

## GROUPON GOODS MARKETPLACE MERCHANT AGREEMENT

This Groupon Goods Marketplace Merchant Agreement (this “**Agreement**”) is an agreement between you (as defined below) and Groupon Goods, Inc. (“**Groupon**,” “**we**,” “**our**,” or “**us**”) and contains the terms and conditions that govern your access to and use of the Marketplace Service (as defined below). You and Groupon may each be referred to individually as a “**Party**”, and together as the “**Parties**”.

By checking the box and clicking “Accept”, you are indicating that you agree to all of the terms and conditions of this Agreement. You additionally represent that you lawfully are able to enter into this Agreement on your own behalf or if you are entering into this Agreement on behalf of a legal entity, that you have the authority to bind such entity and that this Agreement is fully binding upon the entity. Groupon, subject to the provisions of this paragraph, may amend the Agreement in its sole discretion and at any time. The most recent version of this Agreement (as may be amended by Groupon from time to time) will be available: (i) in the Groupon Goods Gateway portal (as further described below), and/or (ii) as part of a Groupon Goods Marketplace merchant newsletter and/or any similar email communication sent by Groupon to Groupon Goods Marketplace merchants (including you). You agree that either or both of these notification methods constitute adequate notice to inform you of any amendments to this Agreement, and you further agree to be bound by any such amendments to this Agreement upon such notification.

**1. Defined Terms.** As used in this Agreement, the following terms have the following meanings:

**1.1. “Affiliate”** means any Person that, directly or indirectly, controls, is controlled by, or is under common control with, a specified Person.

**1.2. “Applicable Law”** means any federal, state, and local laws, rules, regulations, and orders applicable to a Party.

**1.3. “Business Days”** means all days other than Saturday, Sunday, and New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

**1.4. “Chargebacks”** are Your Transactions for which Groupon does not receive payment from the credit card company or has such payment reversed by the credit card company due to a dispute of the payment by a Purchaser.

**1.5. “Customer Data”** means, collectively, Order Information and any other data or information acquired by you or your Affiliates from Groupon, its Affiliates, or otherwise as a result of this Agreement, the transactions contemplated by this Agreement, or the parties' performance under this Agreement.

**1.6. “Expected Ship Date”** means either: (a) one (1) Business Day after a Product is purchased, or (b) the due on time date listed in CommerceInterface at the time of purchase (if, and as, Groupon may, in its sole discretion, offer such functionality).

**1.7. “Expected Tracking Movement Date”** means the date when the Shipment Tracking Information (as defined below) is expected to show movement of the applicable shipment, which is equal to one (1) Business Day after tracking has been uploaded.

**1.8. “Expected Delivery Date”** means the date by which an order for your Products should be delivered to the Purchaser (or other designated recipient) and is equal to either: (i) six (6) calendar days after a Product is purchased, or (ii) the number of days required to deliver such Product as set by you with respect to each of your Products and stated at the time of purchase (if, and as, Groupon may, in its sole discretion, offer such functionality).

**1.9. “Groupon Channels”** means the Groupon Website and/or other platforms or distribution channels owned, controlled or operated by Groupon, Groupon’s Affiliates or third party business partners, including emails, mobile applications, or other types of electronic offerings.

**1.10. “Gateway”** means the Groupon Goods Gateway online portal and tools made available by Groupon to you for your use in managing your inventory, Your Transactions, and your presence on the Marketplace Service.

**1.11. “Groupon Website”** means Groupon’s online platform, located at [www.groupon.com](http://www.groupon.com), and/or any other websites owned, controlled, or operated by Groupon, and their mobile applications.

**1.12. “Net Refunds”** means the amount Groupon had originally paid you for the applicable Your Transaction being refunded to a Purchaser (i.e. Sales Proceeds less Fees).

**1.13. “Offer Value”** means the actual, regular value of the Product.

**1.14. "Order Information"** means, with respect to any of your Products ordered through the Groupon Marketplace Service, the Purchaser contact information and shipping information that we provide or make available to you.

**1.15. "Person"** means an individual or a partnership, corporation, limited liability company, trust, joint venture, association, unincorporated organization, government agency or political subdivision thereof, or other entity.

**1.16. "Product"** means any product or service (including warranties, extended service plans, and any other related offerings) that you offer through the Marketplace Service.

**1.17. "Purchaser"** means a Person who has purchased a Product and fully paid the Sales Proceeds.

**1.18. "Sales Proceeds"** means the gross proceeds from any of Your Transactions, including all shipping and handling, gift-wrap, and other charges (if offered by Groupon), and including taxes and customs duties (to the extent those are selected by you to be collected by Groupon in accordance with this Agreement).

**1.19. "Shipment Tracking Information"** means an accurate, valid, and verifiable, tracking number that can be used to determine where the applicable shipment for any of Your Transactions (as defined below) is in transit and the estimated delivery date.

**1.20. "Third Party Merchant"** means any third-party service provider that you engage to assist you with fulfilling your obligations under this Agreement.

**1.21. "you" and "your"** means the applicant (if registering for or using the Marketplace Service as an individual), or the business employing the applicant (if registering for or using the Marketplace Service as a business) and any of its Affiliates.

**1.22. "Your Transaction"** means any sale of your Product(s) through the Marketplace Service.

## **2. Groupon Goods Marketplace Service; Marketplace Policies; Online Terms.**

**2.1.** Groupon, under the brand "Groupon Goods Marketplace," is offering a service that allows you, as a merchant, to offer certain products for sale to consumers through certain Groupon Channels (the "**Marketplace Service**"). To use the Marketplace Service, you must complete the registration process, which will require you to provide certain information, such as your legal name, tax identification number, address, phone number, e-mail address, and account information for your bank account ("**Your Bank Account**"). Groupon shall determine, in its sole discretion, all aspects of the Marketplace Service, including whether to cease providing any or all aspects of it and its content, appearance, and functionality. In addition, Groupon may at any time, in its sole discretion, reject, remove or suspend any or all of your Products offered for sale through the Marketplace Service.

**2.2.** Use of the Marketplace Service is subject to all applicable Groupon Goods Marketplace requirements and policies, as such may be updated or modified from time to time, that can be found on the Groupon Goods Marketplace Merchant Success Portal located at <https://marketplace.groupon.com/support/home> (collectively, "**Marketplace Policies**"). Marketplace Policies include requirements regarding return policies and shipping and handling charges. If at any time you are not in compliance with any of the Marketplace Policies, Groupon may, in addition to all other rights and remedies available under this Agreement or Applicable Law, impose limitations or revoke privileges that may have been granted to you with respect to your Account, Gateway, or the Marketplace Service in general, including your eligibility to sell certain Products.

**2.3.** All Products shall be sold in accordance with, and subject to, any "Terms of Sale" posted and available on the applicable Groupon Channel, as a section of the "Terms of Use" or otherwise, which may be amended in Groupon's sole discretion from time to time (the "**Online Terms**"). It is your responsibility to routinely monitor and review the Online Terms to ensure your compliance with this Agreement, including the Online Terms.

