

D4H (Driver for Hire)

Terms and Conditions

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1. Agreement to terms and conditions.

1.a. Agreement to terms and conditions.

By:

- 1.b.i. accepting an order through any of the Driver for Hire (D4H) Platforms;
 - 1.b.ii. clicking to agree to this Agreement on a website; or
 - 1.b.iii. signing an agreement that includes, links to, or incorporates this Agreement,
- the Merchant accepts and agrees to this Agreement.

1.b. Authority to bind Merchant.

The individual that accepts and agrees to this Agreement, by doing so, represents and warrants that they have the authority and capacity to accept and agree to this Agreement on behalf of, and legally bind, the Merchant, and its applicable legal entity(ies).

1.c. Acceptance of arbitration.

The “Disputes” section of this Agreement contains provisions which will govern any claims that the parties may have against each other, including a mandatory arbitration provision.

2. Sales Channels.

2.a. Marketplace Sales Channel.

The Merchant may sell Items via the Marketplace Sales Channel.

2.b. Merchant Managed Delivery Sales Channel.

The Merchant may sell Items via the Merchant Managed Delivery Sales Channel, subject to the terms of this section.

2.b.i. Provision of delivery services. The Merchant agrees that:

- 2.b.i.A. the Merchant and MMDS will be solely responsible for determining the most effective, efficient and safe manner to perform each instance of delivery services; and

2.b.i.B. except for the Driver for Hire (D4H) Tools, the Merchant will provide MMDS with all necessary equipment, tools and other materials, at Merchant's own expense, necessary to perform delivery services.

It is recommended that:

2.b.i.C. the Merchant provides detailed instructions for pickup and drop-off to MMDS (e.g., the location within the building address to pick-up/drop-off a package, etc.); and

2.b.i.D. MMDS wait at least 10 minutes for a customer to appear at the requested drop-off location prior to leaving or cancelling the delivery services.

The Merchant will not, and will ensure that all MMDS do not use any MMDS Customer Personal Information received from Portier in relation to providing the delivery services for any reason other than for the purposes of fulfilling delivery services for that Customer's particular order. The Merchant will not retain MMDS Customer Personal Information or any of the Customer's Personal Information for longer than it takes to fulfil the delivery services for that Customer's particular order.

2.b.ii. Merchant relationship with Customers. Portier and its Affiliates are not responsible or liable for the actions or inactions of a Customer in relation to any of the Merchant's activities, any MMDS, or any Transportation Method. The Merchant agrees that each MMDS will have the sole responsibility for any obligations or liabilities to the Merchant, Customers or other third parties that arise from or relate to the Merchant's or MMDS's provision of delivery services. The Merchant agrees that the Merchant and each MMDS is each solely responsible for:

2.b.ii.A. any liability arising from or relating to a Customer or any other third-party in connection with the delivery services; and

2.b.ii.B. taking such precautions as may be reasonable and proper, including, without limitation, maintaining insurance in accordance with applicable Laws and conducting thorough background check investigations in connection with the delivery services.

Portier or its Affiliates may release the contact and/or insurance information of Merchant and/or MMDS member to a Customer upon such Customer's reasonable request (e.g., in connection with an accident). The Merchant will provide evidence of such precautions upon Portier's request.

2.b.iii. Delivery area and delivery timing. The Merchant is responsible for determining the Merchant Delivery Area. During Adverse Delivery Events Portier may limit the Merchant Delivery Area to help ensure safe and reliable Merchant managed delivery services. The Merchant acknowledges that Portier will use the Merchant Delivery Area to limit the Merchant's ability to sell Items only to those potential Customers who request delivery within the Merchant Delivery Area through the MMDS. The Merchant is also responsible for providing Portier with projected timelines for the preparation of the Merchant's Item orders. Portier may use the Merchant's preparation timelines, geolocation of MMDS, Portier's internal projection of delivery time, and other technologies and data available to Portier, in determining the estimated time for delivery that will be displayed in the Apps for all of the Merchant's applicable Items. Any geolocation tracking will be dependent on the individual consent of the

MMDS and will cease upon completion of each order. The Merchant acknowledges that Portier's systems may require adjustments to the Merchant Delivery Area.

2.b.iv. MMDS Personal Information. To the extent that the Merchant shares MMDS's Personal Information, including MMDS's geolocation data with Portier, the Merchant represents and warrants that it has provided appropriate notices to, and collected all legally required consents from, the MMDS to lawfully share their Personal Information with Portier and to allow Portier to lawfully share it with Customers for the purpose of facilitating delivery.

2.b.v. Documentation. To the extent required by applicable Laws, the Merchant must retain all copies of any Required Licenses prior to the Merchant's and the applicable MMDS provision of any delivery services.

2.b.vi. Merchant's relationship with MMDS. The Merchant will have the sole responsibility for any obligations or liabilities to MMDS that arise from or relate to the Merchant's relationship with MMDS (including in connection with the provision of delivery services). The Merchant agrees that the Merchant exercises sole control over the MMDS and will comply with:

2.b.vi.A. all applicable Laws (including tax, gratuity, social security and employment Laws) and regulations applicable to the Merchant's relationship with MMDS; and

2.b.vi.B. industry best practice in respect of working conditions and compensation for MMDS, including the distribution of any gratuities.

The Merchant agrees that the Merchant is at all times responsible and liable for the acts and omissions of MMDS relating to Customers, Portier and its Affiliates, including if such liability may not be mandated under applicable Laws. The Merchant will pay MMDS for their delivery services provided to the Merchant at the Merchant's sole discretion (but at all times in compliance with applicable Laws), and the Merchant is at all times solely responsible for providing payment to MMDS, including the distribution of any gratuities. The Merchant acknowledges and agrees that the Merchant is required to:

2.b.vi.C. complete all tax registration obligations and calculate and remit all tax liabilities related to the provision of delivery services and receipt of the Driver for Hire (D4H) Tools as required by applicable Laws; and

2.b.vi.D. provide Portier with all relevant tax information.

The Merchant further acknowledges and agrees that the Merchant and each MMDS is responsible for taxes on their own receipts arising from the performance of delivery services.

2.b.vii. MMDS requirements. The Merchant agrees that all MMDS will, at all times hold and maintain:

2.b.vii.A. a valid applicable Required License with the appropriate level of certification to operate the Transportation Method assigned to each MMDS (e.g., a driver's license if the Transportation Method is a motor vehicle); and

2.b.vii.B. all Required Licenses applicable to the Merchant and/or MMDS that are necessary to provide delivery services to third parties.

The Merchant agrees to undertake background and driving record checks on MMDS before they can provide delivery services on the Merchant's behalf and from time to time thereafter. The Merchant agrees that Portier reserves the right, at any time in Portier's sole discretion, to restrict the Merchant or MMDS from accessing or using the Driver for Hire (D4H) Platform if the Merchant or such MMDS fails to meet any applicable requirements.

2.c. Webshop Online Ordering Sales Channel.

Portier will provide the Merchant with a hyperlink to embed in the Merchant Marketplaces that will allow Customers to browse Merchant's menu and place order(s) for Items via such Merchant Marketplaces either for:

2.c.i. delivery to such Customer via a Delivery Person or Merchant Managed Delivery Staff (as agreed separately by the parties); or

2.c.ii. pick up by such Customer at the Merchant's Location during its normal business hours.

2.d. Pickup Sales Channel.

The Merchant may sell Items via the Pickup Sales Channel.

2.e. Pick & Pack Sales Channel.

The Merchant may sell Items via the Pick & Pack Sales Channel, subject to the terms of this section.

2.e.i. Procedure. For any orders via the Pick & Pack Sales Channel, the Customer Transaction will occur between the Customer and the Merchant, via the Driver for Hire (D4H) Platforms, at the Retail Price, and the operative price for each Item will be the actual In-Store Price (plus, if agreed, the corresponding Pick & Pack Markup).

2.f.i.A. Each Customer Transaction will be completed upon the Merchant's acceptance of the Customer's order.

2.e.i.B. Notwithstanding the foregoing, the Merchant may, in its discretion, modify a Customer Transaction after completion of the order, for reasons including, but not limited to, inventory demands, the need to substitute one Item with another, the need to establish a final weight for Items with weight-based prices, the exercise of its regulatory responsibilities (where applicable, including where required pursuant to Laws or a Required License), or the need to establish a final quantity for Items with quantity-based prices, or quality concerns with the Item purchased by the Customer.

2.e.i.C. The Merchant authorizes Delivery Persons to, upon the completion of a Customer Transaction, to provide In-Store Services, including Item collection and submission of the Reconciliation Method. For the avoidance of doubt, In-Store Services occur after the Merchant's acceptance of the order and the completion of the Customer Transaction.

2.e.i.D. In order to facilitate reconciliation and settlement between the Merchant and Portier of fees or obligations arising under this Agreement, and for the convenience of the Merchant, the Merchant agrees to and authorizes the Reconciliation Process.

2.e.ii. Payment and Payment Instructions.

2.e.ii.A. The Merchant and Portier acknowledge and agree that:

2.e.ii.A1. Portier (or its Affiliate) has entered into agreements with third parties to collect payments from Customers on the Merchant's behalf for orders via the Pick & Pack Sales Channel;

2.e.ii.A2. the Merchant has control over the Customer Payments for all Items, including Alcohol Items or Restricted Items, that Customers purchase from the Merchant via the Driver for Hire (D4H) Platforms;

2.e.ii.A3. as an exercise of the Merchant's control over the Customer Payments, the Merchant instructs Portier to, on the Merchant's behalf and pursuant to the Merchant's instructions, administer a Merchant FBO Account and a Reconciliation Operating Account;

2.e.ii.A4. the Merchant has received the full amount of the Customer Payments upon transfer of the Customer Payments to the Merchant FBO Account and maintains full control over the Customer Payments while held in the Merchant FBO Account or in the Reconciliation Operating Account;

2.e.ii.A5. the Merchant will determine further transfers from the Merchant FBO Account and the Reconciliation Operating Account by providing instructions to Portier; and

2.e.ii.A6. consistent with the Merchant's control over Customer Payments received by the Merchant in its Merchant FBO Account described above, the Merchant provides standing and default instructions to Portier or its service provider (including the Affiliates of either for the purposes of this clause) to:

2.e.ii.A6i. administer the Merchant FBO Account on the Merchant's behalf and pursuant to the Merchant's instructions;

2.e.ii.A6ii. process Customer Payments into the Merchant FBO Account upon the Merchant's acceptance of orders via the Pick & Pack Sales Channel;

2.e.ii.A6iii. after the Merchant FBO Account has received the full amount of the Customer Payments, for the Merchant's convenience, transfer funds to the Reconciliation Operating Account to facilitate the Reconciliation Process; and

2.e.ii.A6iv. after successful completion of the Reconciliation Process, for the Merchant's convenience, transfer:

2.e.ii.A6iv.1. to a separate account of the Merchant's choosing, the total amount of the In-Store Price for the Items in each order;

2.e.ii.A6iv.2. to Portier, any fees or obligations owed to Portier; and

2.e.ii.A6iv.3. to the Delivery Persons, any fees or obligations owed to the Delivery Persons.

2.e.ii.B. Alternate Instructions. The Merchant retains discretion to provide alternative, substitute, or supplemental instructions to Portier at any time for how to further distribute the Merchant's funds. Subject to the limitations of this Agreement, to the extent required by payment card industry standards, and without limiting any of the Merchant's own obligations under this Agreement, Portier will maintain the security of cardholder data to the extent and while it stores, processes, or transmits such data on behalf of the Merchant.

2.e.iii. Individual Accounts. Regulatory requirements may require that the Merchant maintain an individual account with a service provider to collect Customer Payments. In such case, the Merchant will be subject to terms entered into directly with the service provider, which may be subject to change. The Merchant may be required to provide, directly to Portier's service provider, client information, address, license and any additional information as may be further required. The Merchant grants permission to Portier and its service provider to connect or otherwise set up the Merchant's account with Portier's account with the same service provider so as to accept payments on the Driver for Hire (D4H) Platforms.

2.e.iv. Found Rate. For Items made available via the Pick & Pack Sales Channel, the Merchant is obligated to maintain in stock Items offered on the Driver for Hire (D4H) Platforms. The Merchant will at all times maintain a minimum weekly Found Rate of at least ninety percent (90%). Failure to maintain this Found Rate at any time will be deemed to be a material breach of this Agreement and may result, at Portier's sole discretion, in the removal of the Merchant from the Driver for Hire (D4H) Platforms.

2.e.v. Prices.

