

1 Getting Started

- a spirini.com has developed a mobile application ("**Consumer App**") which it makes available to consumers for the purpose of searching for specific services and offers made available by merchants that have signed up via the spirini.com website to use a mobile application developed by spirini.com. the ("**Merchant App**").
- b Before using the Merchant App the Merchant will need to register a Merchant account with spirini.com via my.spirini.com so that the Merchant can promote its business to consumers via the Merchant App.
- c The Merchant warrants that all information provided when signing up for the Merchant App is complete, accurate and sufficient for consumers to make informed choices about the services.
- d By clicking "sign up" the Merchant is agreeing to be bound by the terms and conditions of the Merchant Agreement.
- e When the Merchant signs up to the Merchant App they will be asked to create a password. The Merchant is responsible for maintaining the confidentiality of this password. If spirini.com believes that a third party has access to a Merchant's password spirini.com may suspend the Merchant's access to the Merchant App.

2 Use of the Merchant App and Ambassador merchants

- a Subject to the terms and conditions of this Merchant Agreement spirini.com hereby grants to the Merchant a non-exclusive, non-transferable, non-sublicensable right to use the Merchant App until such time as this licence has terminated pursuant to the terms of this Merchant Agreement.
- b The Merchant may not use the Merchant App or the website to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights.
- c The Merchant shall not:
 - i use the Merchant App outside the United Kingdom;
 - ii interfere with or disrupt the integrity or performance

- of the Merchant App, including, but not limited to uploading or distributing in any way files that contain viruses or corrupted files that may damage the operation of the Merchant App or affect a third party;
 - iii attempt to gain unauthorized access to the Merchant App or the related systems or networks; or
 - iv reverse engineer the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- d The Merchant and Ambassador Merchant shall:
- i provide spirini.com with all necessary co-operation in relation to this Merchant Agreement; and all necessary access to such information as may be required by spirini.com in order to provide the Merchant App;
 - ii comply with all applicable laws and regulations with respect to its activities under this Merchant Agreement and use of the Merchant App;
 - iii ensure that its network and systems comply with any relevant specifications provided by spirini.com from time to time; and
 - iv be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to enable the Merchant to use the Merchant App.
 - v Ambassador merchants shall post at least two exclusive new offers per month for the 12 month free ambassador period
 - vi Share all Spirini offers on Facebook, Twitter and Instagram feeds
 - vii Allow Spirini window stickers and point of sale advertising
 - viii Honour 15% off voucher for all new Spirini customers

3 What will spirini.com do?

- a spirini.com shall, during the term, provide the Merchant with access to the Merchant App, and make available any documentation, including access to the Merchant's account via the website, to the Merchant on and subject to the terms of this Merchant Agreement.
- b spirini.com shall use commercially reasonable endeavours

to make the Merchant App available 24 hours a day, seven days a week, except for:

- i planned maintenance carried out during such maintenance window as is notified by spirini.com to the Merchant from time to time via the Merchant account; and
 - ii unscheduled essential maintenance performed outside normal business hours wherever possible,.
- c spirini.com will provide the Merchant with support services in the form of frequently asked questions ("FAQs") on spirini.com's website as it believes are appropriate. If the FAQs do not address the Merchant's question, the Merchant can email support@spirini.com and spirini.com shall use reasonable endeavours to respond to the question.
- d spirini.com shall perform its obligations under this Merchant Agreement with reasonable skill and care.
- e The Merchant App is provided by spirini.com "as is" with no express or implied warranty for accuracy or availability.
- f spirini.com does not warrant that the Merchant's use of the Merchant App will be uninterrupted or error-free; or that the Merchant App, any documentation and/or the information obtained by the Merchant through the Merchant App will meet the Merchant's requirements.
- g The Merchant acknowledges that the Merchant App is subject to the limitations and issues inherent in the use of public communication networks. spirini.com is not responsible for and shall not be liable to the Merchant for breach of this Merchant Agreement due to any problems or other damages resulting from such limitations or issues.
- h This Merchant Agreement shall not prevent spirini.com from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to the Merchant App.
- i spirini.com does not moderate the content or any links provided by third parties which are published or available via the Merchant App. spirini.com shall have no responsibility for, or liability in respect of, any content provided by third parties.

- j Spirini.com reserves the right at its sole discretion to suspend and/or terminate the Merchant's access and/or right to use the Merchant App, and the Merchant account at any time during the term of the Merchant Agreement.

4 **Merchant Data**

- a The Merchant shall own all right, title and interest in and to all of the data inputted by the Merchant, or spirini.com on the Merchant's behalf, for the purpose of using the Merchant App or facilitating the Merchant's use of the Merchant App ("**Merchant Data**") and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Merchant Data.
- b If spirini.com processes any personal data on the Merchant's behalf when performing its obligations under this agreement, the parties hereby record their intention that the Merchant shall be the data controller and spirini.com shall be a data processor and in any such case:
 - i the Merchant acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Merchant is located in order to provide access to the Merchant App and perform spirini.com's other obligations under this agreement;
 - ii the Merchant shall ensure that the Merchant is entitled to transfer the relevant personal data to spirini.com so that spirini.com may lawfully use, process and transfer the personal data in accordance with this agreement on the Merchant's behalf;
 - iii the Merchant shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - iv spirini.com shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Merchant from time to time; and
 - v each party shall take appropriate technical and

organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

5 Linking to third party services

The Merchant can link to certain third party services via the Merchant App, including facebook and twitter. These third party services are not provided by spirini.com. The Merchant agrees to hold harmless and release spirini.com from any liability relating to Merchant's use of the third party services or integration of the Merchant App with the third party services. The Merchant's ability to use the third party services may be limited according to the third party's terms and conditions.