## **3. Product Offerings.**

**3.1. Feature Pages and Store Page.** As part of the Marketplace Service, you will be able to create listings for each product you offer for sale through the Marketplace Service which Groupon may, in its sole discretion, turn into a webpage presented by Groupon in various potential formats offering your Product(s) (each a "**Feature Page**"). In addition, if made available, in Groupon's sole discretion, you or Groupon may also create a landing page that contains all Products you currently offer for sale through the Marketplace Service ("**Store Page**"). Groupon reserves the continuing right to: (a) reject, revise, suppress or discontinue any Feature Page or Store Page, including any Product listings thereon, at any time and for any reason in Groupon's sole discretion; (b) to terminate any Product listings and

to remove all references to the Product listings, Feature Page, or Store Page from the Groupon Channels; and (c) redirect or delete any URL used in connection with the Product listings, Feature Page, or Store Page.

**3.2. Product Information.** There is certain information about your Products that we require you to provide as part of the listing process. If a particular Product is already offered for sale through Groupon, some of the product information may be automatically populated for you ("**Existing Product Information**"). If Existing Product Information is automatically populated for you, you will still be able to change it at any time and by listing a product using Existing Product Information, you agree that such information is accurate and for purposes of this Agreement, such information shall be treated as if it is content provided by you. You are responsible for promptly updating all Product information as necessary to ensure your Product listings at all times remain accurate and complete. If you discover any mistake, inconsistency, typographical error, etc. in the Existing Product Information, in addition to correcting your Product listing, please advise Groupon of the issue through Gateway, or as otherwise provided (or allowed) through the Marketplace Service.

**3.3. Prohibitions on Sale.** You shall not provide any information for, or otherwise seek to offer for sale through the Marketplace Service, any and all illegal or counterfeit products and at all times must comply with Marketplace Policies regarding restricted and prohibited products. Your Products, including packaging, and your offer and subsequent sale of any of the same through the Marketplace Service shall not violate Applicable Law including all minimum age, marking, and labeling requirements, and shall not contain any pornographic, offensive, hate-related, violent, or otherwise objectionable content, or content that promotes discrimination based on race, sex, religion, national origin, physical or mental disability, sexual orientation, gender identity, gender expression, marital status, veteran status, medical condition (including, without limitation, condition of pregnancy), genetic information, age, or any other legally-protected characteristic. You shall not provide or include any website links for use, or request that any website link be used, on any Feature Page or a Store Page. Furthermore, Groupon may at any time, in its sole discretion, prohibit you from listing any Products.

#### **4. Orders.**

**4.1. Shipping and Handling Charges.** For every Product, you will determine shipping and handling charges that comply with the Marketplace Policies using Groupon's standard functionality and categorizations of products. You will be solely liable for all costs related to any duplicate or inaccurate shipments sent by you, including any such shipments based upon your retransmission of files related to your orders through Gateway.

**4.2. Order Processing.** We will process all sales of your Products made through the Marketplace Service and collect the applicable Sales Proceeds on your behalf. After a sale, we will provide you with the applicable Order Information so you can fulfill the order. You agree that, if requested by Groupon, you will use all commercially reasonable efforts to stop or cancel pending orders of your Products. Neither Purchasers nor Groupon shall be charged, or otherwise responsible for payment, for stopped or canceled orders, regardless of whether you shipped such order to the Purchaser after the date of stoppage or cancellation.

#### **5. Operations and Customer Service.**

**5.1. Sale and Fulfillment.** You understand that, except for payment processing, you, and not Groupon, are responsible for, and bear all risks of loss associated with, all aspects of the sale of your Products and fulfillment of Your Transactions, including: sourcing your Products; retrieving Order Information; packaging your Products for shipment and delivery; meeting or exceeding Expected Ship Dates, Expected Tracking Movement Dates, and Expected Delivery Dates; providing Shipment Tracking Information to Groupon; complying with all information provided to the Purchaser regarding the Product at the time of sale; and handling of Product returns. For the sake of clarity, at no point in time shall the title to, or risk of loss for, the Product transfer to Groupon.

**5.2. Delivery Tracking.** For each of Your Transactions you ship to a Purchaser, you must ship the Product(s) by the Expected Ship Date, achieve the Expected Tracking Movement Dates, and deliver the Product by the Expected Delivery Dates. You must provide to Groupon the shipping information for each of the Products, including the Shipment Tracking Information and a return address. Groupon may, in its sole discretion, choose to display the Shipment Tracking Information to Purchasers. The Shipment Tracking Information for each of Your Transactions must be uploaded to Gateway within two (2) Business Days from the date of purchase, provided, however, that you may only send a shipment confirmation notice to a Purchaser after the applicable shipment has been delivered to the applicable carrier for shipment. If the applicable Shipment Tracking Information is not uploaded to Gateway within two (2) Business Days, Groupon may cancel Your Transaction on behalf of the Purchaser, and refund any amounts paid by such Purchaser. Such cancellations and refunds shall be in addition to, and not in place of, any other remedy Groupon or the affected Purchaser may have under this Agreement (or any other agreement between such parties) or Applicable Law, including, assessing Non-Compliance Fees (as defined below).

**5.3. Cancellations, Returns and Refunds.** For all of Your Transactions, you will accept and process cancellations, returns, refunds, and adjustments in accordance with this Agreement, the Marketplace Policies, the Online Terms, Applicable Law, the policies stated on the Feature Page published at the time of the applicable order, including the “Fine Print”, and Groupon’s requests or instructions. You will route all refund payments to Purchasers in connection with Your Transactions through Groupon. We will provide those payments to the Purchaser (which may be in the same payment form originally used to purchase your Product). We will either hold back all amounts we pay for such refunds from your next payment or invoice you for such amounts after we complete the refund. You will promptly pay any invoices for refunds and adjustments within thirty (30) days of the obligation arising.

**5.4.** If a Purchaser chooses to return a Product within the return policy, or as otherwise allowed or required under this Agreement, Marketplace Policies or Applicable Law, you shall be responsible for providing such Purchaser with a prepaid return label for such Product at your sole cost and expense within one (1) Business Day after receiving such request. The applicable refund for such return must be processed immediately following your receipt of the returned Product. Furthermore, you shall be responsible for all risk of loss and damage to Products being shipped for return.

**5.5. Delivery Errors and Nonconformities; Recalls.** You are solely responsible for correcting, via refund or replacement, any delivery error or non-conformity of your Products, including non-performance, non-delivery, mis-delivery, theft, mistakes in picking and/or packing your Product, or other mistake or act in connection with the fulfillment of Your Transactions. You are also solely responsible for any and all legal notifications, refunds, replacements, or similar obligations, for defects in your Product, including any public or private recalls thereof, and will notify us as soon as you have knowledge of any such defects and/or potential recalls. You will also make all reasonable efforts to work with any governmental agency to issue any notifications, refunds, replacements, or undertake any similar obligations, to the extent required by Applicable Law, and to notify customers of the same in a timely manner.