2.e.v.A. Generally. The Merchant is responsible for determining and entering the Retail Prices for the Items offered to Customers on the Driver for Hire (D4H) Platform via the Pick & Pack Sales Channel, which, unless otherwise agreed in writing between Portier and the Merchant, will match the In-Store Price for such Items at the applicable Merchant Location, or if the parties have agreed to a Pick & Pack Markup, such In-Store Price plus the Pick & Pack Markup.

2.e.v.A1. The Merchant and Portier agree that, under this Agreement, Portier may assist the Merchant by inputting the Retail Price into the Driver for Hire (D4H) Platforms. The Merchant agrees to provide Portier with an accurate and complete Master File.

2.e.v.A.2. The Merchant agrees to include in its Master File all in-store Items to be made available for sale to Customers on the Apps, excluding any Restricted Items or Items that do not comply with size or weight limitations provided in this Agreement.

2.e.v.A3. In the event of any discrepancies between the In-Store Price in the Master File and the In-Store Price actually settled at time of checkout, the Merchant must promptly update the Master File and provide the same to Portier. Failure to meet the requirements of this section may result, at the sole discretion of Portier, in the suspension and/or removal of the Merchant from the Driver for Hire (D4H) Platforms.

2.e.v.B. Differences. Unless otherwise agreed between the parties in writing, if the Retail Price paid by a Customer on the Driver for Hire (D4H) Platforms for the Merchant's Items via the Pick & Pack Sales Channel is greater than the In-Store Price for the Merchant's Items, the Merchant agrees to pay such difference to Portier as an additional fee for the Merchant's use of the Driver for Hire (D4H) Platforms and the Driver for Hire (D4H) Services. If the Retail Price paid by a Customer on the Driver for Hire (D4H) Platforms for Items from the Merchant via the Pick & Pack Sales Channel is less than the In-Store Price charged to the Reconciliation Method, the Merchant will not owe Portier such difference, provided that such circumstance does not reduce or otherwise impact any agreed-upon Fees due to Portier from the Merchant as set forth under this Agreement.

2.f. Gratuities.

For the sale of Items via the Merchant Managed Delivery Sales Channel, or the Pickup Sales Channel, unless otherwise agreed in writing between Portier and the Merchant, the Merchant agrees to allow Customers to provide gratuities through the Apps. Portier must remit to the Merchant the full value of any gratuities provided by Customers. It is the Merchant's sole responsibility to comply with all applicable Laws (including tax, gratuity, social security and employment Laws where applicable) regarding the distribution of any gratuities.

2.g. Required Licenses.

The Merchant must hold and maintain any and all Required Licenses. Upon Portier's request, the Merchant must provide copies of applicable Required Licenses to Portier. The Merchant will immediately notify Portier of any change, expiration, revocation, renewal, or termination of any applicable Required Licenses and will, upon Portier's request, provide copies of any new applicable Required Licenses to Portier. Failure to comply with the Merchant's obligations in this section may result, at the sole discretion of Portier, in the suspension and/or removal of the Merchant from the Driver for Hire (D4H) Platforms.

2.h. Role of the parties.

Portier does not hold a Required License for the sale of Items, including Alcohol Items, and only facilitates the promotion and/or marketing of Merchants, and the promotion, marketing, and/or sale of Items by third parties via the Driver for Hire (D4H) Platforms. The Merchant, in its sole discretion, sets the price of Items, including Alcohol Items, that the Merchant offers for sale via the Driver for Hire (D4H) Platforms and at the Merchant's Locations. The Merchant enters into contracts with Customers for the sale of Items via the Driver for Hire (D4H) Platforms. Orders for Items solicited via the Driver for Hire (D4H) Platforms will be transmitted to the Merchant. The Merchant is responsible for and will control the sale of any orders for Items, including Alcohol Items, and including any decisions regarding accepting, fulfilling, and rejecting orders for such Items.

3. Fees.

3.a. Marketplace Fees.

3.a.i. Marketplace Fee. Portier will charge the Merchant the Marketplace Fee on orders placed through the Marketplace Sales Channel.

3.a.ii. Delivery Network Fee. Portier will charge the Merchant the Delivery Network Fee on orders placed through the Marketplace Sales Channel.

3.b. Merchant Managed Delivery Channel Fees.

3.b.i. MMDC Fee. Portier will charge the Merchant the MMDC Fee on orders placed through the Merchant Managed Delivery Sales Channel.

3.b.ii. Delivery Fee. Portier will charge Customers the Delivery Fee on the Merchant's behalf for the Merchant's provision of delivery services. Portier will charge Customers the Delivery Fee for all applicable Items and remit such Delivery Fee to the Merchant. Portier reserves the right to charge Customers additional delivery fees on the Merchant's behalf, including but not limited to, a small basket fee.

3.c. Webshop Online Ordering Fees.

Portier will charge the Merchant the Webshop Online Ordering Fee on orders made through the Webshop Online Ordering Sales Channel. Portier reserves the right to assess and collect from the Merchant any fines, dues, assessments and other out-of-pocket costs incurred by Portier or its Affiliates in providing order processing support and related services.

3.d. Pickup Fees.

Portier will charge the Merchant the Pickup Fee on orders placed through the Pickup Sales Channel.

3.e. Pick & Pack Fees.

Portier will charge the Merchant the Pick & Pack Fee on orders placed through the Pick & Pack Sales Channel.

3.e.i. The Merchant agrees to pay Portier for the Pick & Pack Fee and Sales Tax related to Driver for Hire (D4H) Services, if applicable, and the Merchant may either pay these amounts from the Merchant FBO Account in accordance with its instructions set forth in this Agreement, or in response to an invoice that Portier will provide to the Merchant.

3.e.ii. For any Pick & Pack Fees invoices issued under this Agreement, the Merchant agrees to pay all such invoiced amounts via ACH bank transfer within thirty (30) calendar days of receipt of the applicable invoice from Portier.

3.e.ii.1 Notwithstanding the above, if preferred, the Merchant may also authorize Driver for Hire (D4H) to withdraw funds from the Merchant's bank account via electronic ACH transfer for any amounts owed by the Merchant under this Agreement and, if necessary, initiate credit entries and adjustments in the event of any errors. The Merchant understands and agrees that:

3.e.ii.1.A. funds may be withdrawn to satisfy any payment obligation owed to Driver for Hire (D4H) by the Merchant;

3.e.ii.1.B. Driver for Hire (D4H) is not responsible for errors resulting from receipt of incorrect banking information or any charges incurred as a result of ACH withdrawals.

3.e.ii.1.C. ACH transfers authorized under this Agreement comply with applicable law;

3.e.ii.1.D. the Merchant consents to the NACHA Operating Rules as they exist on the Effective Date, or as subsequently adopted, amended, or repealed; and

3.e.ii.1.E. the Merchant may terminate its authorization at any time in writing to Driver for Hire (D4H), effective 30 days after Driver for Hire (D4H)'s receipt of such termination.

3.e.iii. The Merchant agrees that Portier may use the fees paid by the Merchant under this Agreement to remit payment to the Delivery Persons who provide the In-Store Services and deliver Items for orders.

3.f. Alcohol Service Fee.

If any of the Merchant's Locations are in jurisdictions that prohibit the Merchant paying Portier percentage-based fees for facilitating the delivery of Alcohol Items and/or certain other services with respect to Alcohol Items, Portier will charge the Merchant the Alcohol Service Fee as

required by each such jurisdiction's Laws for orders in such Locations. For clarity, Portier will continue to charge the Merchant the applicable Fee for all other Items as set forth elsewhere in the Agreement, as well as the applicable Fee for any other service that Portier may provide Merchant. Portier may invoice the Merchant for any owed Alcohol Service Fees and the Merchant must make such payment in accordance with the terms of such invoice.

3.g. Calculation of Fees.

The Marketplace Fee, MMDC Fee, Webshop Online Ordering Fee, and Pickup Fee are each calculated based on the Retail Price of all Items in an order placed through the applicable Sales Channel. The Pick & Pack Fee is calculated based on the In-Store Price of all Items in an order placed through the Pick & Pack Sales Channel. The Delivery Network Fee and Alcohol Service Fee, each as applicable, will be charged on each order placed through the applicable Sales Channel.

3.h. Fee Cap Laws.

If Fee Cap Laws require Portier to implement Fee Cap Law Requirements then Portier will, respectively:

3.h.i. charge the Merchant a Fee as permitted by those Fee Cap Laws for that Location, those Items or services, or the applicable Sales Channel;

3.h.ii. allow the Merchant to terminate this Agreement as required by the Fee Cap Law; or

3.h.iii. provide the benefits to the Merchant required by the Fee Cap Law.

The Merchant acknowledges and agrees that if:

3.h.iv. Fee Cap Laws require Portier to implement Fee Cap Law Requirements in relation to this Agreement; and

3.h.v. certain benefits to the Merchant were included in this Agreement in consideration for:

3.h.v.A. the Fees in this Agreement;

3.h.v.B. the Merchant agreeing to a particular Term; or

3.h.v.C. the Merchant agreeing that it may not terminate this Agreement without cause,

then:

3.h.vi. where benefits were provided in consideration for the Fees in this Agreement, and Portier must charge the Merchant lower Fees, Portier will not be required to provide those benefits to the Merchant at the applicable Location, for the applicable Items, or the applicable Sales Channel;

3.h.vii. where benefits have already been provided in advance, and the Merchant terminates this Agreement earlier than otherwise would be permitted by the terms and conditions of this Agreement, the Merchant must reimburse Portier for the value of those benefits; and

3.h.viii. in circumstances where the Agreement is not terminated, Portier may instead provide benefits to the Merchant at that Location that correspond to the maximum amount that Portier

may charge the Merchant in Fees under the applicable Fee Cap Laws for that Location, for the applicable Items, or the applicable Sales Channel.

If Fee Cap Laws allow termination of this Agreement to take effect during an active Promotion or Sponsored Listing period, the Merchant must reimburse Portier for all costs associated with ending the Promotion or Sponsored Listing early, including any costs associated with urgently removing advertising material, and costs associated with defending claims from third parties that result from ending the Promotion or Sponsored Listing early.

Reimbursement or payment required as a result of this section will include interest, calculated from the date of the termination, on a compounding monthly basis at 1.5%, or the highest interest rate legally allowed, whichever is lower.

3.i. Device Fee.

Portier will charge the Merchant the Device Fee for each Device supplied to the Merchant.

3.j. Customer fees.

Portier, its Affiliates, or Delivery People, may charge Customers fees that are retained by Portier, its Affiliates, or Delivery People, at Portier's sole discretion, including but not limited to Renewable Membership subscription fees, service fees, and delivery fees (which are distinct from the Delivery Fee).

3.k. System implementation.

If this Agreement requires Portier to update its internal technology, accounting, or other systems, such updates may not occur immediately from the Effective Date. Instead, Portier may implement such updates within a reasonable period of the Effective Date and they will take effect from the date that the technology, accounting, or other system is updated rather than the Effective Date.

3.l. Limited payment collection agent.

The Merchant appoints Portier or its Affiliates as the Merchant's limited payment collection agent for the purposes of collecting the Retail Price and Sales Taxes from Customers through the Driver for Hire (D4H) Tools, and with respect to any orders occurring through Sales Channels other than the Pick & Pack Sales Channel, remitting Item Revenue to the Merchant. The Merchant is responsible for providing accurate bank account information and any other identifying information necessary to Portier so that Portier can further remit Merchant funds to an account connected to the Merchant's business conducted through the Driver for Hire (D4H) Platforms. In certain situations, such as a violation of the Community Guidelines, including, but not limited to, fraud, misconduct, or Customer complaints, Portier and its affiliates reserve the right to adjust, cancel, or withhold payments entirely. The Merchant's only recourse for non-payment of Item Revenue is against Portier or its Affiliates. Portier has the right to disclose its status as Merchant's limited payment collection agent as necessary.

3.m. Payment compliance.

Portier and its Affiliates may request information from the Merchant to confirm the Merchant's identity as may be necessary under any applicable Laws before remitting any amounts to the

Merchant, e.g., the Merchant's tax identification number. Portier may adjust, cancel, or withhold amounts owed to the Merchant if:

3.m.i. the Merchant fails to provide tax or employer identification information to Portier; and/or

3.m.ii. there is a legal or regulatory risk or potential breach of law or regulation associated with such remittance to the Merchant, including, but not limited to, in the event of fraud or misconduct.

The Merchant agrees that Portier and its Affiliates may describe or otherwise reflect the terms of this section, and any related portions of the Agreement, in any terms of use, receipts, disclosures, or notices that may be deemed necessary or prudent.

