any); and, to the maximum extent permitted by applicable law, Apple will have no other warranty or obligation whatsoever with respect to the Baristar App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure of the Baristar App to conform to any warranty will be our sole responsibility, subject to the provisions of these Terms of Service.

- 20.3. Subject to these Terms of Service, you and we each acknowledge that, as between you and us, we, and not Apple or Google, are responsible for addressing any of your claims relating to the Baristar App or your possession and/or operation of the Baristar App, including, but not limited to: (i) product liability claims made in respect of the Baristar App; (ii) any claim that the Baristar App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation in respect of the Baristar App.
- 20.4. Notwithstanding the provisions of this clause 20, and for the avoidance of doubt, you agree:
- (a) to release and indemnify us from any claims that you or any other person might otherwise have (including any claims arising under consumer protection or similar legislation in respect of the Baristar App and any other claims, losses, liabilities, damages or expenses) which relate to your acts or omissions; and
- (b) you, and not us, will be solely responsible for any of the matters referred to in clause 20.3 to the extent they are caused or contributed to by you.
- 20.5. We and you each acknowledge that neither Apple nor Google have any obligation whatsoever to furnish any maintenance or support services with respect to the Baristar App.
- 20.6. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- 20.7. We and you each acknowledge and agree that Apple and Google, and Apple's and Google's respective subsidiaries, are third party beneficiaries of these Terms of Service, and that Apple and Google will each have the right (and will be deemed to have accepted the right) to enforce these Terms of Service against you as a third party beneficiary of these Terms of Service.
- 21 Liability**
- 21.1. If you are a Business or Supplier, you agree that:
- (a) to the maximum extent permissible by law, we shall bear no responsibility for any disconnection, downtime, unavailability, delays, defects, errors or failures of the Baristar App or Services;
- (b) you will have other systems available that can be relied on in place of the Baristar App should it be unavailable; and
- (c) it is likely that the Baristar App and its functionality will be unavailable or inoperable from time to time.
- 21.2. Any use of the Baristar App, Services and/or any Output does not constitute and is not our, professional, financial, legal or other advice. You must obtain all relevant advice as applicable before relying on any Output.
- 21.3. Subject to clauses 21.5 and 21.6, no party is liable to the other party for any loss of profits, loss of business opportunity, loss of revenue, loss of savings or loss of data and whether arising in contract, tort (including negligence) or otherwise, and whether the loss or damage is foreseeable or not.
- 21.4. Your and our liability:
- (a) for any loss or damage that the other party incurs for one or more events in connection with a Service Agreement, that is not otherwise excluded by these Terms of Service, is limited, in the aggregate, to the amount paid or payable under the relevant Service Agreement; and
- (b) for any other loss or damage, is limited, in the aggregate, to the sum of \$500.
- 21.5. To the extent that we may not as a matter of Applicable Law exclude any condition, guarantee or warranty, the scope and duration of such condition, guarantee or warranty shall be the minimum permitted under such law and where permissible by law, we limit our liability for breach of any such condition, guarantee or warranty as follows, at our option:
- (a) in the case of goods, to: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of such goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (v) the payment of the cost of having the goods repaired; and
- (b) in the case of services, to: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.
- 21.6. This clause 20 does not:
- (a) limit a party's liability with respect to any indemnity specified in these Terms of Service;
- (b) apply with respect to any liability that cannot be excluded by Applicable Law; or
- (c) apply with respect to any wilful breach of these Terms of Service.
- 22 Insurance**
- 22.1. Each Business must, at its own cost and expense, obtain prior to, and maintain during, any period in which it has a Business Account on the Baristar App that has not been terminated and for a period of 6 years thereafter:
- (a) public liability insurance in the sum of twenty million dollars (\$20,000,000);
- (b) workers compensation insurance as required by law; and
- (c) any other insurances specified in the Baristar Business Requirements.
- 22.2. Each Supplier must, at its own cost and expense, obtain prior to, and maintain during, any period in which it has a Supplier Account on the Baristar App that has not been terminated and for a period of 6 years thereafter:
- (a) public liability insurance in the sum of twenty million dollars (\$20,000,000);
- (b) workers compensation insurance as required by law; and
- (c) any other insurances specified in the Baristar Supplier Requirements.
- 23 Suspension and Termination of Business Accounts**
- 23.1. We or the applicable Business may terminate or suspend a Business Account on the Baristar App by written notice to the other party (**the defaulting party**) if the defaulting party commits a breach of these Terms of Service which is not remediable, or where the breach is capable of remedy and the defaulting party fails to remedy the breach within seven (7) days of written notice from the other party requiring the breach to be remedied.
- 23.2. Notwithstanding clause 23.1, we may immediately terminate or suspend any Business Account on the