**5.6. Customer Service.** You are solely responsible for all customer service related to the Products and your performance, or non-performance, of any of your obligations related thereto or under this Agreement. You shall use all commercially reasonable efforts to respond to all customer complaints or inquiries submitted through the Marketplace Service within one (1) Business Day and fully resolve the same within seven (7) Business Days. Groupon must be able to contact you during normal business hours to discuss your customer service, Your Transactions, or any other matter related to the Marketplace Service or your Account (as defined below).

**5.7. Your Performance; Non-Compliance Fees.** You acknowledge and agree that any breach of your obligations under this Agreement or any Marketplace Policy may expose Groupon to losses, for which the potential damages are difficult to calculate. As a result, in the event you fail to fulfill any of your obligations under this Agreement and/or the Marketplace Policies for any reason, Groupon will either deduct from your payments or invoice you for the amounts specified at <https://marketplace.groupon.com/support/solutions/articles/5000858069> for the identified action (each a “**Non-Compliance Fee**”). Non-Compliance Fees will be based on Groupon’s audit and monitoring of your performance. You acknowledge and agree that any Non-Compliance Fee is intended as a liquidated damage and not as a penalty. The provisions of this section are in addition to any other rights or remedies Groupon may have under this Agreement or Applicable Law.

**5.8. Third-Party Services.** As a requirement for using Gateway, and/or the Marketplace Service generally, Groupon may require, or otherwise allow, you to access or use certain third-party services through, or otherwise in connection with, Gateway or the Marketplace Service. Regardless of any such requirements established, or permissions allowed, by Groupon, if you decide to access, enable, or use such services, your access to, and use of, such services shall be governed solely by the terms and conditions of such service as entered into directly between you and the provider of such service and you are solely responsible for your interactions with such services and/or the provider(s) thereof; provided, however, by enabling any such services to be used in connection with Gateway or the Marketplace Service, you acknowledge and agree that you expressly permit Groupon to use or disclose any of your information or data as necessary to facilitate your access to, or use of, such services.

Groupon does not endorse, nor is it responsible or liable for, or make any representations or warranties as to any aspect of such services, including the provider thereof, their content, or the manner in which they handle data (including your data or Customer Data) or any interaction between you and the provider of such services. Descriptions of such services are provided by the provider(s) of the respective service(s) and Groupon is not responsible for any claims associated with the description of such service(s) and/or the provider(s) thereof. You should make whatever investigation you deem necessary or appropriate before using any such service(s) and/or provider(s) to determine whether: (i) such service and/or provider is qualified to provide the advertised product or perform the advertised service; or (ii) the service and/or provider is of the care and quality required.

The provider of any such service is solely responsible for the care and quality of the products and services being provided. Groupon shall not be liable for any damage or loss caused, or alleged to be caused, by or in connection with your access or use of any such services, or your reliance, if any, on the privacy practices, data security processes, or other policies of such services.

You hereby release Groupon from any and all claims or liability related to or arising out of: any such service, regardless of whether such product or service is required, or otherwise allowed, by Groupon in order to use Gateway or the Marketplace Service; any action or inaction by such service, or the provider thereof, including any harm caused to you by action or inaction of such service, or the provider thereof; such service's and/or provider's failure to comply with Applicable Law and/or failure to abide by the terms established between you and such service and/or provider; any other product or service purchased or obtained by you from such service and/or provider; and any conduct, speech, service, product, or content, whether online or offline, of any third party, including the provider of any such service.

## 6. Product Pricing.

**6.1. Your Product Pricing.** You are free to determine the price at which to offer your Products for sale through the Marketplace Service; provided, however, that: (i) all Products you list must be at your lowest available price and must be lower than the Offer Value; (ii) You shall disclose all, and not charge or impose any extra or additional, fees; and (iii) you comply with all Marketplace Policies regarding pricing. If the Products are available through other sales channels at the same or a lower price, Groupon reserves the right to remove the Product listing.

**6.2. Pricing Services.** Groupon may, from time to time, in its sole discretion, offer the Pricing Services described below in this Section 6.2, if and as such functionality may be available:

6.2.1. **General.** Groupon may send you price suggestions for your Products, which you may approve or reject in your discretion. In addition, Groupon offers the following promotional pricing services to which you are automatically enrolled. Participation in any promotional pricing service is voluntary and if at any point you wish to opt-out of a promotional pricing service, you can do so within Gateway.

6.2.2. **Competitive Price Matching Service.** With Groupon's competitive price matching service ("**Competitive Price Matching Service**"), Groupon will monitor the prices of products listed on key competitor websites that are the same Products you are offering through the Marketplace Service. If Groupon discovers one of the competitors is selling the same product as your Product at a different price than you ("**Market Price**"), Groupon will assist you in matching your price as follows:

6.2.2.1. **Price Bands.** You can pre-approve a range (which will be either the default of +/- 10% or +/- the percentage you specify in Gateway, hereinafter the "**Price Band**") within which Groupon can automatically increase and/or decrease the price of your Products to match the lowest Market Price. Prices will be rounded and thereafter set at the nearest 0.99 price point ("**Site Price**"). Price Bands are calculated using the price you have in Gateway, not Site Prices.

6.2.2.2. **Price Suggestions.** If a Market Price falls outside of your Price Band, Groupon will not change the price of your Product(s). Groupon will send you a Market Price through Gateway for review. You will then have the ability, if you choose, to update the price for your Product in Gateway to match the Market Price. For the sake of clarity, any price suggestions you approve will change the price for your Product in Gateway and then be used for calculating Price Bands.

6.2.3. **Price Optimization Service.** Groupon's price optimization service ("**Price Optimization Service**") is a complementary service to the Competitive Price Matching Service. It is a way for you to authorize Groupon to automatically adjust and optimize the price of your Products after a competitive price match has been implemented. While participating in the Price Optimization Service, Groupon will monitor a Product's performance before and after a competitive price match, and if performance declines after a competitive price match, you authorize Groupon to automatically, incrementally adjust the price of your Product, using a proprietary algorithm, back towards the price offered immediately before the competitive price match.

6.2.4. **Customer Discounts.** From time to time, Groupon has offers that customers may use to receive a discount off of their purchases of a product at checkout ("**Customer Discount**"). You can find more information about Customer Discounts and how those may impact your payments at: <https://marketplace.groupon.com/support/solutions/articles/5000858403>.

## 7. Fees; Payment Terms.

**7.1. Fees.** In exchange for the services provided by Groupon under this Agreement, you agree to pay to Groupon a fee based on Your Transactions, which shall be specified in your Account (as defined below) in Gateway, (the “**Commission Fees**”) and any other fees that may be specified by Groupon in your Account (as defined below) in Gateway (“**Other Fees**”, collectively with Commission Fees, “**Fees**”). You authorize Groupon to withhold all Fees from any and all Sales Proceeds Groupon may owe to you, as calculated under [Section 7.2](#) below.

