

## MERCHANT TERMS AND CONDITIONS

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These Merchant Terms and Conditions (the “**Terms and Conditions**”) govern and are incorporated into the Groupon Merchant Agreement between Groupon and Merchant (collectively, the “**Agreement**”). Groupon, subject to the provisions of this paragraph, may amend the Terms and Conditions in its sole discretion and at any time. The most recent version of the Terms and Conditions (as may be amended by Groupon from time to time) will be available: (i) in Groupon’s Merchant Center, and/or (ii) as part of the Groupon Works Merchant Newsletter. Merchant agrees that either or both of these notification methods constitute adequate notice to inform Merchant of any amendments to the Agreement and Merchant further agrees to be bound by any such amendments to the Agreement upon such notification.

### Definitions

“**MERCHANT OFFERING**” means the goods and/or services to be provided by the Merchant, stated on the Voucher as presented by Groupon. Values determined by Merchant.

“**MAXIMUM NUMBER OF VOUCHERS**” means the maximum number of Vouchers Groupon is authorized to administer the sale of on behalf of the Merchant.

“**MONTHLY MAXIMUM NUMBER OF VOUCHERS**” means the maximum number of Vouchers Groupon is authorized to administer the sale of on behalf of Merchant each month after the Maximum Number of Vouchers has been sold.

“**FULL OFFER VALUE**” means the Amount Paid plus the Promotional Value.

“**AMOUNT PAID**” means the amount a purchaser pays for each Voucher.

“**PROMOTIONAL VALUE**” means the Full Offer Value less the Amount Paid.

“**PROMOTIONAL VALUE EXPIRATION DATE**” means the date stated on the Voucher when the Promotional Value expires.

“**REMITTANCE AMOUNT**” means the amount Groupon shall remit to Merchant for each Voucher, subject to the payment terms.

“**FINE PRINT**” means the conditions and restrictions concerning Voucher redemption and the Merchant Offering stated on the Website and Voucher.

### 1. Voucher Program

- a. Groupon is authorized to promote and sell Vouchers on Merchant’s behalf subject to the terms of this Agreement and the “**Terms of Sale**” of the Website. The Voucher will evidence the Merchant Offering and will be sent to the purchaser electronically once payment is received. The purchaser will then redeem the Voucher with the Merchant by presenting the Voucher in paper or electronic form. Merchant is the issuer of the Vouchers and seller of the Merchant Offering. If there is a conflict between this Agreement and the Terms of Sale, the Agreement controls.
- b. Groupon is authorized to promote and sell Vouchers on Merchant’s behalf through any platform, including its feature deal-of-the-day, affiliates, business partner network, marketplace, or referral network. The Vouchers may be offered to all or part of Groupon’s subscriber base or its affiliate subscriber base or referral network and segmented by various variables including gender, age, location, and consumer preferences. The features may be offered through a variety of distribution channels, including, the Internet, the Website, affiliate websites, business partner network, email, mobile applications, other types of electronic offerings and other platforms or distribution channels owned, controlled, or operated by Groupon, its affiliates or business partners. In addition, in connection with Groupon’s promotion of a Merchant Offering, Merchant authorizes Groupon to shorten or extend the Promotional Value Expiration Date.
- c. For appointment based Merchant Offerings, Groupon may require that Merchant provide Groupon with a calendar of available appointment times and allow Groupon purchasers to schedule appointments with the Merchant through Groupon and any third party service Groupon may use. Groupon may audit Merchant response times using various methods, including but not limited to, auto-dialers, call forwarding and pre-recorded calls. If Groupon, in its sole discretion, determines Merchant response times or the quality of service provided to purchasers is unsatisfactory, Groupon may terminate the Agreement and return the Amount Paid to purchasers for unredeemed Vouchers.
- d. Groupon is authorized to promote and sell up to the Maximum Number of Vouchers in multiple markets and on dates in its discretion. If Merchant elects to offer recurring month-to-month features, then Groupon will promote and sell up to the Maximum Number of Vouchers for the initial feature, then promote and sell up to the Monthly Maximum Number of Vouchers for subsequent

