

# Sushi Izu

## End User Licence Agreement

Version Date: 21 January 2021

### 1. Acceptance of EULA and amendments to EULA

- 1.1 The terms of this document ("**EULA**") govern the relationship between the licensee (**you**) and Advance Fresh Concepts Pty Ltd ABN 35 605 455 936 trading as Sushi Izu ("**Sushi Izu**", "**AFC**", "**we**", "**us**") in respect of your use of the App and the Services.
- 1.2 By installing, using or accessing the App or Services, you agree to be bound by the terms of this EULA. If you do not agree with or otherwise do not wish to accept the EULA, do not install, use or access the App and/or the Services.
- 1.3 AFC reserves the right to amend the EULA from time to time. We will notify you when you access the App for the first time following the change. The amendments will be effective 14 days after notification (**effective date**), unless AFC is required to make the amendments effective earlier to comply with any law (in which case the effective date will be the date of notification). If you do not agree to any amendments to the EULA, you may terminate this EULA in accordance with clause 11(c). By accessing and using the App or Services after the effective date, you agree to be bound by the amended EULA on and from the effective date.

### 2. Definitions

In the EULA:

<b>App</b>	means the Sushi Izu software application licensed by AFC under this EULA.
<b>Apple</b>	means Apple Inc. of 1 Infinite Loop, Cupertino, California, USA.
<b>Apple App Store</b>	means the store operated by Apple through which it makes applications available for devices running the iOS operating system.
<b>Business Day</b>	means a day on which banks are open for business in Sydney, Australia excluding a Saturday, Sunday or public holiday in that city.
<b>Device</b>	means a single device owned or controlled by you.
<b>Government Agency</b>	means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange.
<b>Intellectual Property</b>	means any and all present and future intellectual and industrial property rights anywhere in the world including copyright, know-how, designs, patents and trade marks, and any application or right to apply for registration of those rights.
<b>Loyalty Program</b>	means the Sushi Izu's loyalty program, as may be updated from time to time.
<b>Provider</b>	means a third party provider that provides you with access to the App. Examples of potential Providers include Apple and Google Inc.
<b>Services</b>	means services offered by AFC by means of the App from time to time, including those specified in clause 5.1(a).
<b>Update</b>	means an update supplied by AFC that replaces or supplements the original App.
<b>Your Content</b>	means content generated, created, made or otherwise brought about as a result of you using the App and/or the Services, or uploaded by you to the App.

### **3. App**

#### **3.1 App licence**

Subject to the terms of this EULA, AFC grants you a non-exclusive, non-transferable licence to:

- (a) use the App on a single Device as permitted by the Usage Rules set forth in the Apple Media Services Terms and Conditions (which can be viewed at <http://www.apple.com/legal/itunes/au/terms.html>), or such greater number of Devices as is provided for in Apple's Usage Rules, if the App was acquired from the Apple App Store; or
- (b) use the App on a single Device, in all other cases.

#### **3.2 Term**

Subject to clause 11, the licence granted to you in clauses 3.1 is granted for the duration you have the App installed on the relevant Device.

#### **3.3 Restrictions**

- (a) You must not rent, lease, lend, sell, transfer, redistribute or sublicense the App, or make the App available over a network where it could be used by multiple Devices at the same time. If you sell or otherwise dispose of, transfer or assign any Devices containing the App, any copies of the App must be removed before doing so.
- (b) Other than as expressly provided in this EULA or otherwise permitted by law, you must not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the App, or any part thereof.

#### **3.4 Intellectual Property**

AFC and its licensors retain all right, title and interest to all Intellectual Property rights subsisting in the App, any Updates, and any part thereof.

### **4. Updates**

#### **4.1 Terms**

The EULA governs any Updates, unless such an Update is accompanied by a separate licence supplied by AFC, in which case the terms of that licence will govern to the extent provided for.

#### **4.2 Acknowledgements**

You acknowledge and agree that AFC:

- (a) is under no obligation to provide any Updates;
- (b) can offer optional paid Updates;
- (c) can use Updates to add, remove, modify or otherwise alter features of the App at its sole discretion;
- (d) can require you to install Updates to the App in order to continue using the Services; and
- (e) can provide Updates in such a manner that the App is unable to be reverted to its previous state.