- Baristar App by written notice to the applicable Business where we determine in our sole discretion that the Business is, has been or will be in non-compliance with the Baristar Business Requirements.
- 23.3. We or an applicable Business may terminate a Business Account by written notice to the other party if the other party suffers an Insolvency Event, except where such termination would contravene the *Corporations Act 2001* (Cth).
- 23.4. If and when a Business Account is terminated for any reason:
- the contract between us and the Business constituted by these Terms of Service is also terminated;
  - the relevant Business shall promptly return to us or destroy, at our option, all copies of our Confidential Information and Documentation in its possession or control;
  - we shall promptly return to the Business or destroy, at the option of the Business, all copies of the Business' Confidential Information in our possession or control; and
  - the Business and its Personnel shall cease to have any right to access and/or use Baristar.
- 23.5. A Business may terminate its Business Account for convenience by prior written notice to us or by deleting their Business Account via the Baristar App (where such functionality is available in the Baristar App).
- 23.6. The termination of a Business Account does not result in the termination of a Service Agreement or result in a waiver of any obligation of a Business to pay any Service Invoice.
- 24 Suspension and Termination of Supplier Accounts**
- 24.1. We or a Supplier may terminate or suspend a Supplier Account on the Baristar App by written notice to the other party (**the defaulting party**) if the defaulting party commits a breach of these Terms of Service which is not remediable, or where the breach is capable of remedy the defaulting party fails to remedy the breach within seven (7) days of written notice from the other party requiring the breach to be remedied.
- 24.2. Notwithstanding clause 24.1, we may immediately terminate or suspend any Supplier Account on the Baristar App by written notice to the applicable Supplier where we determine in our sole discretion that the Supplier is, has been or will be in non-compliance with the Baristar Supplier Requirements.
- 24.3. We or an applicable Supplier may terminate a Supplier Account by written notice to the other party if the other party suffers an Insolvency Event, except where such termination would contravene the *Corporations Act 2001* (Cth).
- 24.4. If and when a Supplier Account is terminated for any reason:
- these Terms of Service are also terminated;
  - the relevant Supplier shall promptly return to us or destroy, at our option, all copies of our Confidential Information and Documentation in its possession or control;
  - we shall promptly return to the Supplier or destroy, at the option of the Supplier, all copies of the Supplier's Confidential Information in our possession or control; and
  - the Supplier and its Personnel shall cease to have any right to access and/or use Baristar.
- 24.5. A Supplier may terminate its Supplier Account for convenience by prior written notice to us or by deleting their Supplier Account via the Baristar App (where such functionality is available in the Baristar App).
- 25 Dispute Resolution**
- 25.1. If a dispute arises between you and us out of or relating to a Service Agreement, a Baristar Invoice or otherwise in connection with these Terms of Service (**Dispute**), each party to the Dispute must seek to resolve it strictly in accordance with the provisions of this clause 25. Compliance with the provisions of this clause 25 is a condition precedent to seeking relief in any court in respect of the Dispute, except as otherwise provided in this clause.
- 25.2. A party seeking to resolve a Dispute must notify the existence and nature of the Dispute to the other party (**Notification**). Upon receipt of a Notification, each party must refer resolution of the Dispute to its senior executive or similar (or its nominee).
- 25.3. The senior executives (or their nominees) must meet in person or by audio visual means within 1 calendar month of the Notification to discuss the Dispute on a confidential without prejudice basis. If the Dispute has not been resolved within 1 calendar month of the Notification, then each party will be entitled to pursue such course of action as it determines.
- 25.4. This clause 25 will not prevent you or us from applying for urgent interlocutory relief from a court of competent jurisdiction at any time.
- 26 Force Majeure Events**
- Each party will have no liability for any failure to perform its obligations under these Terms of Service where caused by a Force Majeure Event.
- 27 Notices**
- 27.1. All notices required or permitted to be made under these Terms of Service shall be in writing and may be:
- issued to us by email at [info@baristar.com.au](mailto:info@baristar.com.au) ; or
  - issued to you using any contact details that you have provided to us.
- 28 General**
- 28.1. You and we may not assign our rights or novate our rights and obligations under these Terms of Service without the prior written consent of the other party (such consent not to be unreasonably withheld). Notwithstanding the foregoing provisions of this clause, we may assign our rights or novate our rights and obligations under these Terms of Service without your consent in connection with any merger, acquisition or restructure of our company or business.
- 28.2. If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the remainder of these Terms of Service shall remain enforceable.
- 28.3. The relationship between us and you is non-exclusive. Nothing in these Terms of Service will prevent us from supplying any goods or services to any third party in our absolute discretion or prevents you from engaging any third party to carry out any services. Nothing contained in these Terms of Service creates any relationship of partnership, employment, joint venture or agency between the parties.
- 28.4. Notwithstanding clause 28.3, if you are a Business or acting on behalf of an Business, you may not circumvent Baristar by engaging a Supplier to provide Supplier Services the subject of an Invitation for Supplier