- features. Merchant shall specify the Maximum Number of Vouchers and, if applicable, specify the Monthly Maximum Number of Vouchers, and may increase either number in its discretion.
- e. Groupon reserves the continuing right to reject, revise, or discontinue any Merchant Offering, at any time and for any reason in Groupon's sole discretion, and to terminate the Merchant Offering and to remove all references to the Merchant Offering and Voucher from the Website; and redirect or delete any URL used in connection with the Merchant Offering.
  - f. Merchant shall honor the Vouchers for the Merchant Offering through the Promotional Value Expiration Date. After the Promotional Value Expiration Date. MERCHANT AGREES TO REDEEM THE VOUCHER FOR THE AMOUNT PAID INDEFINITELY.
  - g. After the Promotional Value Expiration Date, Merchant must always allow the purchaser to redeem the Voucher for the Amount Paid toward the Merchant Offering. If the goods and services constituting the Merchant Offering and stated on the Voucher are no longer available, the Merchant must always allow the purchaser to redeem the Voucher toward any goods or services then offered by the Merchant equivalent to at least the Amount Paid.
  - h. Partial redemptions: If applicable, and if a purchaser redeems a Voucher for less than the Amount Paid, the Merchant is responsible for handling any unredeemed value as required by applicable law.
  - i. Merchant agrees that in providing the Merchant Offering, Merchant will not inflate prices or impose any additional fees, charges, conditions or restrictions that contradict or are inconsistent with the terms stated on the Voucher, including the Fine Print. Unless disclosed in the Fine Print, Merchant further agrees not to impose different terms or a different cancellation policy than what is imposed on its non-Groupon customers.
  - j. Merchant agrees that so long as an appointment or reservation is made to redeem a Voucher, or purchaser has made an attempt to make an appointment, before the Voucher's Promotional Value Expiration Date, the Voucher will be honored for the Full Offer Value without restriction, even though the services may be provided after the Promotional Value Expiration Date.
  - k. For any seasonal Merchant Offering(s), following the initial Promotional Value Expiration Date specified in the Groupon Merchant Agreement the: (i) Promotional Value Expiration Date will reset to be the end of the immediately following season specified by Merchant; and (ii) Maximum Number of Vouchers will reset for the immediately following season. Throughout the Term (as defined herein), the Promotional Value Expiration Date and the Maximum Number of Vouchers for the seasonal Merchant Offering(s) will continue to reset after each season.
  - l. Merchant is responsible for all customer service in connection with the Merchant Offering and for supplying all goods and services stated in the Merchant Offering. Merchant is also responsible for any customer loyalty programs associated with the Merchant Offering.
  - m. If applicable, Merchant will hold the Merchant Offering for pick-up by each purchaser at the Redemption Site. The "Redemption Site" is the complete and accurate address provided by Merchant to Groupon where purchasers are able to redeem the Voucher to pick-up the Merchant Offering. Merchant also agrees to provide Groupon with the hours and dates of operation, complete with any exceptions, and a valid phone number for the Redemption Site. If any of the information related to a Redemption Site changes, Merchant agrees to notify Groupon immediately of such change.
  - n. Merchant agrees to accept returns of the Merchant Offering in compliance with applicable laws and the Fine Print, but in any event: (i) will accept returns of a defective Merchant Offering or nonconforming items in or a part of any Merchant Offering at all times and pay (or reimburse a purchaser for) any and all costs associated with the return of such Merchant Offering; and (ii) will not impose a more restrictive return policy on purchasers than Merchant's regular return policy as applied to Merchant's purchaser in the ordinary course of Merchant's business.