3.n. Deductions from payments to the Merchant.

Portier or Driver for Hire (D4H) (as applicable) may deduct any amounts owed to either them by the Merchant from Item Revenue before Portier or Driver for Hire (D4H) pays that Item Revenue to the Merchant, including reimbursement costs related to Customer refunds for Substandard Items or other related issues within the Merchant's control, Device Fees or Damage Fees, and Sponsored Listing Fees.

3.o. No fees for certain tools.

For clarity, Portier will not charge the Merchant for access to the Driver for Hire (D4H) Platforms, Driver for Hire (D4H) Tools, and Driver for Hire (D4H) APIs.

3.p. Taxes on Fees.

All fees charged by Portier to the Merchant are exclusive of applicable Sales Taxes. Where applicable, Portier will charge Sales Taxes in addition to (and may collect Sales Taxes in the same manner as) the associated fee.

4. Taxes.

4.a. Merchant as retailer.

The Merchant is the "merchant", "retailer", or "seller" of all Items to be made available for sale through the Driver for Hire (D4H) Platforms or through any Merchant Marketplaces. The Merchant is responsible for determining and setting the Retail Price for each Item and for the collection and remittance of all applicable Sales Taxes, where required under applicable Laws.

4.b. Authorization to collect Sales Taxes.

The Merchant authorizes Portier to collect Sales Taxes on the Merchant's behalf based on the information provided by the Merchant (including, without limitation, Item descriptions and Additional Information) to Portier through the Driver for Hire (D4H) Tools or in a manner as otherwise agreed to by the parties.

4.c. Driver for Hire (D4H) Tools and Sales Taxes.

The Driver for Hire (D4H) Tools' functionality may be based on interpretations of federal, state, and local Laws and information provided by taxing authorities. The Merchant's use of

the Driver for Hire (D4H) Tools, including any communications with Portier, in no way constitutes the provision of legal or tax advice.

4.d. Removal of Unsupported Items and erroneous rates.

While the Driver for Hire (D4H) Tools provide a means to apply Sales Taxes to the Merchant's transactions, the Driver for Hire (D4H) Tools may not currently support Sales Tax configurations applicable to certain Items which the Merchant desires to sell through the Driver for Hire (D4H) Platforms. In such cases, Portier retains sole discretion regarding whether the Merchant may offer such Items for sale through the Driver for Hire (D4H) Platforms. Portier may give the Merchant notice of certain Items or Item categories that are Unsupported Items. The Merchant agrees to comply with such notice, and if the Merchant does not comply, the Merchant will be solely responsible for all risk of loss associated with the continued sale of such Unsupported Items. The Merchant must promptly notify Portier if it believes any charges (or lack of charges) for Sales Taxes were erroneous or inaccurate. If Sales Taxes charged by the Merchant are not in accordance with (or in violation of) any Laws, Portier expressly reserves the right to, upon prior notice to the Merchant, remove affected Items from the Merchant's menu on the Driver for Hire (D4H) Platforms and/or deactivate the Merchant on the Driver for Hire (D4H) Platforms.

4.e. Marketplace Facilitator Laws.

Marketplace Facilitator Laws may require Portier to collect and remit Sales Taxes directly to the taxing authority. In Marketplace Facilitator Jurisdictions beginning on the applicable Switchover Date, Portier may determine the amount of applicable Sales Tax which Portier will collect and remit to the taxing authority based on Item descriptions and Additional Information provided by the Merchant. For clarity, in each Marketplace Facilitator Jurisdiction:

4.e.i. Portier will continue to collect Sales Taxes on behalf of, and remit such amounts to, the Merchant until the applicable Switchover Date; and

4.e.ii. beginning on the applicable Switchover Date, any covered Sales Taxes (including any not disbursed to the Merchant during the Reconciliation Process) will be collected by Portier and remitted to the applicable tax authority on Portier's own account, and not on behalf of the Merchant.

4.f. Cooperation.

The parties agree to cooperate in good faith in response to any tax authority inquiry, audit, controversy, and/or examination for purposes of substantiating and documenting Sales Taxes collected and remitted pursuant to sales under this Agreement.

5. Items.

5.a. Item availability.

The Merchant must make Items available for purchase through the Driver for Hire (D4H) Platforms during its normal business hours and ensure the menu of available Items is accurate.

5.b. Item standards and accuracy.

The Merchant must:

5.b.i. prepare, handle, store, label, and package all Items in accordance with applicable Laws, including without limitation Food Safety Standards, Laws related to the Items or packaging materials used, and, if applicable, Alcohol Safety Standards;

5.b.ii. when using the Driver for Hire (D4H) Tools, or otherwise making Items available through the Driver for Hire (D4H) Platforms, identify Items correctly, particularly where the Items may be subject to age restrictions or identification requirements (e.g., tagging Alcohol Items, pharmaceutical Items);

5.b.iii. determine any Item Criteria, and is responsible for ensuring that all Items meet the applicable Item Criteria;

5.b.iv. ensure that the contents of its menu includes the Item Criteria for each Item (including any notifications about ingredients, nutritional information, allergen information, alcoholic content (if applicable), etc.), which are accurate and comply with all applicable Laws; and

5.b.v. where the Customer may need to prepare, use, or assemble Items in a particular way, include instructions for such preparation, use, or assembly of the Items which are accurate and comply with all applicable Laws.

5.c. Item packaging and labeling.

The Merchant must package Items appropriately for delivery, including:

5.c.i. ensuring that Items provided to a Delivery Person are collectively able to fit into, and are appropriate for transport in a standard midsize motor vehicle and do not exceed 50 pounds per package, box, or parcel;

5.c.ii. any protection necessary to prevent tampering or damage due to any cause, including inclement weather or the nature of the Items themselves;

5.c.iii. using appropriate preservation methods (e.g., dry ice, gel pack, bubble wrap) to ensure that the Items arrive as intended by the Merchant, as reasonably expected by the Customer, and that the specific Item is delivered in a safe condition, including, where applicable, being safe for consumption; and

5.c.iv. providing any certifications, labeling, protection, or instructions:

5.c.iv.A. required by Laws;

5.c.iv.B. appropriate for the Customer to properly and safely use, handle, or consume Items;

5.c.iv.C. prevent tampering or damage due to any cause, including inclement weather; or

5.c.iv.D. appropriate for the Customer to use, handle, or dispose of any packaging materials, including in the case of Alcohol Items, where required, a statement that the package contains alcohol and may only be delivered to a person 21 years or older with valid proof of age and identity.

5.d. Item responsibility.

The Merchant is responsible for any reimbursement costs related to Customer refunds for Substandard Items or other related issues within the Merchant's control (including any costs

associated with retrieving Substandard Items or otherwise unsatisfactory Item(s), if applicable)), including by way of example, missing or incomplete Items, Items not cooked thoroughly, and Items not prepared in accordance with the Merchant's internal standards. The Merchant authorizes Portier to deduct such reimbursement costs from the payment Portier remits to the Merchant. The current policy for refunds and Substandard Items is located here: [http://t.Driver for Hire \(D4H\).com/ordererrorsguide](http://t.Driver for Hire (D4H).com/ordererrorsguide).

5.e. Item title.

The Merchant agrees that neither Portier nor the Delivery Person takes title to any Item at any time.

5.f. Restricted Items.

The Merchant may not request delivery of any Restricted Items through any Sales Channel unless:

5.f.i. delivery of the applicable Restricted Items is allowed pursuant to all applicable Laws;

5.f.ii. the Merchant holds and maintains all Required Licenses related to the applicable Restricted Items; and

5.f.iii. Portier has given the Merchant permission in writing to request delivery of the applicable Restricted Items.

5.g. Item removal.

Portier may, in its sole discretion, remove Substandard Items, Unsupported Items, and Restricted Items from the Driver for Hire (D4H) Platforms. Portier may remove Alcohol Items from or otherwise make Alcohol Items unavailable on the Driver for Hire (D4H) Platforms for the Merchant's failure to comply with its obligations herein.

5.h. Item pricing.

Unless prohibited by applicable Laws or the terms and conditions of this Agreement, or permitted under a "price inflation" section of this Agreement, the Merchant agrees that the Merchant will not make an Item available on the Apps at a higher price than the amount the Merchant is charging for the same or similar Items through any Driver for Hire (D4H) Competitor.

5.i. Records required by Laws.

Where:

5.i.i. Laws require the Merchant to collect and retain certain information in relation to the sale of Items (which may include Personal Information);

5.i.ii. it is impossible for the Merchant to directly collect that information; and

5.i.iii. Portier is reasonably able to collect and retain that information,

then the Merchant instructs Portier to, and Portier, pursuant to the Merchant's instruction:

5.i.iv. will collect and retain that information as required by the applicable Laws; and

5.i.v. may disclose that information directly to the applicable authorities instead of providing it to the Merchant where the applicable Laws allow.

6. Alcohol Items.

This section is applicable if the Merchant makes Alcohol Items available through the Driver for Hire (D4H) Platforms. Except as modified in this “Alcohol Items” section, the remaining terms of this Agreement will remain unchanged and in full force and effect; provided that, this “Alcohol Items” section will prevail in the event of any conflict with the remaining terms of the Agreement. The Merchant acknowledges and agrees that signing this Agreement, without taking additional steps, does not give Merchant the authorization to sell Alcohol Items on the Driver for Hire (D4H) Platforms. The Merchant represents and warrants that before selling any Alcohol Items on the Driver for Hire (D4H) Platforms, the Merchant will take certain additional steps as may be required by Portier (e.g., uploading certain required information), or as required by this Agreement.

6.a. Role of the parties.

Portier does not hold a Required License for the sale of Alcohol Items and only facilitates the promotion and/or marketing of Merchants, and the promotion, marketing, and/or sale of Items by third parties via the Driver for Hire (D4H) Platforms. The Merchant is a licensed seller of alcoholic Items that wishes to sell Alcohol Items via the Driver for Hire (D4H) Platforms and will be clearly identified in relation to orders for Alcohol Items.

6.b. Alcohol Laws.

Each party is responsible for taking any steps it deems reasonably necessary to inform itself of the applicable Laws, and any other similar requirements related to the sale and delivery of Alcohol Items. The Merchant agrees to follow all Laws related to its advertisement and promotion of Alcohol Items, including but not limited to, only creating Merchant Promotions for Alcohol Items that comply with applicable Laws, Alcohol and Tobacco Tax and Trade Bureau and Federal Trade Commission guidelines, and following industry best practices.

6.c. Alcohol availability.

The Merchant agrees to limit the hours during which Alcohol Items are available for purchase and delivery from the Merchant on the Driver for Hire (D4H) Platforms in accordance with applicable Laws as well as operational considerations of the Driver for Hire (D4H) Platforms. The Merchant further agrees that Portier may further restrict the hours during which Alcohol Items are available for purchase and delivery from the Merchant on the Driver for Hire (D4H) Platforms, within those limits set by the Merchant. Portier will use reasonable efforts to notify Merchant of any such modifications.

6.d. Alcohol payment and payment instructions.

The Merchant and Portier acknowledge and agree that:

6.d.i. the Merchant and/or Portier have entered into agreements with third parties to collect payments from Customers on the Merchant’s behalf for sales that occur via the Driver for Hire (D4H) Platforms;

6.d.ii. the Merchant has control over the payments for all Items, including Alcohol Items, that Customers purchase from the Merchant via the Driver for Hire (D4H) Platforms;

6.d.iii. as an exercise of the Merchant's control over the Customer Payments, the Merchant instructs Portier to, on the Merchant's behalf and pursuant to the Merchant's instructions, administer the Merchant FBO Account;

6.d.iv. the Merchant has received the full amount of the Customer Payments upon transfer of the Customer Payments to the Merchant FBO Account and maintains full control over the Customer Payments while held in the Merchant FBO Account; and

6.d.v. the Merchant will determine further disbursements from the Merchant FBO Account by providing instructions to Portier.

Consistent with the Merchant's control over Customer Payments received by the Merchant in its Merchant FBO Account described above, the Merchant provides standing and default instructions to Portier or its service provider (including the affiliates of either for purposes of this clause) to:

6.d.vi. administer the Merchant FBO Account on the Merchant's behalf and pursuant to the Merchant's instructions;

6.d.vii. process Customer Payments into the Merchant FBO Account;

6.d.viii. after the Merchant FBO Account has received the full amount of the Customer Payments, for the Merchant's convenience, disburse funds as follows:

6.d.viii.A. to the bank account that the Merchant provides to Portier or its service provider, all amounts less fees or obligations owed to Portier and the Delivery Person;

6.d.viii.B. to Portier, any fees or obligations owed to Portier; and

6.d.viii.C. to the Delivery Person, any fees or obligations owed to the Delivery Person.