- Applications that the Supplier has been notified of, or a Service Agreement between you and the Supplier, independently of the Baristar App.
- 28.5. Notwithstanding clause 28.3, if you are a Supplier or acting on behalf of a Supplier, you may not circumvent Baristar by soliciting a Business to provide Supplier Services the subject of an Invitation for Supplier Applications that you have been notified of or the subject of a Service Agreement, independently of the Baristar App.
- 28.6. If you are a Business or Supplier, these Terms of Service are the entire agreement between you and us about its subject matter and supersede all other proposals, arrangements or agreements between you and us about its subject matter.
- 28.7. Any terms or conditions set out in any document, correspondence or communication (other than terms and conditions expressly approved by us) that may be issued by you to us will have no effect and will not affect our rights or obligations in any circumstances.
- 28.8. These Terms of Service may be amended by us at any time provided that the amended version shall not have any retrospective effect. If you have an Account and do not agree to any amended version you must not use the Baristar App, and must immediately delete the Baristar App from all of your smartphones and tablets.
- 28.9. Any provision of these Terms of Service that by its nature survives termination shall so survive termination of your Account.
- 28.10. These Terms of Service are governed by the laws of New South Wales and you and we each submits to the exclusive jurisdiction of the courts located in the State of New South Wales and the courts of appeal from them in relation to any proceedings concerning or in connection with your use of the Baristar App and the supply of the Services.

## 29 Definitions and Interpretation

In these Terms of Service, words in bold in parentheses have the meanings given to them therein. In addition, the following words have the following meanings, unless the context indicates otherwise:

**Account** means a Business Account and/or a Supplier Account, as applicable.

**Applicable Law** means any applicable legislation, rule of the general law, including common law and equity, judicial order or consent or requisition from, by or with any governmental agency in any applicable jurisdiction.

**AUP or Acceptable Use Policy** means clause 15.

**Available for Bookings Status** means, in connection with a Supplier Account, that the Supplier has toggled the "Open to Work" switch to "on", which has the effect of making the Supplier Account publicly available to Businesses via the Baristar App.

**Supplier Services** means the services supplied or to be supplied by a Supplier, as applicable.

**Baristar** means the Baristar App and the Services.

**Baristar App** means the app entitled "Baristar" or similar that we make available for download in the Android Play Store and Apple App Store

**Baristar Business Requirements** means our minimum standards required for approval of a Business to register and maintain a Business Account on the Baristar App, as updated by us from time to time.