## 2. Payment

- a. Amounts retained by Groupon from the proceeds of the Merchant Offering are compensation to Groupon for marketing, promoting, and advertising the Merchant Offering and distributing the Vouchers on behalf of Merchant. Merchant shall retain the Remittance Amount in trust for the benefit of purchasers holding unredeemed Vouchers until Merchant delivers the Merchant Offering, refunds the holder of any unredeemed Voucher or escheats the amount required to a taxing authority, if applicable. The funds held in trust shall be returned to Groupon upon demand for refunds to purchasers. Groupon is authorized to review Merchant's credit history, which may include a soft credit check.
- b. Groupon is authorized to initiate ACH credit transaction entries to Merchant's depository account at the depository financial institution named in this Agreement or as otherwise provided to Groupon by Merchant in writing ("**Merchant Bank Account**"). Only in the event of an error, Groupon is authorized to initiate debit entry adjustments to the Merchant Bank Account to correct any error. Merchant hereby acknowledges that Groupon's origination of all ACH transactions to Merchant Bank Account must comply with provisions of U.S. law. ACH payments take up to five (5) business days to become available in the Merchant Bank Account after processing.
- c. Merchant will not attempt to bill or collect reimbursement from any third-party payor, including but not limited to any insurer, health insurance plan, Medicare, Medicaid, or any other federal, state, provincial, territorial or local governmental program or entity ("Third-Party Payor"), for any of Merchant's services. Merchant will accept the amounts received from Groupon as payment in full for all services provided by Merchant delivered pursuant to the Merchant Offering. Merchant is solely responsible for complying with any contractual requirements imposed by its contracts with Third-Party Payors, including but not limited to requirements related to offering discounted services.
- d. Tax Levy. In the event Groupon receives written notice of a validly issued state or federal tax levy relating to past-due taxes owed by Merchant, Groupon may, in accordance with applicable law, deduct any such amounts from payments due to Merchant.
- e. Taxes Generally. It is Merchant's responsibility to determine what, if any, taxes apply to the payments Merchant makes or receives, and it is Merchant's responsibility to collect, report and remit the correct tax to the appropriate tax authority. Groupon is not

responsible for determining whether taxes apply to Merchant's transaction with either purchasers or Groupon, or for collecting, reporting or remitting any taxes arising from any transaction with or by Merchant and purchaser. Merchant may be asked to provide Groupon with a valid Tax Identification Number for tax reporting purposes. An IRS Form 1099 may be issued in Merchant's name for the value of payments made. Notwithstanding anything else in this Agreement, Merchant shall be, and will remain, registered for sales, use and other similar tax collection purposes in all states and localities in which Merchant is required to be so registered in connection with the Merchant Offering and pursuant to the terms and redemption of the Voucher, and shall be responsible for paying any and all sales, use or any other taxes related to the Merchant Offering or the goods and services.

- f. **Transaction Taxes.** Merchant bears sole financial responsibility for any and all sales, use, excise, general, GST, or other similar taxes, including any interest penalties and additions related thereto, imposed on or arising from the transactions contemplated by this Agreement between Groupon and Merchant ("Transaction Taxes"), if any. Groupon shall apply the applicable Transaction Tax to the amounts it retains and/or other fees remitted to Groupon pursuant this Agreement. Transaction Taxes are calculated using the Merchant's billing address and will be included on invoices. Tax rates are subject to change. If applied, Transaction Taxes will be calculated at the time of each payment using the rates in effect under current law.
- g. **Withholding Taxes.** Groupon may be required by tax authorities to withhold taxes on behalf of Merchant. Groupon reserves the right to deduct any such taxes from amounts due to Merchant and to remit them to the appropriate tax authority. Groupon may also be required to report the withholding tax payments to the tax authorities. Groupon shall provide evidence of payment of withholding taxes to Merchant no later than 60 days after payment of the withholding taxes.
- h. Notwithstanding anything to the contrary, Groupon will have no obligation to advance amounts that have been paid to Groupon by a purchaser until Merchant has complied with Merchant's obligations under this Agreement. If Groupon reasonably believes that Merchant has breached any provision of this Agreement, Groupon may offset, delay, withhold, or suspend future payments to Merchant, in Groupon's sole discretion. In addition, if Merchant is unwilling to, or in Groupon's reasonable discretion appears unable to, perform its obligations under this Agreement, Groupon is authorized to offset, delay, withhold, or suspend future payments to Merchant in addition to such other remedies as may be available under this Agreement or at law, to secure payment from Merchant for any refunds and/or other amounts payable by Merchant under this Agreement.