6 Charges and payment – After the 12 month Free Ambassador Merchant period terminates

- a If the Merchant decides to continue using the Merchant App. The Merchant shall pay the subscription fee specified on spirini.com's website ("**Subscription Fee**") or as agreed in writing by spirini.com from time to time.
- b The Merchant shall pay the Subscription Fee either monthly or annually in advance or as agreed in advance by spirini.com.
- c If spirini.com has not received payment within 2 days after the due date, and without prejudice to any other rights and remedies of spirini.com:
 - i spirini.com may, without liability to the Merchant, disable the Merchant's password, Merchant account and access to all or part of the Merchant App and spirini.com shall be under no obligation to provide any such access while the invoice(s) concerned remain unpaid; and
 - ii interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- d All amounts and fees stated or referred to in this agreement:

- i shall be payable in pounds sterling;
 - ii are where the Subscription Fee is paid monthly non-cancellable and non-refundable;
 - iii are exclusive of value added tax, which shall be added to spirini.com's invoice(s) at the appropriate rate.
- e spirini.com reserves the right to charge a handling fee for any payments made by credit card.

7 Cancellation by the Merchant

- a If the Merchant decides to terminate its use of the Merchant App during the term of the Merchant Agreement then it should do so by logging into the spirini Merchant website at my.spirini.com. Once logged in, the Merchant can terminate their subscription by visiting the Billing page, and clicking "Stop Payments". This will prevent any future payments being taken.
- b Where the Merchant has paid the Subscription Fee annually in advance then spirini.com shall refund such amount of the Subscription Fee on a pro rata basis for the unused months that the Merchant has paid for.
- c Where the merchant is paying monthly in advance, the Merchant will be charged for the remainder of the month within which the cancellation email is received.
- d Any charges payable to a third party in respect of any cancellation made by the Merchant, including any payment card or banking charges, shall be borne by the Merchant.

8 spirini.com's property

- a The Merchant acknowledges and agrees that spirini.com and/or its licensors own all intellectual property rights in the Merchant App, the Merchant Account, spirini.com's website the Consumer App and any documentation supplied by spirini.com. Except as expressly stated in these terms and conditions, this Merchant Agreement does not grant the Merchant any rights to, or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Merchant App, the Merchant Account,

spirini.com's website and any documentation supplied by spirini.com.

- b spirini.com confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- c The Merchant shall, upon becoming aware of, inform spirini.com of any claim or potential claim that the Merchant App, the Merchant Account, spirini.com's website, or Consumer App has infringed a third party's intellectual property rights.

9 Confidentiality

- a Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by this clause 8.
- b Each party may disclose the other party's confidential information:
 - i to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Merchant Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8; and
 - ii as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Merchant Agreement.

10 Indemnity

If any third-party brings a claim against spirini.com related to the Merchant's acts, omissions, data or information within the Merchant App, Consumer App or the Merchant account (including any breach of PCI DSS Security Standards or

the Card Scheme Rules caused by any act or omission of the Merchant), the Merchant must defend, indemnify and hold spirini.com harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.

11 **Limitation of liability**

- a This clause 10 sets out the entire financial liability of spirini.com (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Merchant.
- b Nothing in this Merchant Agreement limits or excludes the liability of either party for:
 - i death or personal injury resulting from negligence;
 - ii any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party; or
 - iii any other liability which is incapable of being excluded or limited by law.
- c Subject to clause 8(b), spirini.com shall not have any liability to the Merchant (howsoever arising, including any liability in tort) under or in connection with this Merchant Agreement for any:
 - i loss of profits or anticipated savings;
 - ii loss of revenue;
 - iii loss or damage to reputation or goodwill;
 - iv loss of opportunity;
 - v wasted management or other staff time;
 - vi losses or liabilities under or in relation to any other agreement,
 - vii and in each case whether direct, indirect, special and/or consequential loss or damage; or
 - viii for any other indirect, special and/or consequential loss or damage.
- d spirini.com's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid by the Merchant during the 6 months immediately preceding the date on which the claim arose (or such shorter period if the claim

- arose prior to the end of the Initial Subscription Term).
- e The Merchant acknowledges that spirini.com is not responsible for and shall have no liability to the Merchant for the relationship between the Merchant and any consumer, including any transactions entered into with a consumer, using the Consumer App.

12 **General**

- a **Capacity.** Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform the Merchant Agreement and the Merchant warrants that the individual "signing up" to the Merchant App has the necessary authority to do so.
- b **Assignment and other dealings.** The Merchant shall not, except as expressly provided in this Merchant Agreement, assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Merchant Agreement unless as part of a sale of substantially all of the assets of the Merchant.
- c spirini.com may assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Merchant Agreement without the consent of the Merchant.
- d The rights provided under this Merchant Agreement are granted to the Merchant only, and shall not be considered granted to any subsidiary or holding company of the Merchant.
- e **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Merchant Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- f **Entire agreement.** The Merchant Agreement constitutes the entire agreement and understanding of the parties in respect of its subject matter and supersedes all prior agreements, negotiations, discussions and any

previous practice or course of dealing between the parties relating to the same.

- g **Severance.** If any court or competent authority finds that any provision of this Merchant Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Merchant Agreement shall not be affected. If any invalid, unenforceable or illegal provision of the Merchant Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- h **Third party rights.** A person who is not a party to the Merchant Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Merchant Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- i **Force majeure.** Neither party shall in any circumstances be in breach of this Merchant Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Merchant Agreement if such delay or failure results from a force majeure event.
- j **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the English courts.

13 **Contacting spirini.com**

- a Please submit any question you have about these terms, or the Merchant App in general by email to support@spirini.com or write to spirini.com at:

spirini.com Limited c/o Ashfords LLP Tower Wharf Cheese Lane Bristol BS2 0JJ