### **5. Services**

#### **5.1 Services offered via the App**

- (a) Subject to availability, Services provided through the App include:
  - (i) viewing our menu;
  - (ii) ordering and paying for our food and arranging for collection of your order at your nominated Sushi Izu store location; and
  - (iii) the ability to earn and or utilise loyalty points, to the extent applicable, under the terms of our Loyalty Program.
- (b) AFC can modify or cease to offer the Services, or any part thereof, at any time without prior notice to you.

## 5.2 Loyalty Program

- (a) By accessing and using the Apps and Services, you may be eligible to earn rewards and benefits under our Loyalty Program.
- (b) By participating in the Loyalty Program (including by redeeming any rewards or benefits), you agree to the terms and conditions for the Loyalty Program set out at [www.sushiizu.com.au](http://www.sushiizu.com.au), as updated from time to time. Any updates to the Loyalty Program will be published on our website and may also be notified to you in App or via email (and you consent to receiving such notifications). If you continue to participate in the Loyalty Program following notice of any updates, you agree to the updated Loyalty Program terms and conditions.

## 5.3 Risk

- (a) You acknowledge and agree that you use the App and the Services at your own risk.
- (b) Where you order from a Sushi Izu store that is owned and operated by a franchisee of AFC, you acknowledge and agree that AFC may be acting as an agent for the franchised store and AFC is not providing you with any products.

## 5.4 Fees and payment terms

- (a) You are able to download the App for free and browse our menu and access content on our App without charge.
- (b) Certain Services and functionality accessible via the App, for example the ordering of food, is subject to the payment of fees.
- (c) Any applicable fees will be notified to you in App and if you elect to proceed, you agree that we may process payment using your chosen payment method designated in App.
- (d) Your payment will be subject to the terms and conditions of payment specified by the payment provider you choose. This may include an additional fee, which is usually calculated as a percentage of your total transaction cost. You will be advised of any such fees that we charge, in relation to the use of your payment platform, at the time you place your order.
- (e) Payment is required in full at the time of making the order. All prices in App are in Australian Dollars (AUD) and are inclusive of GST.
- (f) Prices in App may differ from in-store prices.
- (g) Acceptance of an order takes place at the time AFC communicates its acceptance of the order to you, even if your payment has been processed beforehand. AFC reserves the right to reasonably refuse to accept or process your order, including where:
  - (i) the products ordered are not available or not able to be substituted with other similar products;
  - (ii) we cannot obtain confirmation that your payment has been authorised or received;
  - (iii) there has been a pricing or product description error; or
  - (iv) you, or the particular order, do not meet any of the requirements of this EULA.
- (h) Once your order is accepted, we will notify you in App (and/or via other means at our discretion, such as via email or SMS) and you must collect your order in accordance with clause 8.1.
- (i) The information, including pricing and product details, contained in the App may include inadvertent and occasional errors due to typographical mistakes, miscommunications and/or technical glitches. We reserve the right to cancel orders, and refund your payment, due to such errors or if the items ordered are no longer available. We will notify you as soon as possible, either in App, via email or SMS (depending on the App functionality and the details we hold about you) if we cancel your order.

## 5.5 Refunds

If there is any issue with your order, please raise this with the relevant Sushi Izu store at the time of pick-up. Requests for refunds will be dealt with in accordance with our refunds policy available at [www.sushiizu.com.au](http://www.sushiizu.com.au).

## **6. User account**

### **6.1 Requirement**

- (a) In order to use the App and/or the Services, or parts thereof, you will be required to create a user account.
- (b) AFC may require personal information (including but not limited to your name, postal address, email address, mobile phone number, payment details and location data) to facilitate your use and access to the App and Services and your account.
- (c) AFC may obtain certain details about you which are held by the Provider in order to provide the information we require to create your user account.

### **6.2 Limits**

You must ensure that:

- (a) you do not register multiple user accounts, as an individual is only permitted to have a single user account; and
- (b) you do not allow multiple people to use the same user account.