### 3. Customer Data Restrictions

- a. **"Customer Data"** means all identifiable information about purchasers generated or collected by Groupon or Merchant, including, but not limited to, purchasers' name, shipping addresses, email addresses, phone numbers, purchaser preferences and tendencies, and financial transaction data.
- b. Merchant shall use Customer Data only to fulfill its redemption obligations in connection with the Merchant Offering as authorized by this Agreement. Merchant expressly agrees that any Customer Data shall be used only for this purpose (including, but not limited to, the redemption of Vouchers and provision of goods and services to purchasers), and not to enhance a file or list owned by Merchant, or any third party. Merchant represents, warrants and covenants that it will not resell, broker or otherwise disclose any Customer Data to any third party, in whole or in part, for any purpose, unless required by applicable law. If Merchant engages any third party to facilitate its redemption obligations hereunder, Merchant shall ensure that such third party implements and complies with reasonable security measures in handling any Customer Data. If any Customer Data is collected directly by Merchant or a third party engaged by Merchant to facilitate its redemption obligations hereunder, Merchant shall ensure that it or such third party adopts, posts and processes the Customer Data in conformity with its posted privacy policy and all applicable laws.
- c. As long as Merchant uses Customer Data in compliance with applicable law and Merchant's posted privacy policy, restrictions stated in this Agreement on Merchant's use of Customer Data do not apply to: (i) data from any purchaser who is already a customer of Merchant before the Effective Date, if such data was provided to Merchant by such purchaser independent of this Agreement or any transaction hereunder; or (ii) data supplied by a purchaser directly to Merchant who becomes a customer of Merchant in connection with such purchaser explicitly opting in to receive communications from Merchant.
- d. Merchant shall immediately notify Groupon if Merchant becomes aware of or suspects any unauthorized access to or use of Customer Data or any confidential information of Groupon, and shall cooperate with Groupon in the investigation of such breach and the mitigation of any damages. Merchant will bear all associated expenses incurred by Groupon to comply with applicable laws (including, but not limited to, any data breach laws) or arising from any unauthorized access or acquisition of Customer Data while such data is in Merchant's reasonable possession or control. Upon termination or expiration of this Agreement, Merchant shall, as directed by Groupon, destroy or return to Groupon all the Customer Data in Merchant's or any agent of Merchant's possession.

### 4. Mobile Redemption Devices

If Groupon leases or lends Merchant a tablet or mobile redemption device ("**Device**"), Merchant agrees to be bound by the terms of use, end user license agreements, or other provisions governing its use, unless otherwise authorized by Groupon in writing. Unless otherwise stated in writing, Merchant shall only use the Device for transmitting redemption data to Groupon and processing purchaser payments and shall return a loaned Device fourteen (14) days after the Promotional Value Expiration Date, unless a new feature is planned or if requested by Groupon for any reason. Groupon reserves the right to bill Merchant for the cost of the Device, or offset any current or future payments due to Merchant under any contract between the parties if the device is not returned, or for costs related to damage or other misuse.

### 5. Promotional Programs

In an effort to incentivize Voucher sales, Merchant authorizes Groupon, at any time and in Groupon's sole discretion, to increase or decrease the Amount Paid for the Merchant Offering (any such effort, "**Promotional Program(s)**"). For each Voucher sold as part of a Promotional Program, the Net Remittance Amount may be adjusted in an amount equal to the percentage increase or decrease in the Amount Paid ("**Promotional Adjustment**"), provided that, any decrease of the Net Remittance Amount will not exceed: (i) twenty percent (20%) of the Net

Remittance Amount, or (ii) if applicable, the maximum Promotional Adjustment specified in the "Payment Terms" section of the Groupon Merchant Agreement. Promotional Programs include the following:

- a. Promotional Codes - A "**Promotional Code**" is a code that purchasers may use, in Groupon's sole discretion, to receive a discount on the Amount Paid for a Merchant Offering.
- b. Price Optimization - "**Price Optimization**" is any change (excluding Promotional Codes) to the Amount Paid for a Merchant Offering.

## 6. Term and Termination

This Agreement will continue in effect until terminated by either party in accordance with this Section ("**Term**"). Groupon is authorized to terminate this Agreement, at any time for any reason, upon written notice to Merchant. Merchant is authorized to terminate this Agreement upon seven (7) business days prior written notice to Groupon. Termination of this Agreement will not in any way affect Merchant's obligation to redeem any Voucher according to the terms of this Agreement, including the obligation to honor the Voucher for the Amount Paid after the Promotional Value Expiration Date. Provisions in this Agreement that are intended to survive termination will continue in full force and effect after the Term.