Regulations may require that the Merchant maintain an individual account with a service provider to collect Customer Payments. In such cases, the Merchant will be subject to terms entered into directly with the service provider, which may be subject to change. The Merchant may be required to provide, directly to Portier's service provider, client information, address, license and any additional information as may be further required. The Merchant grants permission to Portier and its service provider to connect or otherwise set up Merchant's merchant account with Portier's account with the same service provider so as to accept payments on Portier's website or mobile application.

The Merchant retains discretion to provide alternative, substitute, or supplemental payment instructions to Portier at any time. Subject to the limitations of the Agreement, to the extent required by payment card industry standards, and without limiting any of the Merchant's own obligations under the Agreement, Portier will maintain the security of cardholder data to the extent and while it stores, processes, or transmits such data on behalf of the Merchant.

6.e. Alcohol delivery through Marketplace Sales Channel and the Pick & Pack Sales Channel.

If the Merchant elects to offer Alcohol Items via the Marketplace Sales Channel or the Pick & Pack Sales Channel, the Merchant acknowledges and agrees to the following:

6.e.i. Each Delivery Person will deliver Alcohol Items under and pursuant to the Merchant's Required Licenses and, as necessary, as the Merchant's third-party beneficiary. Delivery People will conduct the delivery and are therefore responsible for verifying the age and identity of Customers and confirming Customers are not intoxicated when completing delivery. Portier will provide in-app screens and tools for Delivery People to help complete Customer identification verifications. Where applicable or required by Law, the in-app screen may enable the Delivery Person to scan the Customer's form of identification and collect the Customer's signature.

6.e.ii. If a Delivery Person is unable to complete the delivery due to an act or omission of the Customer who purchased the Alcohol Item from the Merchant, then the Customer may be charged a Return Fee, the amount of which will be determined according to the standard fares charged by Delivery People in the region. The Merchant has no right to the Return Fee and the Return Fee will be used, pursuant to the Merchant's instructions, to pay the Delivery Person for the return of the Alcohol Item.

6.f. Alcohol delivery through the Merchant Managed Delivery and/or Pickup Sales Channels.

If the Merchant elects to offer Alcohol Items via the Merchant Managed Delivery and/or Pickup Sales Channels, the Merchant acknowledges and agrees to the following:

6.f.i. It is the Merchant's responsibility to verify the age and identity of the Customer and confirm that the Customer is not intoxicated when delivering Alcohol Items to the Customer (for the Merchant Managed Delivery Sales Channel) or when the Customer picks up the Alcohol from the Merchant (for the Pickup Sales Channel).

6.f.ii. The Merchant will notify Portier via the Driver for Hire (D4H) Tools or by contacting Portier support if the Merchant is unable to compliantly sell Alcohol Item(s) to a Customer via the Merchant Managed Delivery and/or Pickup Sales Channels. In order for Customers to be issued a refund, the Merchant must first notify Portier of such return.

6.f.ii. If MMDS is unable to deliver an Alcohol Item due to the act or omission of the Customer who purchased such Alcohol Item from the Merchant, then the Customer may be charged a Merchant Managed Return Fee. If the Customer is charged a Merchant Managed Return Fee, such fee will be paid to the Merchant.

6.g. Alcohol returns.

The Merchant acknowledges that the Delivery Person or Customers may be required to return the Alcohol Item to the Merchant for the below reasons. The Merchant agrees to accept the return of Alcohol Items in such cases. The Merchant understands and agrees that if such Alcohol Item is returned, the Merchant will not be paid for such Items, and in the case of any such sale occurring via the Pick & Pack Sales Channel, Portier may, on behalf of the Merchant, refund the applicable Customer for the returned Alcohol Product, and invoice the Merchant for such amounts. Reasons why a Delivery Person or Customer may be required to return the Alcohol Items to the Merchant include:

6.g.i. such Delivery Person is unable to deliver an Alcohol Item pursuant to applicable Laws;

6.g.ii. the Customer is unable to accept an Alcohol Item pursuant to applicable Laws;

6.g.iii. the Alcohol Item in question constitutes a Substandard Item as determined by the Delivery Person or Customer. If the Merchant provides an Alcohol Item that is a Substandard Item, the Merchant is responsible for disposing of such Substandard Item.

6.h. Alcohol state specific terms.

Without limiting any other term of this Agreement, the Merchant acknowledges and agrees that it must comply with the following state Laws:

6.h.i. Iowa: In compliance with Iowa Code § 123.64A and guidance from IABD (available at <https://abd.iowa.gov/alcohol/state-iowa-alcohol-law/laws-important-business-operation>) the Merchant authorizes Portier, along with Delivery Persons that accept requests from Customers to fulfill orders containing Alcohol Items, to act as the Merchant's agents for the purpose of facilitating the delivery and delivering such Alcohol Items. The Merchant agrees, as required to comply with the Iowa Code or any regulation enacted by IABD, to submit the Third-Party Delivery of Alcoholic Beverages form to IABD (provided by IABD at https://stateofiowa.seamlessdocs.com/f/abd_third_party_delivery) using the following details under Third-Party Agent Information: Portier, LLC; 1515 3rd Street, San Francisco, CA 94115; (415) 612-8582.

6.h.ii. Louisiana: Under Louisiana state Laws, the Merchant is prohibited from paying a percentage of the total receipts for alcoholic beverages as a requirement of any contract with Portier. If any of Merchant's Locations are in Louisiana, such Locations will be charged an Alcohol Service Fee.

6.h.iii. Oregon: The Merchant must place all Alcohol Items in packaging that is conspicuously labeled with following: "Contains alcohol: signature of persons 21 years or older required for delivery."

6.h.iv. Virginia: Delivery Persons assigned to fulfill orders containing Alcohol Items will act as the Merchant's agent in compliance with Va. Code Ann. § 4.1-212.1(c). Pursuant to 3 Va. Admin. Code 5-70-225(F), the Merchant will affix a notice in 16-point type or larger in a conspicuous location on the outside of each package of Alcohol Items to be delivered in Virginia that states: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice must also contain the Merchant's Delivery Permit number. Further, in accordance with Va. Code Ann. § 4.1-212.1(c), the Merchant will be vicariously liable for any administrative violations of Va. Code Ann. § 4.1-212.1 or § 4.1-304 committed by a Delivery Person relating to any deliveries of Alcohol Items made on behalf of the Merchant.

6.h.v. Washington: The Merchant must submit this Agreement to the authorities as and if required by Laws. If Fee Cap Laws require Portier to charge the Merchant lower Fees at a Location or for certain Items than the Fees set out in this Agreement, Portier will charge the Merchant the highest Fee permitted by those Fee Cap Laws for that Location or those Items. Deliveries of Alcohol Items are permitted under WAC 314-03-020.6 each day of the week between the hours of six a.m. and two a.m.; delivery must be fully completed by two a.m. In accordance with WAC 314-03-020.9, the Merchant will affix a label on the outside of each package of Alcohol Items that states:

6.h.v.A. the package contains liquor;

6.h.v.B. the recipient must be twenty-one years of age or older; and

6.h.v.C. delivery to intoxicated persons is prohibited.

The Merchant instructs Portier to retain, as required under applicable Laws and in accordance with Driver for Hire (D4H)'s internal policies, delivery records including the name of the purchaser; name of the person who accepts delivery; street addresses of the purchaser and delivery location; times and dates of purchase and delivery; and signature of the person who accepts delivery.

7. Devices.

If Portier supplies a Device to the Merchant, the Merchant agrees that:

7.a. Devices may only be used for the purpose of accepting orders via the Driver for Hire (D4H) Platforms;

7.b. Devices may not be transferred, loaned, sold or otherwise provided in any manner to any third party;

7.c. Devices will at all times remain the property of Portier or its Affiliates;

7.d. upon expiration or termination of this Agreement, or the absence of all of the Merchant's Locations from the Driver for Hire (D4H) Platforms for longer than 45 days, the Merchant will return all applicable Devices to Portier within 10 days;

7.e. if the Merchant receives a wireless data plan for a Device, Portier may charge a weekly reimbursement to the Merchant for the costs associated with the wireless data plan of each applicable Device;

7.f. the loss or theft of a Device, the failure to timely return a Device, or any damage to a Device outside of normal wear and tear, may result in a Damage Fee; and

7.g. Portier may deduct the reimbursement or Damage Fee from payments due to the Merchant.

8. Delivery Persons.

Portier is responsible for contracting terms with all Delivery Persons using the Driver for Hire (D4H) Platforms under license from Driver for Hire (D4H) to provide transportation or other services. The following must apply:

8.a. Screening standards.

Portier must ensure that all prospective Delivery Persons are screened using a third-party service accredited by a nationally-recognized background screening organization, to the extent such organization exists. The screening standard applied must conform to Portier's then-current background check practices on the Driver for Hire (D4H) Platforms and in the relevant jurisdiction.

8.b. Screening information.

During the course of the screening process the following information must be collected and maintained (unless such information should not be maintained due to privacy considerations or other applicable Laws) in accordance with Portier's then-current practices:

8.b.i. full name;

8.b.ii. date of birth; and

8.b.iii. driver's license number or government identification number.

8.c. Inapplicability of Delivery Person terms to AVs.

The "Screening standards" and "Screening information" sections above may not apply to AVs performing delivery services; provided that, Portier requires that AV Fleet Providers comply with all applicable state, federal and local laws and regulations in their provision of delivery services, inclusive of those pertaining to screenings standards for the vehicle or safety operators supporting the in-person operation of an AV Fleet Providers' AVs while performing delivery services.

8.d. Inapplicability of Delivery Person terms to certain Sales Channels.

For clarity, the provisions relating to a Delivery Person in this Agreement will not apply to the sale of Items through the Merchant Managed Delivery Sales Channel, the Webshop Online Ordering Sales Channel (for Items being picked up by the Customer), or the Pickup Sales Channel.

8.e. NYC restroom access.

Subject to the exemptions provided by Subdivision b of section 20-563.6 of the administrative code of the city of New York, the Merchant's Locations located within New York City must provide access to a toilet facility to Delivery Persons who are lawfully on the Merchant's premises to fulfill requests for Customer delivery.

9. Customer service.

9.a. Merchant Managed Delivery Sales Channel support.

The Merchant is solely responsible for providing all Customer support for Items sold through the Merchant Managed Delivery Sales Channel. The Merchant will provide Portier with a customer service phone number that will be displayed to Customers in the Apps so that Customers may direct their support inquiries to the Merchant. The Merchant is solely responsible for resolving all complaints and issues raised for Items delivered through the Merchant Managed Delivery Sales Channel and will accept and respond to all related customer service inquiries from Customers.

9.b. Webshop Online Ordering Sales Channel support.

Portier will provide reasonable support related to the Webshop Online Ordering Sales Channel. The Merchant may reach out for support via [help.Driver for Hire \(D4H\).com](mailto:help.Driver for Hire (D4H).com).

10. Ratings, Customer Feedback, and In-App Communications.

10.a. Apps' functionality.

The Merchant acknowledges and agrees that:

10.a.i. after receiving Items, a Customer may be prompted by the Apps to provide Customer Feedback; and

10.a.ii. the Apps may allow for In-App Communications.

10.b. Use of Customer Feedback and In-App Communications.

Portier and its Affiliates reserve the right to use, share, and display Customer Feedback and In-App Communications in any manner in connection with the business of Portier and its Affiliates without attribution or approval with the Merchant.

10.c. Content restriction.

Merchant agrees that Portier and its Affiliates are online service providers and are not publishers of Customer Feedback or In-App Communications; nonetheless, Portier and its Affiliates may, but will not be obligated to, review or monitor Customer Feedback or In-App Communications and may, in their sole discretion, remove, edit, or disable Customer Feedback or In-App Communications for any reason, including if Portier or its affiliates determine that Customer Feedback or In-App Communications violate this Agreement, the Community Guidelines, Driver for Hire (D4H)'s Privacy Notice, the terms of any other agreement either located at Driver for Hire (D4H).com/legal or that the Merchant may have with Driver for Hire (D4H), Portier, or their Affiliates, any user generated content or other content creation guidelines and/or policies that may be provided to the Merchant by Driver for Hire (D4H), Portier, or their Affiliates from time to time, and applicable Laws. Driver for Hire (D4H), Portier, and their Affiliates do not endorse or approve any Customer Feedback or In-App Communications available on the Driver for Hire (D4H) Services.