**Baristar Supplier Requirements** means our minimum standards required for approval of a Supplier to register and maintain a Supplier Account on the Baristar App, as updated by us from time to time.

**Baristar Terms of Trade** means the Baristar Terms of Trade forming Schedule 1 to these Baristar Terms of Service, as amended by us from time to time.

**Business Day** means any day from Monday to Friday in New South Wales, excluding public holidays in New South Wales.

**Business Hours** means 9:00am – 5:00pm AEST (or AEDT where applicable) on Business Days.

**Business Profile** means a Business' profile on the Baristar App that is made publicly available to Suppliers via the Baristar App.

**Business Reviews** means reviews of a Business submitted via the Baristar App by Suppliers that have entered into a Service Agreement with the Business, which are made available to the Business and Suppliers via the Baristar App.

**Confidential Information** means information which is either marked as confidential or has the quality of confidential information. Our Confidential Information includes our business affairs, financial affairs, business plans, price lists, strategies, technical operations, Intellectual Property Rights, the Documentation and our financial position. Our Confidential Information (whether or not reduced to writing or designated or marked as confidential) also includes, with respect to the Baristar App, all and any:

- (a) work product resulting from or related to work or projects performed or to be performed by us, including the interim and final lines of enquiry, hypotheses, research and conclusions related thereto and the methods, methodologies, technologies, processes, procedures, analysis, techniques and audits used in connection therewith; and
- (b) software of any type or form and in any stage of actual or anticipated development, including, programs and program modules, routines and subroutines, stored procedures, algorithms, business logic, relationship maps and diagrams, scripts, databases, database structures, database objects, tables, triggers (being special stored procedures which automatically execute when particular events occur), functions, views, front end and back end components, database schemas, design concepts, design specifications (including design notes, annotations, functional specifications, documentation, flowcharts, coding sheets, and the like), Source Code, Object Code, SQL component code, software libraries, load modules, programming, program patches and system designs.

**Default Rate** means 20 % per annum.

**Disclosing Party** means a party that discloses Confidential Information to a Receiving Party.

**Documentation** means any user manuals, technical specifications and other documentation, content and materials (whether in written or electronic form and including any audio-visual content) provided by us in respect of the Baristar App.

**Facilitation Fee** means an amount equal to 8.75% of the Service Fees payable under a Service Agreement.

**Force Majeure Event** means a circumstance beyond a party's reasonable control which results in its inability to observe or perform on time an obligation under these Terms of Service.

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means, in respect of a party: (a) the party ceases to carry on business, is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt; (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party; (c) the party enters into an arrangement with its creditors; (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (e) the party suspends payment of its debts to the other party or a third party, or the party takes the benefit of any law for the relief of insolvent debtors; or (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above, occurs under the law of any applicable jurisdiction.

**Intellectual Property Rights** means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under Article 2 of the Convention Establishing the World Intellectual Property Organisation, and all rights to enforce any of the foregoing rights.

**Local Supplier** means a Supplier that is located within the Supplier Radius of a Site the subject of an Invitation for Supplier Applications

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**Object Code** means Source Code in compiled or binary form.

**Onboarding Completion Date** means the date that we determine in our sole discretion that we believe or are advised that a Business or Supplier has met all Baristar Business Requirements or Baristar Supplier Requirements (as applicable), completed any Baristar onboarding requirements and (where a Business) is ready to post Invitations for Supplier Applications via the Baristar App or (where a Supplier) is ready to submit Supplier Applications via the Baristar App (as applicable).

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).

**Personnel** of a party means a party's officers, agents, employees and subcontractors, and where the party is an individual, also the party itself. For the purposes of these Terms of Service, the Business' Personnel does not include any Supplier.

**Privacy Policy** means the Privacy Policy at [www.baristar.com.au/privacy-policy](http://www.baristar.com.au/privacy-policy) as amended from time to time.

**Receiving Party** means a party that receives Confidential Information from a Disclosing Party.

**Supplier Terms of Trade** means any terms and conditions agreed by a Business and Supplier, other than Schedule 1.

**Service(s)** means any services that we make available via the Baristar App or otherwise, but for the avoidance of doubt, does not include Supplier Services.