## 7. Compliance with Gift Card, Gift Certificate and Abandoned Property Laws

Merchant agrees to comply with the Voucher terms and conditions as stated on the Website, including but not limited to the "**Terms of Use**" of the Website, and to ensure that the Vouchers comply with all laws that govern vouchers, gift cards, coupons, and gift certificates, including but not limited to the United States Credit CARD Act of 2009 (if applicable) and any laws governing the imposition of expiration dates, service charges or dormancy fees and all Fine Print related to the Merchant Offering stated on the Voucher. Merchant is solely responsible for compliance with any applicable escheat or abandoned or unclaimed property laws. Upon written request from Merchant, but only when required, Groupon will provide Merchant with information in Groupon's possession that the Merchant needs to comply with its obligations under this Agreement. Merchant agrees that, regardless of the payment terms, Merchant, and not Groupon, maintains any obligation for unredeemed Vouchers under applicable escheat or abandoned or unclaimed property laws.

## 8. Marketing

Groupon and its business partners may communicate with Merchant with regard to products, promotions, and other services that may be of interest to Merchant. This may include email or other communications. Groupon may also solicit Merchant's opinion for market research purposes.

## 9. Intellectual Property Rights

- a. Merchant grants to Groupon a non-exclusive, worldwide, royalty free, paid-up, perpetual, irrevocable, transferable and sub-licensable license and right to use, modify, reproduce, sublicense, publicly display, distribute, broadcast, transmit, stream, publish and publicly perform: (a) Merchant's name, logos, trademarks, service marks, domain names, and any audiovisual content, video recordings, audio recordings, photographs, graphics, artwork, text and any other content provided, specified, recommended, directed, authorized or approved to use by Merchant (collectively, "**Merchant IP**"); and (b) any third party's name, logos, trademarks, service marks, domain names, audiovisual recordings, video recordings, audio recordings, photographs, graphics, artwork, text and any other content provided, specified, recommended, directed, authorized or approved for use by Merchant (collectively, "**Third Party IP**"), in each case in connection with the promotion, sale/resale (as may be applicable) or distribution of the Merchant Offering in all media or formats now known or hereinafter developed ("**License**"). Any use of the Merchant IP or Third Party IP as contemplated in this Agreement is within Groupon's sole discretion.
- b. Merchant acknowledges and agrees that, as between the parties, Groupon owns all interest in and to the Website, Customer Data, Groupon trade names, logos, trademarks, service marks, domain names, social media identifiers, all data collected through or from the Website, all audiovisual content, video recordings, audio recordings, photographs, graphics, artwork, text or any other content created by Groupon or at Groupon's direction, or assigned to Groupon, and any materials, software, technology or tools used or provided by Groupon to promote, sell/resell (as may be applicable) or distribute the Merchant Offering and conduct its business in connection therewith (collectively "**Groupon IP**"). Merchant shall not use, sell, rent, lease, sublicense, distribute, broadcast, transmit, stream, place shift, transfer, copy, reproduce, download, time shift, display, perform, modify or timeshare the Groupon IP or any portion thereof, or use such Groupon IP as a component of or a base for products or services prepared for commercial use, sale, sublicense, lease, access or distribution, except that Groupon grants Merchant a limited, non-exclusive, revocable, non-transferable, non-sub licensable license during the Term to use one copy of Groupon's mobile merchant software application on a single mobile computer, tablet computer, or other device, solely for the purposes permitted by that software, and to make one copy of the software for back-up purposes. Merchant shall keep the Groupon IP confidential, and shall not prepare any derivative work based on the Groupon IP or translate, reverse engineer, decompile or disassemble the Groupon IP. Merchant shall not take any action to challenge or object to the validity of Groupon's rights in the Groupon IP or Groupon's ownership or registration thereof. Except as specifically provided in this Agreement, Merchant and any third party assisting Merchant with its obligations in this Agreement, are not authorized to use Groupon IP in any medium without prior written approval from an authorized representative of Groupon. Merchant shall not include any trade name, trademark, service mark, domain name, social media identifier, of Groupon or its affiliates, or any variant or misspelling thereof, in any trademark, domain name, email address, social network identifier, metadata or search engine keyword. Merchant shall not use or display any Groupon IP in a manner that could reasonably imply an endorsement, relationship, affiliation with, or sponsorship between Merchant or a third party and Groupon. All rights to the Groupon IP not expressly granted in this Agreement are reserved by Groupon.
- c. If Merchant provides Groupon or any of its affiliates with feedback, suggestions, reviews, modifications, data, images, text, or other information or content about a Groupon product or service or otherwise in connection with this Agreement, any Groupon IP, or Merchant's participation in the Merchant Offering or Voucher, (collectively, "**Feedback**"), Merchant irrevocably assigns to