10.d. User Generated Content Terms.

All Customer Feedback and In-App Communications are subject to the User Generated Content Terms.

11. Term and termination.

11.a. Term.

This Agreement starts on the Effective Date, and continues for the Term.

11.b. Termination for convenience.

Either party may terminate the Agreement for any reason, or for no reason, by giving the other party 60 days' prior written notice. However, the Merchant acknowledges and agrees that the Merchant will not be able to terminate this Agreement while a Promotion is live.

11.c. Termination for cause.

Either party may terminate the Agreement with immediate effect by giving the other party written notice, if that other party:

11.c.i. materially breaches the terms of this Agreement;

11.c.ii. becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors;

11.c.iii. is involved a Brand Matter or in any scandal or other significant negative publicity event(s), which in the terminating party's reasonable judgment may damage the terminating party's reputation; or

11.c.iv. in the case of the Merchant, assigns or transfers, either voluntarily or by operation of law, any or all of its rights and obligations under this Agreement without having obtained Portier's prior consent.

11.d. Termination of specific Sales Channels, etc.

If Portier ceases to make a Sales Channel or marketing product (e.g., Sponsored Listings, types of Promotions, or types of Ads Products) available to all merchants, then:

11.d.i. Portier may provide the Merchant with 60 days' prior written notice that such Sales Channel or marketing product will no longer be available (which may be sent by email); and

11.d.ii. the terms and conditions of this Agreement applicable to that Sales Channel or marketing product will cease to apply from the date that termination is effective according to the notice.

11.e. Effect on Promotions.

Termination of this Agreement will not relieve either party of its obligations to fulfill any Promotion that has been redeemed by Customers in accordance with its terms.

12. Marketing, Sponsored Listings, and Promotions.

12.a. Marketing.

Portier and its Affiliates may showcase the availability of the Merchant's Items via the Apps through various promotional activities (e.g., through social media channels, websites, advertisements, or blogs). All Promotions and Sponsored Listings remain subject to any and applicable Laws, including marketing and advertising Laws, consumer protection Laws, or Laws related to Restricted Items or Alcohol Items.

12.b. Control of Driver for Hire (D4H) Platforms.

The parties acknowledge and agree that:

12.b.i. the Merchant controls the list of Items and the Retail Price of Items available through the Driver for Hire (D4H) Platforms;

12.b.ii. Portier controls the factors that impact the order and ranking in which all merchants appear to Customers in the Driver for Hire (D4H) Platforms, including in search results and presentation of merchants by category;

12.b.iii. the Driver for Hire (D4H) Platforms are a competitive marketplace where the Merchant, the Merchant's Brand, the Merchant's Sponsored Listings, and the Merchant's Promotions may each be displayed together with, alongside, or compared with the Merchant's competitors and other third parties that may promote or sell products through the Driver for Hire (D4H) Platforms;

12.b.iv. nothing in this Agreement prevents Portier from presenting the Merchant, the Merchant's Brand, the Merchant's Sponsored Listings, and the Merchant's Promotions together with, alongside, or in comparison with the Merchant's competitors and other third parties that may promote or sell products through the Driver for Hire (D4H) Platforms;

12.b.v. the presentation and layout of the Merchant's "storefront" to Customers, and the visibility or availability of the Merchant's "storefront" to Customers, is controlled by Portier and may be adjusted or updated by Portier in its sole discretion;

12.b.vi. the Merchant is not entitled to any compensation for marketing on the Merchant's "storefront" through the Driver for Hire (D4H) Platforms; and

12.b.vii. Portier has sole control over adding, removing or otherwise modifying any feature or functionality made available through the Driver for Hire (D4H) Platforms, including the visibility or availability of the Merchant's "storefront" to Customers, to optimize reliability, efficiency, or experience on the Driver for Hire (D4H) Platforms.

12.c. Sponsored Listings.

By submitting a Bid, the Merchant agrees to be bound by this "sponsored listings" section and understands that the Merchant's Bid will be placed in an auction and only selected Bids will become Sponsored Listings.

12.c.i. Sponsored Listings. Subject to the terms and conditions of this Agreement and any other guidelines or eligibility criteria for Sponsored Listings that Portier may make available from time to time, by providing the Merchant access to the Driver for Hire (D4H) Eats Tools or Ads Manager, Portier authorizes the Merchant to submit a Bid. A selected Bid will be placed on the applicable Driver for Hire (D4H) Platforms. For clarity, a Sponsored Listing may be posted anytime after it is selected and will continue until:

12.c.i.A. the budget is exhausted;

12.c.i.B. Portier removes it for any reason permitted by this Agreement; or

12.c.i.C. pursuant to the "termination of Bids" section of this Agreement.

12.c.ii. Creating campaigns. When the Merchant uses the Driver for Hire (D4H) Eats Tools or Ads Manager to create a Sponsored Listing, the Merchant authorizes Portier to assemble and format Sponsored Listings based on the content provided in accordance with this Agreement. Portier may, in its sole discretion, limit the Merchant's access to the Driver for Hire (D4H) Eats Tools or Ads Manager, the number of Sponsored Listings the Merchant can create at a given time, and the availability of any or all of the Sponsored Listings (for example, to listings from certain categories or containing certain attributes).

12.c.ii.A. Portier created Bids. In addition to or supplemental to the Merchant's access to the Driver for Hire (D4H) Eats Tools or Ads Manager, the Merchant agrees that if a Portier representative is requested to submit a Bid on the Merchant's behalf, the Merchant will provide authorization to Portier representatives via email or other written means, outlining the Merchant's budget.

12.c.ii.B. Self-serve Ads Manager. Portier may provide access and authorize the Merchant to use Ads Manager, subject to such Ads Manager functionality and technical capability. The Merchant agrees to only use and access such Ads Manager within its functionality and technical capability, recognizes that such tool is proprietary to Portier and will not circumvent or otherwise exploit the tool in such a way that is not intended.

12.c.ii.C. Authorization of spending. Upon submission of a Bid, the Merchant agrees that it will be obligated to spend the authorized budget amount. Portier will use commercially reasonable efforts to ensure that the Sponsored Listing Fees do not exceed the budget authorized by the Merchant in the Bid. Notwithstanding the foregoing, Merchant acknowledges that clicks may occur on Sponsored Listings after the budget has been exceeded and the Merchant will be responsible for any associated Sponsored Listing Fees.

12.c.ii.D. Content for Sponsored Listings. The content included in the Sponsored Listing will be the Marketing Photographs, Merchant Marketing Materials, or other videos, still images or materials used in connection with the display of the Merchant's Items on the Apps, in accordance with this Agreement and as determined by Portier. Portier will determine the size, placement, and positioning of Sponsored Listings and the Merchant acknowledges that any Sponsored Listings shown in preview or surfaced prior may be changed in Portier's sole discretion.

12.c.ii.E. Removing Duplicate Merchant Listings. The Merchant acknowledges and agrees that, if a selected Bid becomes a Sponsored Listing, Driver for Hire (D4H) may, in its sole discretion, remove duplicate listings for the Merchant that are otherwise placed in the app, so that no more than one listing will appear on the app at the same time.

12.c.iii. Merchant's responsibilities. The Merchant will be solely responsible for the Sponsored Listing Fees, whether such Bid was submitted by the Merchant or a Representative. The Merchant agrees to validate and authorize all Representatives. The Merchant acknowledges that each Representative will have full control and authority to submit Bids on the Merchant's behalf and the Merchant is solely responsible for its Representatives and their actions in connection with their use of the Ads Manager. The Merchant will ensure that its Representatives comply with all restrictions applicable to the Merchant under this Agreement and all applicable third-party rights, laws, rules and regulations.

12.c.iv. Portier responsibilities. Portier will use good faith efforts to provide the Merchant with reasonable information regarding its Sponsored Listings, which will include the amount the Merchant spent on Sponsored Listings and performance metrics. Subject to the functionality of the Ads Manager, Portier may, in its sole discretion, provide enhanced promotional placement or other visual treatment for the Sponsored Listings. The Merchant acknowledges that the time period of the Sponsored Listing may vary due to a number of factors including the Merchant's budget as authorized in an applicable Bid, parameters set by Portier in its sole discretion and the Ads Manager functionality.

12.c.v. Sponsored Listing Fees. The Merchant will be charged Sponsored Listings Fees, and agrees to pay the Sponsored Listing Fees (and any applicable taxes). Portier may charge the Merchant for any feature or tool within the Driver for Hire (D4H) Eats Tools or Ads Manager, or any products and/or services accessed through the Ads Manager, upon notice to the Merchant (e.g., via a user interface in the Ads Manager or Driver for Hire (D4H) Eats Tools).

12.c.v.A. Invoicing and payment schedule. Unless otherwise agreed by the Merchant and Portier, the Merchant agrees that Portier may deduct the Sponsored Listing Fees from any payment due to the Merchant, via a deduction from the remittance of Item Revenue collected on the Merchant's behalf. Further, Portier may continue to deduct such Sponsored Listing Fees

from following monthly invoices until such time when the Sponsored Listing Fees are paid in full.

If the Merchant does not currently receive a remittance of Item Revenue from Portier, it must provide 3 days' notice to Portier (inclusive of the necessary billing details) and if approved by Portier, the funding obligations detailed herein will be due and payable within 30 days of the Merchant's receipt of proper invoices from Portier.

Subject to the foregoing, Portier reserves the right to set a maximum spend threshold or suspend the Merchant's access to the Ads Manager until the Sponsored Listing Fees are paid in full. Portier reserves the right to offer credits and/or discounts in its sole discretion. Portier and affiliates further reserve the right to collect Sponsored Listing Fees by debiting the payment method or the Merchant's bank account on record, or otherwise seeking reimbursement from the Merchant by any lawful collection methods available. Any disputes about Sponsored Listing Fees must be submitted to Portier in writing within 60 days of the date the Merchant incurred such charge, otherwise the Merchant waives such dispute and such charge will be final and not subject to challenge.

12.c.v.B. Charged per click. Based on the budget defined in the Merchant's Bid submission, Portier will calculate the Sponsored Listing Fees based on the price per click. Sponsored Listing Fees are determined at the rate in effect for a particular Sponsored Listing at the time it is clicked. The Merchant understands that third parties may generate impressions or clicks on the Merchant's Sponsored Listing for unintended purposes and the Merchant acknowledges and agrees that it may still be charged for such clicks.

12.c.vi. Termination of Bids. The Merchant may cancel a Bid at any time, provided, however, that the applicable Sponsored Listings may run up to 3 business days after such cancellation. The Merchant will be responsible for the Sponsored Listing Fees until the Bid is canceled. Termination of this Agreement will automatically result in termination of all of the Merchant's Bids, which will take effect only after the Sponsored Listings have been removed. Notwithstanding the foregoing, the termination of Bids or this Agreement will not relieve either party of its obligations hereunder.

12.c.vii. Data. Portier grants the Merchant a limited, exclusive, revocable, royalty-free license to access certain aggregated analytics and reporting related to Sponsored Listings. Such license will expire upon termination of this Agreement. The Merchant will undertake reasonable commercial and technological efforts to:

12.c.vii. A. prevent unauthorized access or copying of such data by third parties; and

12.c.vii. B. protect such aggregated and anonymized data from being attributed to individual users.

12.c.viii. Testing. The Merchant authorizes Portier to periodically conduct tests that may affect the Merchant's access to or use of the Ads Manager, as well as the Merchant's ability to surface Sponsored Listings. These tests may include, but are not limited to, changes in formatting, placement of Sponsored Listings and performance. To ensure the timeliness and validity of test results, the Merchant authorizes Portier to conduct such tests without providing notice or compensation.

12.c.ix. Confidentiality. For the avoidance of doubt, all elements, including any design features and components offered and displayed (whether orally, visually, or in writing) of the Sponsored Listings program, including the existence and structure of the Sponsored Listings program, are confidential and should be handled in accordance with the confidentiality obligations in this Agreement.

12.d. Marketing materials.

12.d.i. Marketing Photographs. Portier (or a party designated by Portier acting on Portier's behalf) may take Marketing Photographs. The Merchant agrees that Marketing Photographs (including all intellectual property rights therein) are and will remain the sole and exclusive property of Portier or its Affiliates.