### **6.3 Security**

- (a) You are responsible for protecting the confidentiality of your password.
- (b) You acknowledge and agree that you will be responsible for any activities engaged in using your account, whether or not access is authorised by you.
- (c) AFC may require that you change your password if AFC suspects the security of your account has been breached.

### **6.4 Updates**

You must promptly update your account details if any of your contact details (including email address or mobile phone number) change. You will be liable for any unauthorised access or use of your account which results from your failure or delay to notify us of changes to your contact details.

## **7. Advertising**

You acknowledge and agree that:

- (a) the App and/or the Services may feature advertisements from AFC and/or third parties;
- (b) AFC may, at its sole discretion, introduce advertising into any App or Services that do not presently contain advertising;
- (c) AFC is not responsible for the content of any third party advertisements, nor the content of any website or other materials that may be linked to by third party advertisements, and you view such third party websites and materials at your sole risk; and
- (d) any provision of information to third party advertisers by AFC will be governed by AFC's Privacy Policy (see clause 15).

## **8. Your obligations**

### **8.1 Orders and collections**

- (a) When you order our products through the App, you must select a Sushi Izu store location from which you wish to collect your order. You agree to, and are responsible for, collecting your order within the nominated time frame and the relevant Sushi Izu store's operating hours. You will receive a notification via the App when your order is ready for collection.
- (b) When you collect an order made via the App you must provide proof of purchase (i.e. the QR code that is generated to the App and is unique to your order) to the Sushi Izu store operator. To do so, you will need to display your Device with the App open so that we can scan your QR code. We will not accept screenshots or photos of unique QR codes. Sushi Izu staff may also request identification to confirm the identity of the person collecting the order. There is no "self service" pick-up of orders made via the App.

- (c) It is your responsibility to ensure that any food you order is consistent with your dietary requirements, including any allergies.
- (d) Given the nature of the products and their limited shelf life, if we have prepared your order and you have not collected it within the pick up time window you selected, we may cancel your order and no refund will be given.

## 8.2 **Restricted parties**

You warrant and represent that the following statements are true and correct:

- (a) you are not located in a country that is subject to an embargo by the governments of the United States of America or the Commonwealth of Australia or of a country that has been designated by the United States of America or the Commonwealth of Australia as a "terrorist supporting" country; and
- (b) you are not included on any list of prohibited or restricted parties by the governments of the United States of America or the Commonwealth of Australia.

## 8.3 **Third party services and software**

- (a) You may be required to access or use certain third party services (for example, some Sushi Izu stores are located within Woolworths' supermarkets) or software (for example, a Provider's software marketplace) and be connected to the internet in order to obtain, install, update, access, use, or continue to access or use the App and/or Services (or certain functionality), and you may be required to update such third party services and software from time to time.
- (b) You acknowledge and agree that:
  - (i) AFC is not responsible for such third party services, software or updates;
  - (ii) third party services and software (including any updates) may be subject to fees and separate terms and conditions, which AFC strongly recommends you review prior to implementing the third party services, software (or any update);
  - (iii) you must comply with any applicable third party terms and conditions when using the App and/or Services;
  - (iv) you are responsible for ensuring that your installation and use of the App and/or Services does not cause you to exceed any data usage quotas or other limitations that may apply to your internet service or other services acquired from third parties; and
  - (v) if you are unable or unwilling to obtain, access or install such third party services or software (including any updates), or do not agree to comply with the terms and conditions imposed by such third parties, you may be unable to obtain, install, update, access, use, or continue to access or use the App and/or Services.
- (c) The App and Services may contain links (including via advertisements) to third party websites or other third party content or services. Those links are provided for convenience only and may not remain current or be maintained. You acknowledge that such links should not be construed as an endorsement, approval or recommendation by us of the third parties, or of any content or services provided by them.

## 8.4 **User obligations**

By accessing and using our App and/or Services, you agree that you will:

- (a) provide current, true and accurate information (such as your location) and update us of any information that may be relevant to your use of our App and/or Services;
- (b) comply with all applicable laws regarding access to and use of the App and Services.