Groupon all right, title, and interest in and to Feedback. In the event your assignment to Groupon is invalid for any reason, you hereby irrevocably grant Groupon and its affiliates a perpetual, paid-up, royalty-free, nonexclusive, worldwide, irrevocable, freely transferable right and license to (i) use, reproduce, perform, display, and distribute Feedback; (ii) adapt, modify, re-format, and create derivative works of Feedback for any purpose and sublicense the foregoing rights to any other person or entity. Merchant warrants that: (A) Feedback is Merchant's original work, or Merchant obtained Feedback in a lawful manner; and (B) Groupon and its sublicensees' exercise of rights under the license above will not violate any person's or entity's rights, including any copyright rights. Merchant agrees to provide Groupon such assistance as Groupon might require to document, perfect, or maintain Groupon's rights in and to Feedback.

#### 10. Representations and Warranties

Merchant represents and warrants that: (a) Merchant has the right, power and authority to enter into this Agreement; (b) Merchant, if required by applicable law, is registered for sales and use tax collection purposes in all jurisdictions where Merchant's goods and services will be provided; (c) the Voucher, upon being delivered by Groupon, will be available immediately for redemption and Merchant will have sufficient goods and/or services available for redemption through the Promotional Value Expiration Date (to a number of goods and/or services sufficient to fulfill its redemption obligations in connection with the applicable Maximum Number of Vouchers); (d) the terms and conditions of the Voucher, including any discounts or goods and services offered thereunder do not and will not violate any, local, state, provincial, territorial or federal law, statute, rule, regulation, or order, including but not limited to, any law or regulation governing the use, sale, and distribution of alcohol and any laws governing vouchers, gift cards, coupons, and gift certificates; (e) the Merchant's redemption of the Voucher will result in the bona fide provision of goods and/or services by Merchant to the purchaser; (f) Merchant owns all interest in and to the Merchant IP and has licensing rights in (with the right to sublicense to Groupon) the Third Party IP, and has the right to grant the License stated in this Agreement; (g) the Merchant IP and the Third Party IP, the Merchant Offering, Groupon's use and promotion thereof, and the results of such Merchant Offerings, will not infringe, dilute, misappropriate, or otherwise violate, anywhere in the world, any patent, copyright, logo, trademark, service mark, trade name, rights in designs, or other intellectual property right or right of privacy or publicity of any third party or any applicable law, and does not and will not result from the misappropriation of any trade secret or the breach of any confidentiality obligations to any person or entity; (h) the Merchant IP and Third Party IP does not include any material that is unlawful, threatening, abusive, defamatory, vulgar, obscene, profane or otherwise objectionable, or that encourages conduct that constitutes a criminal offense, gives rise to civil liability or otherwise violates any law; (i) the Vouchers and any advertising or promotion of Merchant's goods and services relating thereto will not constitute false, deceptive or unfair advertising or disparagement under any applicable law; (j) Merchant and its employees, contractors and agents have had the proper education and training and hold all required and up-to-date regulatory authorization, licenses and certifications relating to any Merchant Offering to provide the goods or services described in this Agreement; (k) Merchant's business information and direct deposit details as provided in this Agreement, indicating where payments should be forwarded are accurate and Merchant is the authorized entity to receive the funds forwarded by Groupon; (l) Merchant is not authorized to resell, broker or otherwise disclose any Customer Data (as defined in this Agreement) to any third party, in whole or in part, for any purpose, and Merchant is not authorized to copy or otherwise reproduce any Customer Data other than for the purpose of redeeming or verifying the validity of Vouchers in connection with this Agreement and (m) the Merchant Offering is: (i) free from defects in workmanship, materials and design, (ii) merchantable and suitable for the purposes, if any, stated in the Agreement, and (iii) genuine, bona fide products, as described herein and does not violate the rights of any third party.