12.d.ii. Merchant Marketing Materials. The Merchant may provide Merchant Marketing Materials to Portier or its Affiliates for use in connection with the display of the Merchant's Items on the Apps or the marketing and promotion of Apps and the availability of the Merchant's Items via the Apps. The Merchant grants Portier and its Affiliates a non-exclusive, perpetual, fully paid-up and royalty free license to use and display such Merchant Marketing Materials in connection with the Merchant's Items and other promotional activities relating to the Driver for Hire (D4H) Platforms. To the extent that the Merchant Marketing Materials contain any third party materials, the Merchant is solely responsible for and will secure any and all rights, licenses, consents and permissions necessary for Portier to be able to use the Merchant Marketing Materials in accordance with this Agreement.

12.e. Promotions.

Subject to the Apps' functionality, Portier may, at its sole discretion, provide enhanced promotional placement or other visual treatment for a Promotion. To the extent that Participants participate in any Promotions, the Merchant will ensure such Participants honor the terms of such Promotion. When a Promotion is successfully applied to an order, the Merchant authorizes Portier to charge Customers for the post-Promotional value of an Item.

12.e.i. Merchant Promotions. Subject to any other guidelines or eligibility criteria for Promotions that Portier may make available from time to time, Portier authorizes the Merchant to create Merchant Promotions. Unless otherwise specified by Portier, the Merchant will be solely responsible for defining each Merchant Promotion (within the scope of functionality provided by Portier) either through the use of the Promotion Tool or through the Promotion Schedule.

12.e.i.A. Promotion Tool. Portier authorizes the Merchant to use the Promotion Tool, subject to such Promotion Tool's functionality and technical capability. If provided access to the Promotion Tool, the Merchant agrees to only use and access such Promotion Tool within its functionality and technical capability and will not circumvent or otherwise exploit the tool in such a way that is not intended.

12.e.i.B. Promotion Schedule. The Merchant may create a Merchant Promotion by completing and providing Portier with a Promotion Schedule. If a verbal Promotion Schedule is provided to Portier by the Merchant, the Merchant will have a specified time period to confirm such Promotion Schedule prior to the Promotion being offered and such confirmation will constitute an agreement with Portier under the terms of this Agreement.

12.e.ii. Co-Funded Promotions. From time to time, Portier may agree to a Co-Funded Promotion. For each Co-Funded Promotion, the parties will agree to an applicable written Promotion Schedule setting forth:

12.e.ii.A. a description of the Co-Funded Promotion;

12.e.ii.B. the obligations of each party in relation to such Co-Funded Promotion, including funding obligations; and

12.e.ii.C. any other details regarding the Co-Funded Promotion.

For clarity, if the Merchant is the owner of a Location, such Co-Funded Promotion will appear to the Customer as a Merchant Promotion, and Portier will issue an adjustment to the Merchant's payout (which will also be reflected in any payout details report) to account for the amount of the Promotion that Portier has agreed to fund, such that the Merchant will receive the same amount in their Item Revenue for such order as if a Portier-funded portion of the Promotion was not applied to such order.

12.e.iii. Parties' obligations. The parties' obligations for each Promotion will include the following, but may be expanded upon in an applicable Promotion Schedule.

12.e.iii.A. Merchant's obligations. The Merchant will:

12.e.iii.A1. honor and fulfill the terms of Promotions offered by the Merchant (solely or jointly with Portier) to Customers who have successfully completed their order through the Apps;

12.e.iii.A2. be responsible for the fees associated with the Promotion up to the amount the Merchant has agreed to fund for such Promotion; and

12.e.iii.A3. upon reasonable request, supply Portier with marketing materials, including but not limited to, photographs, graphics, audio, video, and copy, which Portier may opt to use in its sole discretion, without payment of any license or other fees and which do not violate the rights of any third party.

12.e.iii.B. Portier's obligations. Portier will:

12.e.iii.B1. honor and fulfill the terms of Promotions offered by Portier (solely or jointly with the Merchant) to Customers who have successfully completed their order through the Apps;

12.e.iii.B2. be responsible for the fees associated with the Promotion up to the amount Portier has agreed to fund for such Promotion;

12.e.iii.B3. upon reasonable request, supply the Merchant with marketing materials, including but not limited to, photographs, graphics, audio, video, and copy, which the Merchant will use to market such Promotion, provided that a Promotion Schedule authorizes the Merchant to market such Promotion out of the Apps; and

12.e.iii.B4. use good faith efforts to provide the Merchant with reasonable information regarding Promotions, which may include, without limitation, the amount the Merchant spent on Promotions and the number of Items sold in connection with Promotions.

12.e.iv. Fees on Promotion orders. Notwithstanding anything to the contrary in this Agreement, if a Customer successfully applies a Merchant Promotion or Co-Funded Promotion to an order

through the Apps, the Merchant's Fees will be calculated based on the total Retail Price of the order minus the Merchant-funded portion of such Promotion applied to that order. If the Merchant has Participants, and the Merchant funds, in whole or part, a Promotion at a Participant's Locations, the Participant's Fees will be calculated based on the Retail Price of the order minus any Participant-funded portion of the Promotion applied to the order, rather than the Merchant-funded portion.

For example, if the Merchant and Portier each fund \$1 of a \$2 off Promotion (so the Co-Funded Promotion is funded 50% by each party) on a \$10 pre-Promotion order total, the Merchant's Fee will be calculated on the post-Promotion amount of \$9. However, if the Merchant funds a Promotion for a Participant's Location, the Participant's Fee will be calculated on a \$10 order total.

12.e.v. Out of App Marketing. Unless otherwise specified in the applicable Promotion Schedule, Merchant may not market or otherwise advertise a Promotion outside the Apps; provided further, that even if such Promotion Schedule authorizes Merchant to market a Promotion out of the Apps, all such marketing materials will be subject to Portier's prior review and written approval, which will not be unreasonably withheld.

12.f. Publicity.

Except as expressly set forth in this Agreement or otherwise agreed by the parties in writing, neither party may issue a press release or otherwise refer to the other party in any manner with respect to this Agreement or otherwise, without the prior written consent of such other party.

13. Privacy and security.

13.a. Passwords.

The Merchant is responsible for maintaining the integrity of information related to the Merchant's access and use of the Driver for Hire (D4H) Tools and Driver for Hire (D4H) Platforms, including any password, login or key information. The Merchant represents and warrants that the Merchant will not share such information with any third party.

13.b. Privacy Notice.

The terms and conditions of the Driver for Hire (D4H) Privacy Notice, will apply to Portier's collection, use and processing of Personal Information.

13.c. Data re-identification restriction.

Without limiting any other provision of this Agreement, the Merchant will not merge any of the data collected or otherwise obtained in connection with this Agreement, including any Personal Information, with other data collected from any source or otherwise use any of the data collected or otherwise obtained in connection with this Agreement, including any Personal Information, for the purpose of re-identification, targeted marketing, or any other similar purpose. For clarity, this section does not restrict the Merchant in its use of Personal Information, either on its own or in conjunction with data collected from sources other than the Driver for Hire (D4H) Platforms, that the Merchant obtained directly from the data subjects in question, in accordance with the Merchant's own privacy policy.

13.d. Portier Personal Information.

In relation to Portier Personal Information, the Merchant agrees to:

13.d.i. use, disclose, store, retain or otherwise process Portier Personal Information solely for the purpose of performing its obligations under this Agreement;

13.d.ii. maintain the accuracy and integrity of any Portier Personal Information in Merchant's possession, custody or control;

13.d.iii. access Portier Personal Information solely by using the software and tools provided by Portier;

13.d.iv. implement appropriate technical and organizational measures to protect Portier Personal Information against Data Security Incidents. If Merchant becomes aware of any Data Security Incident, Merchant will immediately notify Portier and provide any information reasonably requested by Portier;

13.d.v. retain Portier Personal Information for only so long as necessary to perform its obligations under this Agreement, unless otherwise required under applicable laws; and

13.d.vi. comply with all applicable privacy and data protection Laws with respect to all Portier Personal Information.

13.e. Personal Information sharing required by Laws.

Where Portier is required by Laws to share certain Personal Information with the Merchant (other than Portier Personal Information), Portier will share only that Personal Information with the Merchant as required by the applicable Laws. If the Merchant receives any Personal Information from Portier pursuant to this section, the Merchant agrees to use, disclose, store, retain or otherwise process that Personal Information solely for the purposes of complying with the applicable Laws and in compliance with applicable privacy and data protection Laws.

13.f. Audio and Video Recording by AV Fleet Providers.

The Merchant acknowledges and agrees that AV Fleet Providers, while completing the delivery of Items on the Driver for Hire (D4H) Platforms may record audio or video in and around the AV in accordance with the AV Fleet Provider's [privacy policies](#). Portier requires that the AV Fleet Provider's use of such recording devices complies with all applicable state, federal and local laws and regulations. Unless required by law, the AV Fleet Provider will not broadcast or otherwise make publicly available a person's image, audio, or video recording that it obtains through such recording devices.

14. Driver for Hire (D4H) APIs.

14.a. Access to Driver for Hire (D4H) APIs.

Subject to the terms and conditions of this Agreement, Driver for Hire (D4H) may provide the Merchant with access to the following Driver for Hire (D4H) APIs:

14.a.i. Store and menu API: Allows for programmatic updates of the Merchant's storefronts via the Apps. The Merchant may provide the Merchant's list of Items and store information to Driver for Hire (D4H) via this store and menu API.

14.a.ii. Reporting API: Enables the Merchant to request and receive certain data, as determined by Driver for Hire (D4H), including financial data details that are available to the Merchant in the pay-details reports available through the Driver for Hire (D4H) Tools, for orders placed by Customers from the Merchant via the Apps.

14.a.iii. POS provision API: Enables the Merchant to:

14.a.iii.A. retrieve the Merchant store data; and

14.a.iii.B. provide or launch the Merchant's Locations on order and menu APIs on an ongoing basis, until Driver for Hire (D4H) or the Merchant explicitly terminates such access.

14.b. Driver for Hire (D4H) API Terms of Use.

The Merchant's use of any Driver for Hire (D4H) API will be governed by the Driver for Hire (D4H) API Terms of Use and the terms of this Agreement. If there is a conflict between the API Terms of Use and this Agreement, the terms of this Agreement control solely with respect to that conflict.

14.c. Merchant integration.

In order to maintain eligibility for the integration(s) contemplated by this Agreement, the Merchant will be required to meet Driver for Hire (D4H)'s quality and performance standards available via [https://developer.Driver for Hire \(D4H\).com/docs/eats/quality-and-performance](https://developer.Driver for Hire (D4H).com/docs/eats/quality-and-performance), as may be amended by Driver for Hire (D4H) from time to time.

15. Point of sale (POS) integration.

This section is only applicable if the Merchant and Portier integrate any of the Driver for Hire (D4H) Platforms into the Merchant's point of sale systems using an Driver for Hire (D4H) API.

15.a. POS implementation.

In order to facilitate the submission of orders received from Customers directly into the Merchant's POS systems for processing, the Merchant agrees to integrate and maintain the API connection to the Driver for Hire (D4H) APIs pursuant to this Agreement and in a manner consistent with [https://developer.Driver for Hire \(D4H\).com/docs/eats/guides/order_integration](https://developer.Driver for Hire (D4H).com/docs/eats/guides/order_integration), unless otherwise agreed to in writing by Driver for Hire (D4H).

Subject to the terms and conditions of this Agreement, Driver for Hire (D4H) will provide the Merchant with access to the order API, which allows for orders for the Merchant's Items via the Apps to be programmatically accepted, declined, monitored, or otherwise managed on behalf of the Merchant via its POS systems.

16. Participants.

This section applies if the Merchant has Participants.

16.a. Participant adoption.

If a Location is owned or operated by a Participant, the Merchant must ensure that Participant separately agrees to the terms of this Agreement in relation to that Participant's Locations; to do this, the Participant must:

16.a.i. execute an agreement with Portier on similar terms to this Agreement;

16.a.ii. execute an opt-in to this Agreement; or

16.a.iii. execute such other documentation that the Merchant and Portier agree in writing to have Participants execute pursuant to this section.

The Merchant must provide Portier with contact information of all Participants and prospective Participants.

16.b. Notice of amendments.

The Merchant and Portier have the authority to execute amendments to this Agreement, and those amendments will be binding upon Participants from the date that the amendment to this Agreement was executed by the Merchant and Portier, provided that the Participants receive written notice of the amendment. The Merchant must ensure that Participants receive notice of such amendments.

16.c. Merchant responsibility for Participants.