## 8.5 **Restrictions**

You agree that you will not:

- (a) attempt to disrupt the normal operation of the App or Services, or any infrastructure operated by AFC or other business activities of AFC;
- (b) attempt to gain unauthorised access to the App and/or the Services;
- (c) make any automated use of the App and/or the Services;
- (d) impersonate any other person in using of the App and/or Services;

- (e) upload or create any information or content which infringes third party rights (including Intellectual Property rights) or breaches any law; or
- (f) use the App and/or the Services in connection with the actual or attempted contravention of any applicable laws.

## 9. Apple App Store

If you obtained the App from the Apple App Store, you and AFC acknowledge and agree that (to the full extent permitted by applicable law):

- (a) this EULA is concluded between you and AFC only, and not with Apple, and AFC, not Apple, is solely responsible for the App and the content thereof;
- (b) the license granted to you for the App is a non-transferable license to use the App on any Apple-branded products that you own or control and as permitted by the Usage Rules set forth in the Apple Media Services Terms and Conditions, except that such App may be accessed and used by other accounts associated with the purchaser via family sharing or volume purchasing;
- (c) Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App, either under this EULA or applicable law;
- (d) in the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price to you. You acknowledge that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App, and any other claims, losses, damages, costs or expenses attributable to any failure to conform to any warranty will be dealt with by AFC in accordance with this EULA;
- (e) AFC, not Apple, is responsible for addressing any claims by you or any third party relating to the App or your possession and/or use of the App, including but not limited to:
  - (i) product liability claims;
  - (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; or
  - (iii) claims arising under consumer protection, privacy or similar legislation including in connection with the App's use (if applicable) of Apple's HealthKit and HomeKit frameworks;
- (f) in the event of any third party claim that the App or possession and/or use of the App by you infringes that third party's Intellectual Property rights, AFC, not Apple, will be solely responsible for the investigation, defence, settlement and discharge of any such claim;
- (g) Apple, and Apple's subsidiaries, are third party beneficiaries of the EULA and upon your acceptance of this EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against you as a third party beneficiary thereof.

## 10. Support

Unless otherwise specified in this EULA or agreed pursuant to a separate written agreement between you and AFC, AFC will not be obliged to support the App or the Service, whether by providing advice, training, error-correction, modifications, updates (including Updates), new releases or enhancements or otherwise, or to provide any hosting, telecommunication, internet or other services in relation to the use of the App or the Service by you.

## 11. Termination and suspension

- (a) This EULA can be immediately terminated by AFC in the following circumstances:
  - (i) you are in material breach of any term of this EULA;
  - (ii) you are in breach of any term of this EULA and you fail to rectify the breach within 7 days of written notice; or
  - (iii) you become bankrupt, are wound up or become subject to administration or receivership or any similar thing under any law.
- (b) AFC may terminate the EULA if it decides to withdraw the App from the market (in which case AFC will endeavour to give you at least 14 days' notice before doing so).
- (c) You may terminate this EULA at any time by deleting the App from your Device.

- (d) Upon termination of this EULA, your licence to the App immediately ends, and you must delete the App from your Device and any remaining copies of the App and any associated documentation or otherwise return or dispose of such material in the manner directed by AFC.
- (e) Termination pursuant to this clause will not affect any rights or remedies which a party may have otherwise under this EULA or at law.
- (f) AFC may suspend your access to the App or Services without notice to you where AFC reasonably believes your access should be suspended, including where:
  - (i) necessary to comply with any law;
  - (ii) AFC believes that there is a risk of fraud or security breach; or
  - (iii) you have not accessed the App for a period of 6 months or more.
- (g) If AFC has the right to terminate the EULA pursuant to clause 11(a), it may instead of terminating the EULA, immediately suspend your access to the App and/or the Services.
- (h) Nothing in this EULA limits any right AFC may have pursuant to this EULA to modify the App by way of Update, including by removing or amending any features or functionality from the App, or to modify, suspend or cease offering the Services or any part thereof.