### 7.2. Payment Terms.

7.2.1. Payments which may be due to you will be calculated weekly on Saturdays (each, a “**Pay Period**”). Groupon will process payment within the number of days stated in Gateway after the end of each Pay Period; provided that you understand that such payment may be delayed if you change Your Bank Account. Notwithstanding anything to the contrary, if any payment-processing date falls on a holiday or weekend, the payment will be processed on the next business day; and, if any payment-processing date falls within the last five (5) business days of a calendar month, the payment will be processed on the first business day of the following calendar month.

7.2.2. Only once you upload the applicable Shipment Tracking Information into Gateway (or as otherwise required by Groupon) for the Product(s) for Your Transaction(s), Groupon has verified such Shipment Tracking Information to Groupon’s reasonable satisfaction, and such verified Shipment Tracking Information confirms active movement of the applicable shipment for such Product(s), such of Your Transaction(s) will become a “**Payment Eligible Transaction**”.

7.2.3. Payments will be calculated as follows: Sales Proceeds from Your Transactions that became Payment Eligible Transactions during the Pay Period less: Net Refunds issued during the Pay Period for Your Transactions; Fees for all of Your Transactions during the Pay Period; Chargebacks; Transaction Taxes; and any other amounts that, under this Agreement or Applicable Law, Groupon is required, or authorized, to withhold or deduct from your payments, including, any Taxes or Tax Levies as described in [Section 14](#).

**7.3. Payment Method.** All payments to you will be remitted to Your Bank Account through a banking network or by other means specified by us. Except as otherwise stated in Gateway or otherwise in your Account (as defined below), all amounts contemplated under this Agreement shall be in U.S. Dollars. Groupon is authorized to initiate ACH credit transaction entries to Your Bank Account unless otherwise agreed to in Gateway. Only in the event of an error, Groupon is authorized to initiate debit entry adjustments to Your Bank Account to the extent necessary to correct any error. You hereby acknowledge that Groupon’s origination of all ACH transactions to Your Bank Account must comply with Applicable Law. ACH payments may take up to five (5) business days to become available in Your Bank Account after processing.

**7.4. Other.** Groupon reserves the right to obtain credit reports and/or background checks about you from time to time and you will provide Groupon with any requested documentation for Groupon to do so. In addition to any other rights that may be available to Groupon under this Agreement or Applicable Law, for any amounts you owe to Groupon (including if erroneous or duplicate transactions are discovered), you agree that Groupon may setoff such amount from payments that are due to you under any current or future contract between the parties and/or their affiliates. debit Your Bank Account for such amount or invoice you for such amount. Groupon reserves the right to withhold payments to you at any time if Groupon determines, in its sole discretion, that your action, inaction, performance, or non-performance may result in claims (including returns, refunds, or Chargebacks) or disputes involving Groupon. Furthermore, Groupon shall have no obligation to advance amounts that have been paid to Groupon by a Purchaser until you have complied with your obligations under this Agreement. If Groupon reasonably believes that you have breached, or will breach, any provision of this Agreement, Groupon may cancel purchases for your Products and issue refunds to the Purchasers thereof, and may offset, delay, withhold, or suspend future payments to you, in Groupon’s sole discretion, and including, without limitation, to recoup any amounts you may owe to Groupon for such cancellations and refunds. In addition, if you are unwilling, or in Groupon’s reasonable discretion appear unable, to perform your obligations under this Agreement, Groupon is authorized to cancel purchases for your Products and issue refunds to the Purchasers thereof, and offset, delay, withhold, or suspend future payments to you in addition to such other remedies as may be available under this Agreement or Applicable Law, to secure payment from you for any refunds and/or other amounts payable by you under this Agreement.

## 8. Term; Termination; Effect of Termination.

**8.1. Term; Termination.** This Agreement shall commence on the date you complete registration for use of the Marketplace Service and will end when terminated in accordance with this Agreement (the “**Term**”). Groupon may terminate this Agreement at any time for any reason. You may terminate this Agreement at any time for any reason by

the means then specified by Groupon in Gateway or otherwise through your Account (as defined below) or the Marketplace Service.

**8.2. Effect of Termination.** Termination of this Agreement or suspension of the Marketplace Service shall not affect your obligations hereunder pertaining to Your Transactions, including fulfillment, delivery, returns, refunds, and/or recalls. Termination or suspension of the Marketplace Service will not terminate or suspend any other service provided by Groupon unless explicitly provided. Upon termination, all provisions of this Agreement intended or required to survive the termination or expiration of this Agreement in order to achieve its full effect, shall survive termination, including Sections 1, 5.5, 5.6, 5.7, 5.9, 8, 9, 10, 11, 12, 14, 15, 16, 17, 20, and 21.

**9. License.** You grant to Groupon a non-exclusive, royalty-free, worldwide, perpetual, irrevocable, transferable and fully sublicensable license and right to use, modify, reproduce, sublicense, publicly display, distribute, transmit, publish, publicly perform adapt, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner: (a) your name, logo, trademarks, domain names, and any photographs, graphics, artwork, text, and other content provided or specified by you (collectively, “Your IP”); and (b) any third party’s name, logo, trademarks, domain names, photographs, graphics, artwork, text, and other content provided or specified by you (collectively, “Third Party IP”) in any and all media or formats now known or hereinafter developed, including the Groupon Channels (the “License”). You acknowledge that any use of Your IP or Third Party IP as contemplated herein is within the sole discretion of Groupon and Groupon may decide not to use Your IP or Third Party IP at all. To the extent that we may have the right to use Your IP or Third Party IP under Applicable Law without a license from you (i.e. fair use, a valid license from a third party, etc.), nothing in this Agreement will prevent or impair such use. In addition, Groupon may use Your IP and/or Third Party IP in general marketing materials related to Groupon services without your prior written consent.