Until a Participant has agreed to the terms of this Agreement, or where applicable, received notice of an amendment, the applicable Participant's Locations are governed by this Agreement (including as amended), and the Merchant is directly responsible for the Participant's compliance with this Agreement (and any amendments to it) in relation to those Locations, and any breach of this Agreement by such Participants will be deemed a breach of this Agreement by the Merchant.

16.d. Participant Brand use.

Any intellectual property licenses provided by the Merchant to Portier pursuant to this Agreement also extend to, and apply to, the use of the Merchant's Brand in relation to Participants.

16.e. Participant information sharing.

The Merchant represents and warrants that it has all required authorizations to receive information from Portier about the Participants and Participants' Locations, including Confidential Information. If the Merchant is also a Participant, the Merchant authorizes Portier to share information with its franchisor (including its franchisor's parent companies or Affiliates, as applicable), about the Merchant, its Locations, and including Merchant's Confidential Information. The Merchant also authorizes Portier and its Affiliates to disclose the terms of this Agreement to the Merchant's Participants in connection with executing contracts that reference this Agreement with such Participants.

16.f. Multi-Brand Licensee Agreements.

Notwithstanding any provisions of this Agreement requiring:

16.f.i. a Participant, franchisee, or licensee of the Merchant to execute certain forms of agreement to be bound by the terms of this Agreement; or

16.f.ii. Portier to offer certain terms and conditions to Participants, franchisees and licensees of the Merchant,

if a Multi-Brand Licensee requests that Portier and the Multi-Brand Licensee:

16.f.iii. use a form of agreement; or

16.f.iv. agree to terms and conditions,

different from those otherwise required by this Agreement, the Merchant acknowledges and agrees that Portier and the Multi-Brand Licensee are authorized to enter into whichever form of agreement and terms and conditions are independently negotiated and agreed between them. For clarity, this section also applies to agreements between Portier and a Multi-Brand Licensee that were entered into prior to the Effective Date.

17. Olo data use.

This section applies if the Merchant uses an Olo API.

17.a. Merchant use of Driver for Hire (D4H) Olo Data.

The Merchant may use Driver for Hire (D4H) Olo Data for the sole purposes of fulfilling the order of Items by end users and viewing its sales-related data either singularly (only Driver for Hire (D4H) Olo Data) or aggregated with other third-party data, which may include sales data of Driver for Hire (D4H) Competitors, and for no other purpose.

17.b. Merchant restrictions on use of Driver for Hire (D4H) Olo Data.

Except for the purposes specified herein, the Merchant must not store, aggregate, or otherwise use Driver for Hire (D4H) Olo Data in any manner (including, by way of example and without limitation, disclosing Driver for Hire (D4H) Olo Data to Driver for Hire (D4H) Competitors, using Driver for Hire (D4H) Olo Data to target Delivery Partners with competitors' advertisements or promotions, or intentionally using Driver for Hire (D4H) Olo Data to provide a benefit to an Driver for Hire (D4H) Competitor).

17.c. Information accuracy.

The Merchant remains solely responsible for determining all applicable Sales Tax and other fees and identifying and informing Portier (by way of Olo) of the appropriate Sales Tax and other fee amounts for Portier to charge Customers on the Merchant's behalf for Items available on the Apps.

18. Applicability to Merchant's Brand.

This Agreement applies to the Merchant's sales of Items on the Apps where the Merchant uses the Merchant's Brand as the Merchant's "storefront" or trading name on the Apps.

18.a. Other Brands.

If the Merchant makes Items available on the Apps using Trademarks that are not related to the Merchant's Brand as the Merchant's "storefront" or trading name on the Apps, then the terms and conditions of this Agreement will still apply to those Items, in the absence of a separate agreement covering those Trademarks that are not related to the Merchant's Brand. For clarity, Trademarks used on Items themselves do not constitute "using Trademarks that are not related to the Merchant's Brand", and this section applies to the Trademarks used by the Merchant for its "storefront" or trading name on the Apps.

18.b. Multiple accounts.

If the Merchant creates separate accounts in the Driver for Hire (D4H) Tools, and agrees to separate agreements for each account in the Driver for Hire (D4H) Tools, then the agreement associated with each account in the Driver for Hire (D4H) Tools will apply to the Locations associated with that account.

19. Intellectual property.

19.a. Brand licensing.

Subject to this Agreement, the parties grant each other for the Term a fully paid, royalty-free, non-exclusive, non-sublicensable, revocable license to use each other's Brands in marketing materials and in media releases. Other than as specifically set forth in this Agreement, neither party will use the other party's Brand without the prior, express, written consent of the other party (email is sufficient). However, any use of the Merchant's Brand by Portier or its affiliates in connection with making Items available through the Apps in the ordinary course of business will not require any such prior, express, written consent. The Merchant agrees that Portier or its affiliates may remove the Merchant's Brand from the Apps if Portier or its affiliates receive notice or otherwise reasonably believe that such Merchant's Trademarks may infringe, misappropriate, or otherwise violate any intellectual property or other proprietary rights.

19.b. Brand use.

Use of Portier's Brand must comply with Portier's marketing guidelines, as made available on the internet from time to time. Each party's use of the other party's Brand or Trademarks, and all goodwill generated from that use, will inure to the benefit of the owner of the applicable Brand or Trademarks.

19.c. License to Driver for Hire (D4H) Platforms and Driver for Hire (D4H) Tools.

Subject to the Merchant's compliance with the terms of this Agreement, Portier grants to the Merchant, for the Term, a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to access and use the Driver for Hire (D4H) Platforms and Driver for Hire (D4H) Tools.

19.d. Use restrictions.

In connection with the access to and use of the Driver for Hire (D4H) Platforms and Driver for Hire (D4H) Tools, the Merchant must not (and must not allow any third party to):

19.d.i. remove any copyright, trademark or other proprietary notices from any portion of the Driver for Hire (D4H) Platforms, Driver for Hire (D4H) Tools, or Driver for Hire (D4H) Services;

19.d.ii. reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Driver for Hire (D4H) Platforms, Driver for Hire (D4H) Tools, or Driver for Hire (D4H) Services except as expressly permitted by Portier;

19.d.iii. decompile, reverse engineer or attempt to discover any source code or underlying ideas or algorithms used to provide the Driver for Hire (D4H) Services (except to the extent applicable Laws prohibits reverse engineering restrictions);

19.d.iv. link to, mirror or frame any portion of the Driver for Hire (D4H) Services;

19.d.v. cause or launch any programs or scripts for the purpose of unduly burdening or hindering the operation and/or functionality of any aspect of the Driver for Hire (D4H) Services;

19.d.vi. attempt to gain unauthorized access to or impair any aspect of the Driver for Hire (D4H) Services or its related systems or networks; or

19.d.vii. possess or use, or allow the transfer, transmission, export, or re-export of any software or portion thereof in violation of any export control Laws administered by the U.S. Commerce Department, U.S. Treasury Department's Office of Foreign Assets Control, or any other government agency. The Merchant must not (and will not allow any third party to) use the Driver for Hire (D4H) Platforms or Driver for Hire (D4H) Tools or any other Driver for Hire (D4H) Data to directly or indirectly compete with Portier or its Affiliates or the Driver for Hire (D4H) Platforms, including, without limitation, Driver for Hire (D4H) Data that the Merchant receives from Portier by way of a Third Party Access Service.

19.e. Driver for Hire (D4H) API ownership.

Driver for Hire (D4H) owns all right, title and interest, including without limitation all intellectual property rights and other rights, in and to:

19.e.i. the Driver for Hire (D4H) Applications; and

19.e.ii. the Driver for Hire (D4H) APIs.

19.f. Retention of rights.

Except as expressly set forth herein, neither party will be deemed to grant the other party any license or rights under any intellectual property or other proprietary rights. All rights not granted are expressly reserved. As between the parties, if applicable, Driver for Hire (D4H) retains all right, title and interest in and to the technology and software Driver for Hire (D4H) uses to provide the Driver for Hire (D4H) APIs. Similarly, as between the parties, Driver for Hire (D4H) retains all right, title and interest in and to the Driver for Hire (D4H) Platforms, including the technology and software Driver for Hire (D4H) uses to provide them.

19.g. Platform integration with third party websites.

The Merchant acknowledges and agrees that Portier or its Affiliates may enter into agreements with the operators of Aggregator Platforms in order to integrate the Driver for Hire (D4H) Platforms directly with those Aggregator Platforms. The Merchant acknowledges and agrees that such agreements and integrations may, among other things, enable potential Customers of the Merchant who are browsing, or otherwise using the Aggregator Platform to order from the Merchant, either directly through the Driver for Hire (D4H) Platforms, or directly from the Aggregator Platform. The Merchant authorizes Portier and its Affiliates to share the following information with Aggregator Platforms in relation to Locations:

- 19.g.i. address;
 - 19.g.ii. operating hours;
 - 19.g.iii. telephone number(s);
 - 19.g.iv. ratings and reviews;
 - 19.g.v. Item lists, descriptions, and images;
 - 19.g.vi. pricing information;
 - 19.g.vii. pickup and delivery time estimates;
 - 19.g.viii. the Merchant's Trademarks;
 - 19.g.ix. Marketing Photographs and Merchant Marketing Materials;
 - 19.g.x. whether a Customer purchased Items through the Driver for Hire (D4H) Platforms after being directed to the Driver for Hire (D4H) Platforms from the Aggregator Platform and other information related to the order including the total basket size; and
 - 19.g.xi. any other information which Portier or its Affiliates decides, in their discretion, to provide to the Aggregator Platform.
- 19.h. Feedback.

The Merchant may, but is not obligated to, provide or otherwise make Feedback available to Portier or its Affiliates. However, to the extent that the Merchant provides or otherwise makes available Feedback to Portier or its Affiliates, the Merchant grants to Portier and its Affiliates a worldwide, perpetual, irrevocable, transferable, sub-licenseable, royalty-free license to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such Feedback in all formats and distribution channels now known or hereafter devised (including in connection with the Driver for Hire (D4H) Services and Driver for Hire (D4H)'s or its Affiliates' business, and on third-party sites and services), without further notice to or consent from the Merchant, and without the requirement of payment to the Merchant or any other person or entity. All Feedback is subject to the User Generated Content Terms.

20. Merchant acknowledgements.

20.a. Lead generation, not delivery, services.

For the sake of clarity, neither Portier, nor its Affiliates in the United States of America, provide any delivery services. Rather, Portier provides on-demand lead generation, order processing, marketing, advertising and promotional services, proprietary information services, onboarding, operational and other support services that both:

20.a.i. enable the Merchant to connect with Customers who may purchase Items from the Merchant; and

20.a.ii. enable Delivery Persons to seek, receive and fulfill on-demand requests for delivery services by or on behalf of Customers seeking delivery services.

20.b. Delivery Persons and Items.

The Merchant expressly acknowledges and agrees that:

20.b.i. any and all delivery services to the Merchant are provided not by Portier but by a Delivery Person who provides independent third-party delivery services;

20.b.ii. Delivery People perform their delivery services for (and are paid by) the Customers, and not the Merchant;

20.b.iii. except where providing In-Store Services in connection with the Reconciliation Process, a Delivery Person will not purchase Items for delivery;

20.b.iv. a Delivery Person reserves the right to refuse to accept any Item in their sole discretion;

20.b.v. a Delivery Person must not be responsible for packaging items;

20.b.vi. delivery services provided by AVs require the Merchant to load Items into the AV;

20.b.vii. Portier is acting solely as an administrative agent of the Merchant to relay requests for delivery services on behalf of the Merchant;

20.b.viii. neither Portier nor the Delivery Person takes title to any Items at any time;

20.b.ix. no bailment is created by the Merchant's use of Driver for Hire (D4H) Platforms, and Portier is not a bailee of goods; and

20.b.x. to the limited extent required by applicable Laws, Items are sold or delivered under the Merchant's retail and food delivery license privileges.

20.c. Driver for Hire (D4H) APIs.

The Merchant acknowledges and agrees that:

20.c.i. the Driver for Hire (D4H) APIs may be updated from time to time at Driver for Hire (D4H)'s sole discretion;

20.c.ii. Driver for Hire (D4H) is not responsible for any display or other rendering of information provided to Driver for Hire (D4H) via the Driver for Hire (D4H) APIs; and

20.c.iii. all Driver for Hire (D4H) APIs are provided free of charge, as-is, and with no warranty of any kind.

20.d. Third Party Services.