## 12. Warranties and liability

### 12.1 Australian Consumer Law

- (a) In this EULA:
  - (i) "Australian Consumer Law" means schedule 2 of the Competition and Consumer Act 2010 and any equivalent state or territory legislation;
  - (ii) "Consumer" has the meaning given in the Australian Consumer Law; and
  - (iii) "Consumer Guarantee" means a right or guarantee under Part 3-2 (Division 1) of the Australian Consumer Law that cannot lawfully be excluded.
- (b) The Australian Consumer Law provides Consumers with a number of Consumer Guarantees that cannot be excluded or limited. The limitations of liability set out in this EULA are therefore subject to, and will not apply to the extent that they limit or exclude any Consumer Guarantees that may apply to you if you are a Consumer. However where the Australian Consumer Law permits us to limit the remedies for a breach of such Consumer Guarantees we do so in accordance with clause 12.2.

### 12.2 Exclusion of implied warranties

- (a) All implied terms, conditions, guarantees and warranties which otherwise might apply to or arise out of this EULA are excluded other than:
  - (i) those set out in this EULA; and
  - (ii) any term, condition, guarantee or warranty which cannot lawfully be excluded or modified by agreement under applicable laws including the Consumer Guarantees under the Australian Consumer Law (**Non-excludable Terms**).
- (b) AFC's liability to you in connection with the EULA and the supply of any goods or the Services (including in respect of any breach of or failure to comply with any Non-excludable Terms, where it is permissible under applicable law to limit liability for such Non-excludable Term) is limited to (at AFC's option):
  - (i) in the case of goods, including the App (to the extent the App is considered a good under applicable law) – repairing, replacing or supplying equivalent goods, or paying the cost of any of those remedies to you; or
  - (ii) in the case of services, including the Services – supplying the services again or paying the cost of having the services supplied again.

### 12.3 Disclaimer and exclusion and limitations on liability

To the maximum extent permitted by law and **without limiting your rights and AFC's obligations under the Australian Consumer Law** (which are subject to clauses 12.1 and 12.2), you acknowledge and agree that:

- (a) given the nature of the App, the App and Services cannot be guaranteed to be error free, uninterrupted and available at all times;

- (b) the App and Services (including any information supplied therein) are provided on an “as is” and “as available” basis;
- (c) AFC will not be liable to you in connection with this EULA for:
  - (i) any indirect or consequential loss or damage; or
  - (ii) loss of profits, loss of revenue, loss of opportunity, loss of data or loss of reputation, that you suffer or incur, whether arising under contract, tort (including due to AFC's or any other person's negligence), under statute or otherwise;
- (d) AFC does not accept liability for any claims, damages or loss (however arising, including due to AFC's or any other person's negligence) you may incur arising directly or indirectly from:
  - (i) a failure to provide the App or Service, or any part thereof;
  - (ii) any incompleteness, inaccuracy or unavailability of information provided (or unable to be provided) through the App;
  - (iii) corruptions to or loss of data, errors or interruptions occurring in the course of using, or as part of, any Service or the App;
  - (iv) any interference or damage to Devices or your computer systems which arises in connection with use of the App and/or the Services;
  - (v) any suspension or discontinuance of any Service, or any part thereof; or
  - (vi) any use of the Services by other users, including any use of the Services by other users in manner which contravenes this EULA; and
- (e) our total aggregate liability to you for any loss, damage, liability or expense you suffer or incur in connection with this EULA and which is not excluded under sub-clauses (a) to (d) inclusive, whether arising under contract, tort (including negligence), under statute or otherwise, is limited to an amount which is equal to the fees you have paid to us via the App in the 12 months prior to the claim.

#### 12.4 **Indemnity for third party claims**

You will indemnify AFC against all liabilities, costs, losses and expenses which AFC may suffer or incur in connection with any third party claims or allegations against AFC that are caused by your breach of this EULA.

### 13. **Intellectual Property**

#### 13.1 **No transfer**

This EULA does not constitute a transfer or conveyance of any Intellectual Property owned by AFC as at the date of this EULA, including but not limited to all Intellectual Property associated with the App and the Services, and its functionality, features and content, or operate as a future transfer of any Intellectual Property owned by AFC any time thereafter.