**Site** means a property location specified in an Invitation for Supplier Applications.

**Source Code** means human readable computer code.

**Supplier Profile** means the Supplier's profile on the Baristar App that is made publicly available to Businesses via the Baristar App.

**Supplier Reviews** means reviews of a Supplier submitted via the Baristar App by Businesses that have entered into a Service Agreement with the Supplier, which are made available to the Supplier and Businesses via the Baristar App.

29.2. Unless the context requires otherwise:

- (a) A reference to "**a party**" is a reference to you or us as the context dictates and a reference to "**the parties**" is a reference to you and us.
- (b) Headings and underlinings are for convenience only and do not affect the construction of this Terms of Service.
- (c) A provision of the Terms of Service will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision.
- (d) Currency refers to Australian dollars.
- (e) A reference to a statute or regulation includes amendments thereto.
- (f) A reference to a subclause or paragraph is a reference to the subclause or paragraph in the clause in which the reference is made.
- (g) A reference to time is to time in New South Wales unless expressly specified otherwise.
- (h) A reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity.
- (i) The words "include", "including" and similar expressions are not words of limitation.
- (j) A reference to the singular includes the plural and vice versa.

# Schedule 1 - Baristar Terms of Trade

## 1 About these Terms of Trade

- 1.1 These Terms of Trade form part of any Service Agreement between a Business and any Supplier made via Baristar for the supply of Supplier Services by the Supplier to the Business.
- 1.2 Any capitalised term not defined herein shall have the meaning given to that term in the Terms of Service to which these Terms of Trade are attached (**Terms of Service**).

## 2 Accepted Service Offers

- 2.1 By the Business issuing a Service Offer to the Supplier using the Baristar App, the Business confirms its acceptance of these Baristar Terms of Trade and by the Supplier's acceptance of the Business' Service Offer via the Baristar App, the Supplier confirms its acceptance of these Baristar Terms of Trade and the Business and the Supplier are deemed to have entered into a binding Service Agreement.
- 2.2 A Service Agreement cannot be cancelled by a party without the prior written consent of the other party.

## 3 Variation of a Service Agreement

- 3.1 The Business or the Supplier may request that an existing Service Agreement (including these Baristar Terms of Trade) be varied by providing a request in writing to the other party. A request for a variation must be agreed to in writing by both parties in order to have effect.
- 3.2 Each party must promptly (and in no event more than 24 hours after becoming aware of it) notify Baristar if and when a variation to an existing Service Agreement has been agreed between the parties (**Notice of Variation**).
- 3.3 Each Notice of Variation must include full details of the variation to the Services Agreement as agreed between the parties.
- 3.4 Each party warrants that any Notice of Variation is true and correct.

## 4 Invoicing and payment

- 4.1 Baristar will, on behalf of the Supplier, issue an invoice to the Business for the amount of the Service Fee and any applicable GST, in accordance with the Terms of Service (**Supplier Invoice**).
- 4.2 Each Supplier Invoice is payable by the Business within 7 days of the date of the Supplier Invoice.
- 4.3 If the Business fails to pay any Service Invoice in accordance with clause 4.3, then, without limiting any of Supplier's other rights and remedies, the Business shall pay interest on the overdue amount at the Default Rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and the Business shall pay the interest together with the overdue amount upon demand by the Supplier.

## 5 Agency and assignment

- 5.1 The Business agrees that the Supplier may at any time appoint or engage a suitably qualified agent to perform an obligation of the Supplier arising out of or pursuant to any Service Agreement (**Supplier Agent**). Any such appointment or engagement of a Supplier Agent does not relieve the Supplier of its obligations under any Service Agreement.
- 5.2 No party may:
- (a) assign, or purport to assign, any of its rights under any Service Agreement;
  - (b) novate, or purport to novate, any of its rights or obligations under any Service Agreement,
- without the prior written consent of the other party.