**10. Representations, Warranties and Covenants.** You represent, warrant and covenant to Groupon now and throughout the Term that:

**10.1.** You have all requisite right, power, and authority to enter into this Agreement, perform your obligations, and grant the rights, licenses, and authorizations in this Agreement;

**10.2.** You are duly organized, validly existing, and in good standing under the laws of your jurisdiction of formation; and are duly qualified to do business and are in good standing in each jurisdiction where the conduct of your business, provision of Products, or the ownership of your property requires such qualification;

**10.3.** This Agreement is the legal, valid, and binding obligation of you, enforceable against you in accordance with its terms;

**10.4.** You are not a party to any agreement or instrument, or subject to any charter or other corporate restriction, or any judgment, order, writ, injunction, decree, rule, or regulation which materially and adversely affects, or so far as you can now foresee, may in the future materially and adversely affect, your business operations, prospects, properties, assets, or condition, financial or otherwise, or your ability to legally and properly perform under this Agreement;

**10.5.** If you are unable to fulfill your obligations under this Agreement or to any Purchaser for any reason, you will immediately notify Groupon and take prompt action to remediate such failure;

**10.6.** You are registered for the collection of sales, use, and other similar taxes in all states and localities in which you are required to be so registered pursuant to the terms of this Agreement and in connection with fulfilling your obligations hereunder;

**10.7.** You and your employees, contractors, agents, and Third Party Merchants have had the proper education and training, and hold all required and up-to-date regulatory authorization, licenses, and certifications relating to any Products and any of your activities related to this Agreement;

**10.8.** You: (a) will have in stock a number of units of Products sufficient to fulfill your obligations for so long as you offer the Product for sale; and (b) are able to and will ship the purchased Products to each Purchaser by the Expected Ship Date, Expected Tracking Movement Dates, and Expected Delivery Dates;

**10.9.** The Products: (a) are free from defects in workmanship, materials and design; (b) are genuine, bona fide products as described in this Agreement; and (c) do not violate the rights of any third party;

**10.10.** You have the full right, power, and authority to offer, promote, and sell, and authorize Groupon to offer and promote, the Products as set forth in this Agreement;

**10.11.** This Agreement, the Products, including any marketing or promotion of the Products contemplated hereunder, and any of the information you provide to Groupon, including your name, Your IP, and any Third Party IP, shall not violate any rights of any third party, including the manufacturer of the Products (if applicable) or any other third party with which you have entered into a prior agreement, or any other agreement to which you are a party;

**10.12.** With respect to the Offer Value: (a) the amount represented by you as the Offer Value of the Product is the actual, regular value of the Product and is an accurate valuation of the regular retail price of the Product; (b) you have not inflated or increased the Offer Value; and (c) you will not otherwise manipulate pricing or values in any way that is unfair, deceptive, misleading, and/or outside the ordinary course of business;

**10.13.** The terms and conditions of the Products, including the offer, discount, sale, and shipment or pick up thereof, comply with all, and do not and will not violate any, Applicable Law;

**10.14.** You and all of your subcontractors, agents, suppliers, and Third Party Merchants shall comply with all Applicable Law and the [Groupon Vendor Code of Conduct](#) (which is incorporated herein by this reference) in your performance of your obligations and exercise of your rights under this Agreement, and with respect to the Products generally;

**10.15.** Any information provided or made available by you or your Affiliates to Groupon or its Affiliates is at all times accurate and complete, including, Shipment Tracking Information, the description of and any information relating to the Products, and any information relating to Your Bank Account;

**10.16.** Any advertising or promotion of the Products contemplated hereunder will not constitute false, deceptive, or unfair advertising or disparagement under any Applicable Law;

**10.17.** You own all right, title and interest in and to Your IP, have licensing rights in (with the right to sublicense to Groupon) the Third Party IP, and have the right to grant the licenses set forth in this Agreement;

**10.18.** Your IP and the Third Party IP, and Groupon's use thereof, do not violate any copyright, trademark, service mark, trade name, or other intellectual property right, or right of privacy or publicity, of any third party or any Applicable Law;

**10.19.** Neither Your IP nor the Third Party IP includes 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 local, state, provincial, territorial, or federal law, statute, rule, regulation, or order;

**10.20.** You are the person or entity authorized to receive any payments made to you by Groupon under this Agreement;

**10.21.** (a) You are not authorized to resell, broker, or otherwise disclose, any Customer Data to any third party, in whole or in part, for any purpose; and (b) you are not authorized to use, copy, or otherwise reproduce any Customer Data other than for the purpose of fulfilling your obligations under this Agreement (including shipping Products to Purchasers); and

**10.22.** You are familiar with and shall comply with: (a) the U.S. Foreign Corrupt Practices Act, which prohibits providing a payment of money or anything of value to a foreign government official, public international organization official, foreign political party, foreign political party official or candidates for such offices, either directly or indirectly, for the purpose of influencing official acts and decisions (including failures to act and decide) in order to assist in obtaining or retaining business or directing business to any entity, and any provisions of local law and Groupon's policies and procedures related thereto; and (b) all Applicable Law regarding imports and exports, including any Applicable Law of the United States regarding unsanctioned foreign boycotts, anti-boycott laws, and embargoed countries.

**11. Indemnification.** You agree to defend, indemnify, and hold Groupon, its Affiliates, and their respective officers, directors, agents and employees, harmless from and against any claims, lawsuits, investigations, penalties, damages, losses, or expenses (including reasonable attorney's fees and costs) arising out of or relating to any of the following: (a) any breach or alleged breach by you of this Agreement, including the representations, warranties, and covenants set forth in this Agreement; (b) your fraud, negligence, or willful misconduct; (c) any claim for Taxes (as defined in [Section 14](#) below), including any Taxes, penalties, or interest for which Groupon has undertaken Marketplace Facilitator Collection (as defined below); (d) the materials you provide, or otherwise recommend or direct, to Groupon in connection with the Products, including Your IP and the Third Party IP; (e) any infringement, misappropriation, or other violation of any patent, trademark, copyright, publicity, privacy, trade secret, or other right of any third party by you, including in connection with Your IP or the Third Party IP, or Groupon's use thereof; (f) your provision of incomplete or



inaccurate information applicable to the Feature Page, Store Page or Products; (g) the Feature Page, Store Page, or Products, or your services or obligations related thereto or otherwise related to this Agreement, including any claims for false advertising, product defects, personal injury, death, or property damages; (h) any violation of Applicable by you or governing your Products and/or services; (i) any violation by you of any law or regulation governing the use, sale, and distribution of alcohol; (j) any claim by a Purchaser for the Sales Proceeds; (h) your misuse of Customer Data, or any violation of an applicable data privacy or security law by you. 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 you. Your duty to defend and indemnify Groupon includes the duty to pay Groupon's reasonable attorneys' fees and costs, including any expert fees. Without limiting the foregoing, you shall pay any monies owed to any party, as well as all reasonable attorneys' fees, related to any action or determination against Groupon in connection with any action to pursue Groupon for Taxes.

**12. LIMITATION OF LIABILITY.** IN NO EVENT SHALL GROUPON BE LIABLE UNDER ANY THEORY TO YOU OR YOUR EMPLOYEES, AGENTS OR THIRD PARTY MERCHANTS, OR ANY THIRD PARTY, FOR ANY LOST PROFITS, LOST BUSINESS, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST DATA, AND COST OF COVER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT GROUPON WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL GROUPON'S LIABILITY FOR ANY CLAIMS ARISING OUT OF RELATING TO THIS AGREEMENT, OR ANY ERRORS OR OMISSIONS IN CONNECTION WITH THE MARKETPLACE SERVICE, FEATURE PAGE, STORE PAGE, GATEWAY, OR PRODUCTS, EXCEED AT ANY TIME THE TOTAL UNCONTESTED AMOUNTS EARNED AND RETAINED BY GROUPON IN CONNECTION WITH THIS AGREEMENT DURING THE PRIOR SIX MONTH PERIOD. THIS LIMITATION OF LIABILITY SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY. IN ADDITION, ANY CLAIM BY YOU, OR ON YOUR BEHALF, IN CONNECTION WITH ANY PAYMENT MADE BY GROUPON, INCLUDING CLAIMS ALLEGING THAT YOU WERE UNDERPAID, MUST BE MADE IN WRITING TO GROUPON WITHIN NINETY (90) DAYS FROM THE DATE OF PURCHASE FOR YOUR TRANSACTION AT ISSUE. ALL CLAIMS NOT MADE IN ACCORDANCE WITH THE FOREGOING SHALL BE DEEMED WAIVED, RELEASED, AND DISCHARGED BY YOU.