#### 13.2 **Acknowledgement**

You acknowledge that the App and any materials provided in the course of the Services are protected by copyright and may also be protected as other forms of Intellectual Property owned by AFC or its licensors. You will not during or at any time after the termination of this EULA undertake or permit any act which infringes or attempts to infringe those Intellectual Property rights and, without limiting the generality of the foregoing, you specifically acknowledge that you must not copy the App except as otherwise expressly authorised by this EULA.

#### 13.3 **Your Content**

To the extent that any Intellectual Property rights are contained in Your Content, you will retain ownership of such rights, and you hereby grant to AFC a worldwide, perpetual, irrevocable, royalty-free, transferable and sub-licensable licence to use, exploit and modify Your Content in any way and for any purpose, without compensation to you. You warrant that you have the right to grant this licence and to upload Your Content and that AFC's use of Your Content in accordance with this EULA will not breach any third party Intellectual Property rights and privacy rights. You further consent to AFC and its successors, assigns and licensees doing anything in respect of Your Content which would, but for this consent, infringe your moral rights.



## 14. Security

- (a) Unfortunately, no data transmission over the internet can be guaranteed as totally secure. Whilst AFC strives to protect such information and keep your personal information confidential, it does not warrant and cannot ensure the security of any information transmitted to it by you. Accordingly, any information transmitted to AFC via the App is transmitted at the risk of the sender. Nevertheless, once AFC receives transmissions from you, it will take reasonable steps to preserve the security and confidentiality of your personal information.
- (b) Users must take their own precautions to ensure that the process which they employ for accessing the App and/or the Services does not expose them to the risk of viruses, malicious computer code or other forms of interference which may damage their Devices or computing systems.
- (c) You must take all reasonable steps to protect the security of your Device, your data and computing systems, including by ensuring you don't have any viruses or other mechanisms capable of recording your passwords or access codes to the App.
- (d) If you suspect that there has been unauthorised access to your account or there is any other security breach or issue relating to the App, Services or your account, you must notify AFC immediately (see clause 17 for contact details) and change your account password.

## 15. Privacy, data and geographical information

### 15.1 Privacy statement

- (a) Use of the App and Services is subject to AFC's Privacy Policy located at [www.sushiizu.com.au](http://www.sushiizu.com.au).
- (b) AFC may collect your personal information via the App, the Providers and Sushi Izu stores for the purposes of:
  - (i) providing and allowing you to access and have the benefit of the Services and the App, including the Loyalty Program; and
  - (ii) communicating with you, including via in App push notifications and electronic messaging such as SMS and email, by mail, by phone or in any other lawful manner,as well as other purposes that are described in AFC's Privacy Policy.
- (c) The types of information we collect depends on the App and Services you elect to use and receive. The minimum information we need to provide basic App functionality is your name, email address and a password. We may also collect the following information:
  - (i) your post code and phone number;
  - (ii) payment details (such as your credit card information) to process any transactions you make via the App;
  - (iii) details of the Services being sought;
  - (iv) if you have GPS enabled Device and have this feature turned on, or if you allow us to access your location, we may collect your location information from third party services where you have enabled it and if you request a service that requires your location (including so that we can find the closest Sushi Izu store to you);
  - (v) information about the devices and networks that you use to access the App to help us develop and secure our App and Services (such as information collected via cookies); and
  - (vi) details of your use of the App and Services.
- (d) We may disclose your personal information:
  - (i) on a confidential basis to our employees, to Sushi Izu store franchisees and their employees, suppliers, contractors, service providers, professional advisers and related entities, in order to run our business, and to provide you with the App functionality and Services you request; and
  - (ii) to any third parties to whom you have directed or permitted us to disclose your personal information, or where we are permitted or required to do so by law.
- (e) AFC may make disclosures of your personal information to recipients based overseas, including to our related companies based in the United States.

- (f) Unless you have previously instructed us otherwise, you consent to your personal information being used to contact you with special offers, news and information about AFC's products, services and promotional offers, including contacting you via electronic messaging. You can opt out of receiving direct marketing communications by contacting us (see clause 17 for contact details).
- (g) If you don't provide the information AFC requests, you may not be able to set up an account, use the App (or certain functionality and features) or be able to utilise the Services.
- (h) AFC's Privacy Policy contains information about:
  - (i) how you can seek access to the personal information AFC holds about you and seek the correction of such information; and
  - (ii) how you can complain about a privacy breach and how AFC will deal with such complaints.