#### 11. Indemnification

To the extent allowed under applicable law, Merchant agrees to defend, indemnify and hold Groupon, its affiliated and related entities, and any of its respective officers, directors, agents and employees, harmless from and against any claims, lawsuits, investigations, penalties, damages, losses or expenses (including but not limited to reasonable attorneys' fees and costs) arising out of or relating to any of the following: (a) any breach or alleged breach by Merchant of this Agreement, or the representations and warranties made in this Agreement; (b) any claim for state sales, use, or similar tax obligations of Merchant arising from the sale and redemption of a Voucher; (c) any claim by any local, state, provincial, territorial or federal governmental entity for unredeemed Vouchers or unredeemed cash values of Vouchers or any other amounts under any applicable abandoned or unclaimed property or escheat law, including but not limited to any claims for penalties and interest; (d) any claim arising out of a violation of any law or regulation by Merchant or governing Merchant's goods and/or services; (e) any claim arising out of Merchant's violation of law or regulation governing the use, sale, and distribution of alcohol; (f) any claim by a purchaser or anyone else arising out of or relating to the goods and services provided by Merchant and/or pick up of the goods and services at the Redemption Site, including but not limited to, any claims for false advertising, product defects, personal injury, death, or property damages; (g) any claim by a purchaser for the Amount Paid; (h) any claim arising out of Merchant's misuse of Customer Data, or any violation of an applicable data privacy or security law; and (i) any claim arising out of Merchant's negligence, fraud or willful misconduct. Groupon maintains the right to control its own defense and to choose and appoint its own defense counsel, regardless of the presence or absence of a conflict of interest between Groupon and Merchant. Merchant's duty to defend and indemnify Groupon includes the duty to pay Groupon's reasonable attorneys' fees and costs, including any expert fees.

#### 12. Confidentiality

The terms for the Merchant Offering described in this Agreement are confidential, and Merchant agrees not to disclose the terms described in this Agreement to any party (other than to its employees, parent companies, shareholders, lawyers and accountants on a strict need-to-know basis or as required by applicable public records and other law, if Merchant has taken the necessary precautions of the kind generally taken with confidential information to preserve the confidentiality of the information made available to such parties). In the event of a breach, Groupon is entitled to injunctive relief and a decree for specific performance, and any other relief allowed under applicable law (including monetary damages if appropriate).

#### 13. Limitation of Liability

EXCEPT FOR MERCHANT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT IS EITHER PARTY LIABLE OR OBLIGATED TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST BUSINESS, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE. Groupon's SOLE AND COMPLETE

LIABILITY TO MERCHANT FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY ERRORS, OMISSIONS OR MISPLACEMENTS OF ANY VOUCHER IS LIMITED TO THE AMOUNT OF FEES RETAINED BY Groupon HEREUNDER FOR THE PRECEDING SIX (6) MONTHS AFTER FINAL CALCULATION AND RECONCILIATION OF ALL REFUNDS. THIS LIMITATION OF LIABILITY APPLIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY. IN ADDITION, ANY CLAIM BY OR ON BEHALF OF A MERCHANT IN CONNECTION WITH ANY PAYMENT MADE BY Groupon, INCLUDING, BUT NOT LIMITED TO, CLAIMS ALLEGING THAT A MERCHANT WAS UNDERPAID, MUST BE MADE IN WRITING TO Groupon WITHIN NINETY (90) DAYS FROM THE DATE Groupon REMITS THE PAYMENT AT ISSUE. ALL CLAIMS NOT MADE IN ACCORDANCE WITH THE FOREGOING SHALL BE DEEMED WAIVED, RELEASED AND DISCHARGED BY MERCHANT.

#### 14. Dispute Resolution

All disputes arising out of, or relating in any way to this Agreement, shall be resolved pursuant to this Section 14 Dispute Resolution.

##### 14. a. Binding Arbitration

EXCEPT AS SPECIFICALLY STATED HEREIN, ANY DISPUTE OR CLAIM BETWEEN MERCHANT AND Groupon ARISING OUT OF, OR RELATING IN ANY WAY TO, THIS AGREEMENT (“DISPUTES”) SHALL BE RESOLVED EXCLUSIVELY BY FINAL, BINDING ARBITRATION. BY VIRTUE OF THE AGREEMENT IN THIS SECTION 14 TO ARBITRATE, MERCHANT AND Groupon ARE EACH GIVING UP THE RIGHT TO GO TO COURT AND HAVE A DISPUTE HEARD BY A JUDGE OR JURY (EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 14). The provisions of this Section 14 shall constitute Merchant’s and Groupon’s written agreement to arbitrate Disputes under the Federal Arbitration Act. The arbitration will be administered by the American Arbitration Association (“AAA”) and conducted before a single arbitrator pursuant to its applicable rules, including those applicable to Commercial Disputes, available at <http://www.adr.org> or by calling 800-778-7879. The arbitrator will apply and be bound by this Agreement, apply applicable law and the facts, and issue a reasoned award.