**13. Insurance.**

**13.1.** During the Term of this Agreement and for a period of at least thirty-six (36) months thereafter, Merchant shall maintain in force, with insurance companies whose A.M. Best rating meets or exceeds A- VII, the following insurance policies to cover such liability, or alleged liability, that may arise under or in connection with the services performed or action taken in furtherance of, or because of, this Agreement. Said insurance policies shall provide, at a minimum, the following coverages:

13.1.1. Commercial General Liability insurance, including coverage for bodily injury, property damage, products and completed operations and personal and advertising injury, with a minimum limit of liability of no less than one million (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate;

13.1.2. In lieu of the personal and advertising injury coverage required in the above general liability policy, Merchant may satisfy the personal and advertising injury requirement with a professional liability policy that includes Media Liability coverage with a minimum limit of liability of no less than one million (\$1,000,000) per claim and two million (\$2,000,000) in the aggregate.

**13.2. Primacy.** Merchant's insurance shall act as primary and noncontributory with respect to any other insurance, captives or self-insurance maintained by Groupon, their affiliates and subsidiaries, and the directors, officers, employees and successors and assigns of each. Merchant must satisfy any and all applicable deductibles or retentions applicable to their relevant insurance coverage.

**13.3. Additional Insured and Waiver.** Merchant shall include Groupon as an additional insured on the Commercial General Liability policy and shall so identify Groupon on a Certificate of Insurance. Merchant shall also include a waiver of subrogation in favor of Groupon with respect to all required coverage.

**13.4. Notice of Cancellation and Material Changes.** Merchant shall provide Groupon with thirty (30) days prior written notice in the event of cancellation, non-renewal, or material change of any of the Merchant's insurance coverage required in this Section

**13.5. Subcontractors.** Any Subcontractors being utilized by the Merchant, with respect to services performed as it relates to this Agreement, are required to adhere to all insurance requirements listed in this Section.

**13.6. Certificate of Insurance.** Merchant shall provide Groupon with a certificate of insurance evidencing coverage compliant with this Section upon the execution of this contract

**13.7. Materiality.** For purposes of clarity, any cancellation, termination or reduction of or failure to comply with the coverage amounts herein without Groupon's prior consent shall be a material breach of this Agreement.

#### **14. Taxes.**

**14.1. Generally.** Except as set forth in Section 14.2 below, it is your responsibility to determine what, if any, taxes apply to the payments you make or receive under this Agreement, and it is your responsibility to collect, report, and remit the correct tax to the appropriate tax authority. Groupon is not responsible for determining whether taxes apply to your transaction with either Purchasers or Groupon, or for collecting, reporting, or remitting any taxes arising from any transaction with or by you and Purchaser. Notwithstanding anything else in this Agreement, you shall be, and will remain, registered for and responsible for paying any and all sales, use, and/or other similar taxes in all states and localities in which you are required to be so registered in connection with the sale of the Products.

**14.1.1. Registration.** You must register for tax calculation services by providing, in the format and manner we require, calculation settings for the jurisdictions for which you wish to calculate taxes or other transaction-based charges that we support for your use of the Marketplace Service.

**14.1.2. Calculation Services and Service Fees.** We will calculate sales and use taxes and other transaction-based charges supported by the functionality we make available for Your Transactions based on your calculation settings and any related information we request. You are responsible for configuring the tax settings in the sales tax calculation and collections system that Groupon makes available to you in Gateway and/or through the Marketplace Service.

**14.1.3. Product Categories and Associated Information.** We may make available a list of Product categories and associated Product tax codes. For each of your Products, you will provide to us, in the format and manner we require, a reference to one of our Product categories and any related information we request. If you do not provide a reference to one of our Product categories, we will not calculate any tax amounts for Your Transactions for that Product.

**14.1.4. Remittance.** We will remit to you any taxes collected through the tax calculation services for you to submit to the appropriate taxing authority. You agree to accept the amounts we remit to you as full satisfaction of our obligations in connection with the tax calculation services. As set forth in Section 14.2, Groupon may, in its sole discretion, elect to collect and remit taxes directly to any taxing authority that permits or requires the marketplace facilitator to be the collector and remitter of the tax. You agree to indemnify Groupon of any taxes, penalties, or interest that may be assessed upon Groupon in connection with this Agreement.

**14.1.5. Calculation of Refunds and Exempt Transactions.** If a Purchaser seeks a post-order tax-only refund related to an exemption for Products you fulfilled, you are responsible for calculating refunds of all taxes and other transaction-based charges calculated through the tax calculation services, and you will process them using functionality we make available to you.

**14.1.6. Your Responsibilities.** You are solely responsible for your use of the tax calculation services. Your responsibilities include reviewing and determining the correct Product categories, calculation settings, and all related information for your Products and for documenting and paying all taxes to the appropriate taxing authorities for your transactions. You are solely responsible for reviewing all tax exemption information and complying with all applicable laws and regulations related to tax-exempt transactions.

**14.2. Marketplace Facilitator Tax Collection and Remittance.** Some jurisdictions may have laws or administrative regimes that permit or require Groupon to collect and remit sales and use taxes or other similar taxes for Your Transactions ("**Marketplace Facilitator Collection**"). It is possible that additional jurisdictions will enact such laws or seek to require Marketplace Facilitator Collection under existing laws. At its sole discretion, Groupon shall determine when it will undertake Marketplace Facilitator Collection with respect to a jurisdiction and you authorize Groupon to take all actions necessary to undertake Marketplace Facilitator Collection. You agree to reasonably

cooperate with Groupon and timely provide all information necessary for Groupon to accurately collect and remit such taxes including, but not limiting to, complying with the provisions of [Section 14.1](#) to the extent applicable to Marketplace Facilitator Collection. Groupon shall have sole discretion to specify the rate and taxability applied to the Products sold. You also understand and agree that Groupon may undertake Marketplace Facilitator Collection for Transactions in jurisdictions in which you do not otherwise have a substantial nexus. Notwithstanding any other provision of this Agreement, you understand and agree that Groupon will not remit to you any taxes collected as part of Marketplace Facilitator Collection. Without limiting your obligations or liability under any other provision of this Agreement, you agree to indemnify and hold harmless Groupon for any taxes, penalties, or interest on Your Transactions asserted against Groupon by a jurisdiction with respect to Marketplace Facilitator Collection.