## 6 Performance of the Supplier Services

- 6.1 The Supplier must perform the Supplier Services in a diligent and professional manner in accordance with the highest professional standards and Applicable Law.
- 6.2 The Supplier must ensure that it and any Supplier Agent has all the requisite qualifications, licences, skills and training required to perform the Supplier Services in accordance with clause 6.1 and to comply with all policies and directions of the Company.
- 6.3 The Supplier must not perform or permit any Supplier Agent to perform the Supplier Services in circumstances where they are ill, incapacitated

or incapable of performing the Supplier Services in a safe and proper manner.

- 6.4 The Supplier shall perform the Supplier Services independently of the Business and using the Supplier's own knowledge and skill.
- 6.5 Notwithstanding clause 6.4, the Supplier must comply with, and must ensure that each of its Supplier Agents complies with, all reasonable directions of the Business in relation to the performance of the Supplier Services.
- 6.6 The Supplier must act in good faith in all dealings with the Business and must not do anything that may be harmful to the reputation or interests of the Business.
- 6.7 The Supplier must provide the Supplier Services at its own cost and is responsible for all working expenses incurred in the course of providing the Supplier Services. The Supplier will not be reimbursed for any out of pocket expenses or disbursements that it incurs in the course of performing the Supplier Services.

## 7 Default and termination

- 7.1 The Business or Supplier (the **first party**) may terminate a Service Agreement immediately upon written notice to the other:
- (a) if the other commits a material breach of the Service Agreement (including, but not limited to, defaulting on any payment due under the Service Agreement) and where such breach is remediable fails to remedy that breach (where remediable) within 14 days of being given notice by the first party to do so; or
  - (b) if the other party suffers an Insolvency Event, except where such termination would contravene the *Corporations Act 2001* (Cth).
- 7.2 The Business may, by giving 14 days written notice to the Supplier, terminate any Service Agreement.
- 7.3 Termination of a Service Agreement will not affect any accrued rights or remedies available to a party under the Service Agreement.

## 8 Exclusions and limitation of liability

- 8.1 To the fullest extent permitted by law, each term and condition implied into any Service Agreement is hereby excluded.
- 8.2 Nothing in any Service Agreement excludes any liability of the Supplier that cannot be excluded under the Australian Consumer Law or other similar state-based legislation.
- 8.3 Subject to clause 8.2, and except to the extent that any such Loss is covered by the Supplier's Required Insurance, the Supplier's aggregate liability for any Losses under a Service Agreement shall not exceed the fees paid or payable under the relevant Service Agreement.
- 8.4 The Australian Consumer Law and other similar non-excludable state-based law may give to the Business certain guarantees. Nothing in any Service Agreement excludes such guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to Supplier Services to the supply of the Supplier Services again or paying the cost of re-supplying the Supplier Services again.

## 9 Force Majeure

- 9.1 If circumstances beyond the Supplier's control prevent or hinder its provision of the Supplier Services, the Supplier's obligation to provide the Supplier Services is suspended while those circumstances continue.
- 9.2 Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees and proclamations or orders.

## 10 Relationship between parties

- 10.1 The relationship between the Business and the Supplier is only that of a principal and an independent contractor. Nothing in this Service Agreement constitutes the relationship of partnership, joint venturers or