#### 15.2 **Usage data and de-identified data**

- (a) You agree that AFC may collect and use non personally identifying data, including but not limited to information about the App, the Services, the Devices and its usage by its customers. AFC may use this information (as long as it is in a form that does not personally identify you) to improve its products and services, or to suggest or provide particular services to you.
- (b) AFC may also use Your Content, including personal information, in a de-identified form (that is, in a form which removes or obscures any personal identifiers) to assist us in running our business, to improve our products and services and to provide reports to third parties (such as statistical reports about products, services and trends).

#### 15.3 **Consent to the collection and use of your information**

By entering into this EULA, and each time you log into your account via the App, you consent to AFC collecting, using, disclosing and handling your information as set out in AFC's Privacy Policy and this EULA.

### 16. **General**

#### 16.1 **Assignment and sub-contracting**

- (a) You cannot assign, novate or otherwise transfer any of your rights or obligations under this EULA without the prior written consent of AFC which consent can be granted or withheld in the absolute discretion of AFC. An assignment in breach of this clause is intended by the parties to be void and of no force and effect.
- (b) AFC can assign, novate or otherwise transfer any of its rights or obligations under this EULA at its sole discretion, on written notice to you. AFC may subcontract the performance of its obligations under this EULA to any person and without notice to you, but will remain liable to you for the performance of its obligations notwithstanding any such sub-contracting.

#### 16.2 **Waiver**

A party's rights or remedies under this EULA are not waived by it unless such waiver is in writing and signed by the party granting the waiver. No delay or omission of a party in exercising any rights or remedies shall operate as a waiver of such rights or remedies.

#### 16.3 **Severance**

If a provision in this EULA is wholly or partly void, illegal or unenforceable in any relevant jurisdiction, that provision or part must, to that extent, be treated as deleted from this EULA for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this EULA.

#### 16.4 **Governing law and jurisdiction**

The EULA is governed by and is to be construed under the laws in force in New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with the EULA.

#### 16.5 **Further assurances**

You agree that you will, at your own expense, do all things and execute all further documents necessary to give full effect to the EULA and the transactions contemplated by it.

16.6 **No reliance**

You acknowledge and agree that you have not relied on any statement by AFC which has not been expressly included in this EULA.

16.7 **Entire agreement**

The EULA constitutes the entire agreement between you and AFC regarding access and use of the App and Services and supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

16.8 **Exercise of rights**

- (a) Unless expressly required by the terms of this EULA, AFC is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this EULA.
- (b) AFC may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this EULA. You must comply with any such conditions when relying on the consent, approval or waiver.

16.9 **Clauses that survive termination**

Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination of this EULA, clauses 3.3, 3.4, 6.3(b), 8.4, 12, 13, 14, 15, 16.4 and this clause 16.9 survive the termination of the EULA.

16.10 **Notices**

Any notice required to be given to you under this EULA may be given by AFC to you by any legal means, including notification via the App. Any notices required to be given by you to AFC under this EULA must be sent by mail or email to the contact details set out in clause 17.

16.11 **Interpretation**

In the EULA unless a contrary intention is expressed:

- (a) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (b) other parts of speech and grammatical forms of a word or phrase defined in the EULA have a corresponding meaning;
- (c) a reference to a party to any document includes that party's successors and permitted assigns;
- (d) a provision of the EULA may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of the EULA or the preparation or proposal of that provision;
- (e) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in the EULA do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (f) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (g) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (h) if anything under the EULA is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

**17. Contact**

In the event that you need to contact AFC regarding the EULA, the App and/or the Services, please use the following details.

Advanced Fresh Concepts Pty Ltd

Unit 19, 538 Gardeners Road, Alexandria NSW 2015

Telephone +61 2 9667 5800

Email [info@afcsushi.com.au](mailto:info@afcsushi.com.au)