**14.3. Transaction Taxes.** You bear 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 you ("**Transaction Taxes**", collectively with the taxes contemplated by [Section 14.1](#), the "**Taxes**"), if any. Groupon shall apply the applicable Transaction Tax to the Fees remitted to Groupon (but not to the amounts of taxes collected as contemplated by [Section 14.1](#)) pursuant to this Agreement. Transaction Taxes are calculated using your billing address. 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.

**14.4. Additional Special Taxes and Fees:** Certain additional fees, including but not limited to Electronic Waste Recycling Fees, Lead-Acid Battery Fees, Tire Fees, and Mattress Recycling Fees, are imposed upon the retail sale of specific items outside the scope of Marketplace Facilitator Collection obligations. As the retailer, these fees remain your obligation to comply with.

**14.5. 1099-K Requirement:** An IRS Form 1099-K may be issued in your name for the value of gross payments processed on your behalf.

**14.6. Tax Levies.** In the event Groupon receives written notice of a validly issued state or federal tax levy related to past-due Taxes you owe, Groupon may, in accordance with Applicable Law, deduct such amounts from payments due to you. Groupon may be required by tax authorities to withhold taxes on your behalf. Groupon reserves the right to deduct any such taxes from amounts due to you 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 you no later than sixty (60) days after payment of the withholding taxes.

**14.7. Cooperation.** You and Groupon agree to reasonably and in good faith cooperate and assist each other in determining and administering each party's collection and remittance responsibilities in connection with this Agreement and with any and all audits and/or reviews administered by taxing authorities that may arise in connection with this Agreement.

**14.8. Alcohol and Tobacco.** You bear sole responsibility for collecting and remitting all taxes imposed on or arising from Your Transactions associated with alcohol and tobacco, except as set forth in [Section 14.2](#). Functionality may not be available for you to collect tax on any portion of transactions involving alcohol and tobacco related Products. You agree to indemnify Groupon of any Taxes, penalties, or interest that may be assessed upon Groupon in connection with this Section, including any Taxes, penalties, or interest for which Groupon has undertaken Marketplace Facilitator Collection.

**15. Confidentiality.** You agree to keep confidential (a) the terms of this Agreement (including the Commission Fee), (b) any materials, documents, or information designated by Groupon as "confidential" or with a similar designation, (c) all Customer Data, and (d) any materials, documents, or information that you should reasonably expect to be confidential or proprietary under the circumstances and/or given the nature of the materials, documents or information (collectively, "**Confidential Information**"). You shall take reasonable precautions to protect all Confidential Information and will only disclose Confidential Information to Third Party Merchants, subject to [Section 21.10](#) below, and your employees on a need-to-know basis. If you become aware of any unauthorized use or disclosure of Confidential Information, you shall promptly and fully notify Groupon of all facts known to you concerning such unauthorized use or disclosure and shall cooperate with Groupon so that Groupon may seek a protective order or other appropriate remedy to protect such Confidential Information. You will bear all associated expenses incurred by Groupon to comply with

Applicable Law (including any data breach laws) or arising from any unauthorized access or acquisition of Confidential Information while the same is in your possession. Upon Groupon's written request, you shall return to Groupon or destroy, at Groupon's option, all Confidential Information in your possession or control. You acknowledge and agree that a breach of your confidentiality obligations under this Agreement will entitle Groupon to injunctive relief and a decree for specific performance and any other relief allowed under Applicable Law. ***Without limiting the foregoing, you agree that you shall not issue any press release or other public statement or make any social media posting relating to your relationship with Groupon or this Agreement without the express prior written consent of Groupon.***

**16. Groupon IP.** You acknowledge and agree that Groupon owns all right, title, and interest in and to the Groupon Website, Marketplace Service, Gateway, the Groupon name, logos, trademarks, domain name, all data collected through or from the Marketplace Service (including Customer Data), and any software, technology, or tools used by Groupon to promote, market, sell, generate, or distribute the Products (collectively the "**Groupon IP**"), other than Your IP and the Third Party IP. For the avoidance of any doubt, no license in the Groupon IP is being granted hereunder. You shall not use, sell, rent, lease, sublicense, distribute, transfer, transmit, reproduce, download, display, modify, perform, 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. You shall not prepare any derivative work based on the Groupon IP or translate, reverse engineer, decompile, or disassemble the Groupon IP. Except as specifically provided herein, you may not use, nor may you authorize any Third Party Merchant to use, Groupon IP in any medium without prior written approval from Groupon. You 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.

#### **17. Customer Data.**

**17.1.** Subject to [Section 17.2](#) below, you may use Customer Data for the sole purpose of fulfilling your obligations under this Agreement (including shipping Products to Purchasers). You expressly agree that Groupon owns all Customer Data and that any Customer Data that may be provided hereunder is being provided solely to fulfill your obligations hereunder and may not be used to enhance a file or list owned by you, any Third Party Merchant, or any third party. You represent, warrant, and covenant that you will not, nor will you permit any Third Party Merchant to, resell, broker, or otherwise disclose any Customer Data to any third party, in whole or in part, for any purpose whatsoever. You agree that you will not copy or otherwise reproduce any Customer Data other than for the purpose of fulfilling your obligations hereunder.

**17.2.** For purposes of this Agreement, the restrictions set forth in [Section 17.1](#) on your use of Customer Data do not apply to: (a) data from any Purchaser who is already your customer prior to the effective date of this Agreement, to the extent such data was previously provided to you by such Purchaser independent of this Agreement or any transaction hereunder; or (b) data supplied by a Purchaser directly to you who becomes your customer in connection with such Purchaser explicitly opting in to receive communications from you for the purposes for which such Customer Data will be used by you; provided that you handle and use such Customer Data in compliance with Applicable Law and your posted privacy policy.

**17.3.** You shall immediately notify Groupon if you become aware of, or suspect, any unauthorized access to, or use of, Customer Data or any Confidential Information, and shall cooperate with Groupon in the investigation of such unauthorized access or use and the mitigation of any damages related thereto. You shall bear all associated expenses incurred by Groupon to comply with Applicable Law related to such unauthorized access or use, including any data breach laws, or arising from any unauthorized access to, or acquisition of, Customer Data or Confidential Information while such data is in your reasonable possession or control. Upon termination or expiration of this Agreement, you shall, as directed by Groupon, destroy or return to Groupon all Customer Data in your, or any of your agent's, possession.

**18. Feedback and Other Information.** If you provide 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 your participation in the Marketplace Service (collectively, "**Feedback**"), you irrevocably assign to Groupon all right, title, and interest in and to Feedback. In the event your assignment to us 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; and (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. You warrant that: (A) Feedback is your original work or you 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. You agree to provide Groupon such assistance as Groupon might require to document, perfect, or maintain Groupon's rights in and to Feedback.