- employer and employee between the Business and the Supplier, or between the Business and any Supplier Agent.
- 10.2 Nothing in this Service Agreement constitutes or deems any Supplier Agent to be an employee of the Business.
- 10.3 Any Supplier Agent is and will remain at all times an employee, officer, independent contractor or agent of the Supplier.
- 10.4 The Supplier is solely responsible for paying its employees, officers and agents, including any Supplier Agent, all remuneration and benefits (including as applicable, salary, superannuation, annual leave, sick leave, long service leave and any applicable employee benefits and any other benefits to which they may be entitled) and for otherwise complying with all applicable laws and industrial awards which are applicable to its employees, officers and agents.
- 10.5 Without limiting the foregoing provisions, the Supplier is solely responsible for all benefits, contributions and taxes that may be payable for its employees, officers and agents.
- 10.6 Nothing in this Service Agreement creates any contract between the Business and any of the Supplier's employees, officers, independent contractors or agents.
- 10.7 This Service Agreement is not exclusive. The Supplier may perform any services for any third party at any time. Nothing in this Service Agreement requires the Business to exclusively use the Supplier to perform any services.
- 11 Confidentiality**
- 11.1 The Supplier may not, at any time without the Business' prior written consent, use or disclose any Confidential Information of the Business, other than to exercise its rights or perform its obligations under this Service Agreement or to comply with Applicable Law.
- 11.2 Clause 11.1 does not apply to information:
- that is independently developed, obtained or known by the Supplier, without any obligation of confidence to the Business;
  - that the Supplier can prove was already known to it at the time of disclosure to it by the Business;
  - that is in the public domain, except where due to a breach of any obligation of confidence; or
  - that the Supplier must disclose under the rules of any stock exchange on which it or its holding company is listed.
- 11.3 The Supplier must at all times store all Confidential Information of the Business safely and securely.
- 11.4 The Supplier must immediately notify the Business in writing of any actual, threatened or suspected unauthorised disclosure of any Confidential Information of the Business.
- 11.5 Upon termination of this Service Agreement, the Supplier must return or, if requested by the Business, destroy to the reasonable satisfaction of the Business, all of the Confidential Information, materials or documents of the Business in the Supplier's (and/or any Supplier Agent's) possession and/or control.
- 11.6 The Supplier's obligations under this Service Agreement with regard to the Confidential Information of the Business will continue in perpetuity.
- 12 Intellectual Property**
- 12.1 The Supplier hereby assigns to the Business all and any Intellectual Property Rights in all and any comments, suggestions and/or work product made by the Supplier to or for the Business in connection with the provision of the Supplier Services to the Business, the Business, its products, services and operations that the Supplier may make or suggest (each, an **Improvement Suggestion**). Each such Improvement Suggestion becomes the Business' sole and exclusive property. This assignment is effective as soon as the Supplier makes the comment or discloses the Improvement Suggestion to the Business including where applicable under section 197 of the *Copyright Act 1968* (Cth) and in equity.
- 12.2 The Supplier irrevocably consents, and must extract from its Personnel a freely given consent, to the infringement, by the Business and any third party that the Business may authorise, of all Moral Rights that the Supplier and/or its Personnel may have in any Improvement Suggestion.
- 13 Miscellaneous**
- 13.1 Each Service Agreement is governed by the laws of the state of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state in relation to any dispute between the parties.
- 13.2 Each Service Agreement and any written variations agreed to in writing by the parties represents the whole agreement between the parties relating to the subject matter of the Service Agreement.
- 13.3 Each Service Agreement supersedes all oral and written negotiations and communications by and on behalf of either of the parties.
- 13.4 In entering into any Service Agreement, neither party has relied on any warranty, representation or statement, whether oral or written, made by the other party or any of its employees or agents relating to or in connection with the subject matter of the Service Agreement.
- 13.5 If any provision of a Service Agreement at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- 13.6 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 14 Definitions and interpretation**
- 14.1 Any capitalised term not defined herein shall have the meaning given to that term in the Baristar Terms of Service.
- 14.2 Definitions:
- Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- Business** means the person identified in a Service Agreement as the business.
- Loss** includes, but is not limited to, costs (including legal costs), expenses, lost profits, award of damages, personal injury and property damage.
- Supplier** means the person identified in a Service Agreement as the supplier.
- Supplier's Required Insurance** means the insurance held by the Supplier pursuant to clause 22.2 of the Terms of Service.
- 14.3 Interpretation
- In these Baristar Terms of Trade, unless the context otherwise requires:
- a reference to writing includes email;
  - a reference to **a party** is to the Supplier or Business as the context dictates and a reference to **the parties** is to both of them; the singular includes the plural and vice versa;
  - a reference to a clause or paragraph is a reference to a clause or paragraph of these Baristar Terms of Trade unless expressly specified otherwise;
  - a reference to a party to these Baristar Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
  - where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
  - headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade;
  - if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
    - if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
    - in all other cases, must be done on the next Business Day.