To begin an arbitration proceeding, Merchant or Groupon must comply with the limitations provision set forth in Section 13 and submit the Dispute by making a demand for arbitration as detailed at <http://www.adr.org>. If Merchant demands arbitration, it shall simultaneously send a copy of the completed demand to the following address: C T Corporation System, 208 S. LaSalle Street, Suite 814, Chicago, IL 60604. If Groupon demands arbitration, it shall simultaneously send a copy of the completed demand to the Merchant’s address of record. Payment of all filing, administration and arbitrator fees will be governed by the AAA’s rules. Groupon will reimburse those fees for Disputes totaling less than \$10,000 if Merchant is the prevailing party in such arbitration. Groupon will not seek attorneys’ fees and costs in arbitration unless the arbitrator determines that a Merchant Dispute is frivolous. The arbitration will be conducted based upon written submissions unless Merchant requests and/or the arbitrator determines that a telephone or in-person hearing is necessary. If the arbitrator grants the request or determines an in-person hearing is necessary, the hearing will proceed in Chicago, Illinois, unless the arbitrator determines or we agree that the matter should proceed in the county of Merchant’s principal place of business.

##### b. Class Action Waiver

WE EACH AGREE THAT WE SHALL BRING ANY DISPUTE AGAINST THE OTHER IN OUR RESPECTIVE INDIVIDUAL CAPACITIES AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE PROCEEDING OR AS AN ASSOCIATION. IN ADDITION, WE EACH AGREE THAT DISPUTES SHALL BE ARBITRATED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. THE ARBITRATOR DOES NOT HAVE THE POWER TO VARY THESE PROVISIONS.

##### c. Choice of Law/No Jury Trial

If for any reason a Dispute proceeds in court: (i) Merchant and Groupon agree that any such Dispute may only be instituted in a state or federal court in Cook County, Illinois; (ii) Merchant and Groupon irrevocably consent and submit to the exclusive personal jurisdiction and venue of such courts for resolution of such Disputes; (iii) Merchant and Groupon agree that the Federal Arbitration Act, the AAA rules, applicable federal law and the laws of the State of Illinois, without regard to principles of conflicts of law, will govern this Agreement and any Disputes; and (iv) MERCHANT AND Groupon AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY.

##### d. Injunctive Relief/Attorneys’ Fees

Notwithstanding anything to the contrary in this Agreement, either party may bring suit in court seeking an injunction or other equitable relief arising out of or relating to claims that the other party’s conduct may cause the other irreparable injury.

In the event Groupon is the prevailing party in any Dispute, subject to any exceptions in this Section 14, Merchant shall pay to Groupon all reasonable attorneys’ fees and costs incurred by Groupon in connection with any Dispute.

#### 15. Other

- a. The parties are independent contractors. Nothing in this Agreement is to be construed to create a joint venture, partnership, franchise, or an agency relationship between the parties. Neither party has the authority, without the other party’s prior written approval, to bind or commit the other in any way.
- b. This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter.
- c. Merchant is not authorized to transfer or assign its rights or obligations under this Agreement, whether by operation of law or otherwise, without Groupon’s prior written consent. Any waiver must be in writing and signed by an authorized signatory of Groupon. Groupon is authorized to transfer or assign this Agreement to a present or future affiliate or pursuant to a merger, consolidation, reorganization or sale of all or substantially all of the assets or business, or by operation of law, without notice to Merchant.

- d. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement are not affected.
- e. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS NOR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. Groupon DOES NOT WARRANT OR GUARANTEE THAT THE SERVICES OFFERED ON OR THROUGH THE WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE VOUCHERS ARE ERROR-FREE, OR THAT ANY MERCHANT OFFERING WILL RESULT IN ANY REVENUE OR PROFIT FOR MERCHANT.

Want to talk to a Groupon Specialist? **Call (888) 582-4354**

We're here Monday-Friday, 8am-7pm CDT

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