**19. Password Security.** You must safeguard your password and supervise your use of the Marketplace Service, including, without limitation, Gateway, and all information concerning Your Transactions and use of the Marketplace Service, including, without limitation, Gateway (together your “**Account**”). You are solely responsible for maintaining the security of your Account and maintaining settings that reflect your preferences. We will assume that anyone using your Account is you. You agree that you are solely responsible for any activity that occurs under your Account.

**20. Dispute Resolution.** All disputes arising out of, or relating in any way to this Agreement, shall be resolved pursuant to this Section 20, “Dispute Resolution”.

**20.1. Binding Arbitration.** EXCEPT AS SPECIFICALLY STATED HEREIN, ANY DISPUTE OR CLAIM BETWEEN YOU 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 20 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 20). The provisions of this Section 20 shall constitute written agreement between you and Groupon 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, you or Groupon must comply with the limitations provision set forth in Section 12 and submit the Dispute by making a demand for arbitration as detailed at <http://www.adr.org>. If you demand arbitration, you shall simultaneously send a copy of your 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 your 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 you are the prevailing party in such arbitration. Groupon will not seek attorneys' fees and costs in arbitration unless the arbitrator determines that your Dispute is frivolous. The arbitration will be conducted based upon written submissions unless you request 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 you and Groupon agree, that the matter should proceed in the county of your principal place of business.

**20.2. Class Action Waiver.** EACH PARTY AGREES THAT IT SHALL BRING ANY DISPUTE AGAINST THE OTHER PARTY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE PROCEEDING, OR AS AN ASSOCIATION. IN ADDITION, EACH PARTY AGREES 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.

**20.3. Choice of Law/No Jury Trial.** If, for any reason, a Dispute proceeds in court: (i) you and Groupon agree that any such Dispute may only be instituted in a state or federal court in Cook County, Illinois; (ii) you and Groupon irrevocably consent and submit to the exclusive personal jurisdiction and venue of such courts for resolution of such Disputes; (iii) you 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) YOU AND GROUPON EACH AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY.

**20.4. 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 20, you shall pay to Groupon all reasonable attorneys' fees and costs incurred by Groupon in connection with any Dispute.

## **21. Miscellaneous.**

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

**21.2. Notices.** When you use the Marketplace Service or send emails to Groupon, you are communicating with us electronically and consent to receive electronic communications related to your use of the Marketplace Service. We will communicate with you by email or by posting notices on Gateway or otherwise to your Account or through the Marketplace Service. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any legal requirement that such communications be in writing. Notices from us will be considered delivered to you and effective when sent to the email address you provide through the Marketplace Portal or from which you otherwise email us. You must send all notices and other communications relating to the Marketplace Service, Gateway, your Account, and/or Groupon Goods Marketplace generally, through Gateway or as otherwise provided (or allowed) through the Marketplace Service.

**21.3. Relationship of the Parties.** The Parties are independent contractors. Nothing in this Agreement is to be construed to create a partnership, joint venture, franchise, or agency relationship between Groupon and you. Neither Party has the authority, without the other Party's prior written approval, to bind or commit the other in any way. Because Groupon is not your agent, or the Purchaser's agent, for any purpose, Groupon will not act as either Purchaser's or your agent in connection with resolving any disputes between Purchasers and you related to or arising out of any transaction.

**21.4. Force Majeure.** Whenever a period of time is prescribed for action to be taken by Groupon, Groupon shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays (including an allowance for Business Days) due to strikes, riots, acts of God, war, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the reasonable control of Groupon.

**21.5. Waiver; Severability.** Any waiver of a provision of this Agreement must be in writing, expressly identify the provision to be waived, and be signed by an authorized representative of Groupon. The consent or approval by Groupon to or of any act by you requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Groupon's failure, whether single or repeated, to exercise a right hereunder shall not be deemed to be a waiver of that right, and Groupon's delay in exercising a right shall not be deemed a waiver of that or any future right. If any provision of this Agreement should be held to be unenforceable or invalid, the validity and enforceability of the remaining provisions of this Agreement are not affected.

**21.6. Entire Agreement.** 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.

**21.7. Modification.** Groupon may amend any of the terms and conditions contained in this Agreement at any time and at its sole discretion. You agree that any changes will be effective upon the posting of notice pursuant to [Section 21.2](#) above, and that the posting of notice pursuant to [Section 21.2](#) above is adequate and reasonable notice of changes to the terms and conditions of this Agreement and that it is your responsibility to review the notice locations and inform yourself of all applicable changes or notices. You should refer regularly to Gateway and your Account to review the current Agreement and to be sure that you can comply with the Agreement and that the items you offer can be offered. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR CONTINUED USE OF THE MARKETPLACE SERVICE AFTER GROUPON PROVIDES NOTICE PURSUANT TO [SECTION 21.2](#) ABOVE OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS AND YOUR AGREEMENT TO BE BOUND BY THE AGREEMENT AS REVISED.

**21.8. Interpretation.** The headings preceding the text of the sections and subsections of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning of this Agreement. The singular number shall include the plural, and vice versa. Any use of the word "including" shall be interpreted to mean "including, but not limited to," unless otherwise indicated. All references to dollars (including via the symbol "\$") shall refer to the currency United States dollars. References to any Person (including the Parties and any other entities referred to) shall be construed to mean such Person and its successors in interest and permitted assigns, as applicable. References throughout to this "Agreement" include any exhibits or attachments, unless otherwise stated. References to "days", including Business Days, shall be measured from midnight to midnight in the North American Central Time Zone (CT).

**21.9. Assignment.** You are not authorized to transfer or assign any rights or obligations under this Agreement, whether by operation of law or otherwise, without Groupon's prior written consent. 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 to which this Agreement relates, or by operation of law, without notice to you.

**21.10. Delegation.** If you delegate any obligation under this Agreement to a Third Party Merchant, you shall ensure that such Third Party Merchant has reviewed and agreed to uphold each term of this Agreement in full, including confidentiality obligations. You acknowledge and agree that you shall be fully liable for any non-compliance on the part

of a Third Party Merchant. Before you disclose Confidential Information to a Third Party Merchant, such Third Party Merchant must sign a confidentiality agreement that requires it to protect the Confidential Information in at least the same manner specified in this Agreement.

**21.11. DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, GROUPON MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. GROUPON AND ITS AFFILIATES DO NOT WARRANT OR GUARANTEE THAT THE SERVICES OFFERED ON OR THROUGH THE MARKETPLACE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE; THAT THE FEATURE PAGES OR STORE PAGE WILL BE ERROR-FREE; THAT ANY ERRORS, OMISSIONS, OR MISPLACEMENTS IN ANY FEATURE PAGES OR STORE PAGE WILL BE CORRECTED; OR THAT THE PROMOTION OF YOUR PRODUCTS WILL RESULT IN ANY REVENUE OR PROFIT FOR YOU.