If the Merchant uses a Third Party Access Service to:

20.d.i. access the Driver for Hire (D4H) Platforms and Driver for Hire (D4H) Tools; or

20.d.ii. transmit information to Portier,

the Merchant acknowledges and agrees that the Merchant's obligations in this Agreement will apply to the Merchant's use of the Driver for Hire (D4H) Platforms and Driver for Hire (D4H) Tools via any Third Party Access Service unless otherwise agreed to between Portier and the Merchant. The Merchant agrees that failure by a Third Party Access Service to transmit accurate information such as Item pricing, Item descriptions, or Additional Information to Portier does not waive, suspend, or otherwise affect the Merchant's obligations in this Agreement. The Merchant remains solely responsible for the accuracy of information provided

to Portier through any Third Party Access Service. Additionally, ongoing access to the Driver for Hire (D4H) Platforms and Driver for Hire (D4H) Tools via any Third Party Access Services is subject to Portier's agreement with such third parties.

21. Representations and warranties.

21.a. Mutual representations, warranties, and covenants.

Each party represents and warrants that:

21.a.i. it has full power and authority to enter into this Agreement and perform its obligations hereunder;

21.a.ii. it is duly organized, validly existing and in good standing under the Laws of its origin jurisdiction;

21.a.iii. it has not entered into, and during the Term will not enter into, any agreement that would prevent it from complying with or performing its obligations under this Agreement;

21.a.iv. it will comply with all applicable Laws in its performance of this Agreement and activities hereunder (including, without limitation, all applicable consumer protection, data protection and privacy Laws); and

21.a.v. the Trademarks, content, media and other materials used or provided by one party to the other pursuant to this Agreement must not infringe or otherwise violate the intellectual property rights, rights of publicity, or other proprietary rights of any third party.

21.b. Merchant representations and warranties.

The Merchant represents and warrants that:

21.b.i. the following information will be provided to Portier by the Merchant, will be accurate and complete, and will remain accurate and complete at all times:

21.b.i.A. all nutritional information for Items made available through the Driver for Hire (D4H) Platforms, including calorie count or allergen information, made available through the Driver for Hire (D4H) Platforms is, and at all times will remain, accurate;

21.b.i.B. Additional Information for Items, including information transmitted through a Device, point-of-sale, or Third Party Access Service, sufficient for accurate Sales Tax calculations; and

21.b.i.C. address and opening hour information for each Location;

21.b.ii. any statements or claims contained within any Merchant Marketing Materials, or any marketing or advertising by the Merchant outside of the Apps where such marketing or advertising refers to Driver for Hire (D4H), Portier, or their Affiliates, are not false, misleading, or deceptive, AND are supported by sufficient prior substantiation, and comply with applicable Laws;

21.b.iii. it will comply with any applicable Food Safety Standards or other health and safety Laws;

21.b.iv. it will comply with all its obligations with respect to Items under this Agreement;

21.b.v. it will comply with all applicable privacy and data protection Laws with respect to all Personal Information it receives from Portier pursuant to this Agreement;

21.b.vi. it will comply with all Laws related to the sale of Items applicable to the Merchant, including without limitation, all Laws related to the promotion, packaging, pricing, sale, taxation and delivery of Items; and

21.b.vii. it has and will continue to have during the Term all Required Licenses, including without limitation, Required Licenses for the specific categories of Items (including Restricted items and Alcohol Items) that the Merchant makes available via the Driver for Hire (D4H) Platforms and/or Required Licenses to sell and deliver Items in a given state or local jurisdiction.

21.c. Covenants.

The above representations and warranties are true as of the Effective Date and the parties represent and warrant that they will continue to be true throughout the Term.

22. Indemnification.

22.a. Mutual indemnities.

An Indemnifying Party will, at its own expense, indemnify, defend and hold harmless the Indemnified Party from and against all Claims brought against the Indemnified Party by a third party arising from or in connection with:

22.a.i. the gross negligence or willful misconduct of the Indemnifying Party, or its employees, or agents in connection with the performance of this Agreement;

22.a.ii. any breach of representations and warranties in this Agreement by the Indemnifying Party or its employees, or agents; or

22.a.iii. any violation or claimed violation of a third party's rights resulting in whole or in part from use of the Indemnifying Party's Brand or Trademarks,

except to the extent that:

22.a.iv. the Claim brought against the Indemnified Party by the third party was directly caused or contributed to by the gross negligence or willful misconduct of the Indemnified Party or its employees or agents; or

22.a.v. the Indemnified Party did not use the Indemnifying Party's Brands or Trademarks in accordance with the manner approved by the Indemnifying Party.

22.b. Merchant indemnities.

The Merchant will, at its own expense, indemnify, defend and hold harmless Portier, Driver for Hire (D4H), and their Affiliates, from and against all Claims brought against Portier, Driver for Hire (D4H), or their Affiliates by a third party arising from or in connection with:

22.b.i. the Merchant's violation or alleged violation of Food Safety Standards or other health and safety Laws;

22.b.ii. Merchant's failure to provide accurate and complete descriptions or Additional Information for Items, including information transmitted through a Device, point-of-sale, or Third Party Access Service, sufficient for accurate Sales Tax calculations;

22.b.iii. Merchant's failure to comply with a notice with respect to Unsupported Items; and

22.b.iv. the Merchant's violation or alleged violation of its obligations with respect to Items under this Agreement.

22.c. Indemnification process.

The Indemnified Party will provide the Indemnifying Party with:

22.c.i. prompt written notice of such Claim;

22.c.ii. control over the defense and settlement of such Claim, provided that the Indemnifying Party must not enter into a settlement that involves a remedy other than the payment of money by the Indemnifying Party without the express written consent of the Indemnified Party, which must not be unreasonably withheld; and

22.c.iii. proper and full information and assistance to settle or defend any such Claim, at the Indemnifying Party's expense.

23. LIMITATION OF LIABILITY.

EXCEPT FOR LIABILITY ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, INDEMNIFICATION OBLIGATIONS OR A BREACH OF CONFIDENTIALITY OBLIGATIONS:

23.a. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CLAIM FOR ANY INDIRECT, WILLFUL, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, FOR LOSS OF BUSINESS PROFITS, OR DAMAGES FOR LOSS OF BUSINESS OF MERCHANT OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, OR LOSS OR INACCURACY OF DATA OF ANY KIND, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND

23.b. EACH PARTY'S TOTAL CUMULATIVE LIABILITY OF EACH AND EVERY KIND UNDER THIS AGREEMENT WILL NOT EXCEED \$100,000.

THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

24. DISCLAIMER.

EXCEPT AS SET FORTH HEREIN, EACH PARTY MAKES NO REPRESENTATIONS, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS SERVICES OR PRODUCTS OR ANY PORTION THEREOF, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

25. Insurance.

25.a. Insurance requirements.

During the Term each party will maintain:

25.a.i. commercial general liability insurance;

25.a.ii. if required by Laws, worker's compensation insurance; and

25.a.iii. commercial automobile liability insurance, except that this requirement to maintain commercial automobile liability insurance will only apply to the Merchant when the Merchant has MMDS.

25.b. Minimum insurance limitations.

25.b.i. Commercial general liability. The commercial general liability insurance policy limits will be one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, death and property damage liability, and two million dollars (\$2,000,000) in aggregate.

25.b.ii. Commercial automobile liability. The commercial automobile liability insurance limits will be one million dollars (\$1,000,000) combined single limit for bodily injury or property damage arising out of the ownership, maintenance or use of owned, hired, and non-owned vehicles.

25.c. Minimum insurance requirements.

All policies will be written by reputable insurance companies with an AM Best's policyholder rating of not less than A-. Such insurance will not be canceled or materially reduced without 30 days' prior written notice to the other party.

25.d. Certificates and additional insured.

Upon a party's request, the other party will provide evidence of the insurance required herein. Each party must include the other as an additional insured on its commercial general liability and commercial automobile liability policies.

25.e. No limitation of liability.

In no event will the limits of any policy be considered as limiting the liability of a party under this Agreement.

25.f. Insurance of MMDS.

If the Merchant will use the Merchant Managed Delivery Sales Channel as part of this Agreement, the Merchant's commercial general liability and commercial automobile liability insurance policies must cover the acts and omissions of MMDS.

26. Confidentiality.

26.a. Obligation to keep Confidential Information confidential.

Each Recipient agrees that it will not disclose to any third parties other than Representatives, or use in any way other than as necessary to perform this Agreement, the Discloser's Confidential Information.

26.b. Recipient's responsibility for Representatives.

Recipient will cause its Representatives to comply with the terms of this Agreement and will be solely responsible for any breach of this Agreement by any of its Representatives. Each Recipient will not, and will not authorize others to, remove or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of the Discloser's Confidential Information.

26.c. Exclusions from obligations of confidentiality.

The foregoing prohibition on use and disclosure of Confidential Information will not apply to the extent:

26.c.i. the Discloser has authorized such use or disclosure; and

26.c.ii. a Recipient is required to disclose certain Confidential Information of the Discloser pursuant to any Laws, provided that the Recipient gives the Discloser prior written notice of such obligation to disclose and reasonably assist in obtaining a protective order prior to making such disclosure.

26.d. Deletion of Confidential Information.

Upon expiration or termination of this Agreement and as requested by a Discloser, each Recipient will deliver to the Discloser (or destroy at the Discloser's election) any and all materials or documents containing the Discloser's Confidential Information, together with all copies thereof in whatever form.

27. Disputes.

27.a. Scope of arbitration.

This Agreement is intended to require arbitration of every claim or dispute that lawfully can be arbitrated, except for those claims and disputes which by the terms of this Agreement are expressly excluded from arbitration.

27.b. Negotiation of disputes.

The parties will attempt to resolve all disputes between the parties arising out of or relating to this Agreement amicably through good faith negotiations upon the written request of any party.

27.c. Commencing arbitration.

In the event that any dispute cannot be resolved within a period of 45 days after notice of a dispute has been given, all such disputes will, at election of either party, be finally resolved by final and binding arbitration in the State of New York administered by JAMS, and in accordance with the Arbitration Rules and Procedures of JAMS then in effect, by one arbitrator with substantial experience in the technology industry selected in accordance with JAMS rules.

27.d. No class actions.

All disputes will be resolved on an individual basis and neither party has the right to arbitrate on a class action basis any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, enforceability, performance, breach, termination, or validity thereof, including this arbitration clause.

27.e. Arbitration costs.

The arbitrator will have the authority to allocate between the parties the costs of arbitration (including service fees, arbitrator fees, reasonable attorneys' fees, expert witness fees and all other fees and expenses related to the arbitration) in such equitable manner as the arbitrator may determine. Judgment on the arbitrator's award will be final and binding, and may be entered in any court having jurisdiction.

27.f. Court action.

Notwithstanding the foregoing provisions of this "disputes" section, each party may seek injunctive or other equitable relief in a court of competent jurisdiction with respect to any dispute related to the actual or threatened infringement, misappropriation of a party's intellectual property rights or breach of confidentiality obligations.

28. Notices.

28.a. Receipt of notices.

Any and all notices permitted or required to be given under this Agreement will be sent and deemed duly given:

28.a.i. upon actual delivery, if delivery is by hand;

28.a.ii. one day after being sent by overnight courier, charges prepaid; or

28.a.iii. by electronic mail to the designated recipient.

28.b. Notices to the Merchant.

The parties agree that all legal documents (including complaints and subpoenas) directed to the Merchant will be served on the Merchant at the details provided in the Driver for Hire (D4H) Tools.

28.c. Notices to Portier.

The parties agree that all legal documents (including complaints and subpoenas) directed to Portier will be served on Portier's registered agent for service of process, with a copy addressed to the Driver for Hire (D4H) legal team at Driver for Hire (D4H)'s then-current headquarters address. The name and current contact information for the registered agent in each state are available online at <https://ct.wolterskluwer.com/sop-locations>.

29. Supplemental terms.

Supplemental Terms are in addition to, and will be deemed a part of, the Agreement. Supplemental Terms will prevail over the Agreement in the event of a conflict. Portier will use good faith efforts to provide the Merchant with written notice of any material updates to the Supplemental Terms, and, if the Merchant does not agree to comply with the terms of any such update, the Merchant may, as its sole and exclusive remedy, terminate this Agreement and cease use of the Driver for Hire (D4H) Platforms and Driver for Hire (D4H) Tools. By continuing to use the Driver for Hire (D4H) Platforms or the Driver for Hire (D4H) Tools, the Merchant will be deemed to accept the Supplemental Terms.

30. Diversity and inclusion.

The Merchant will not, in its use of the Driver for Hire (D4H) Platforms or the Driver for Hire (D4H) Tools, discriminate against any customer, employee, contractor or other person or individual on the basis of race, color, gender, pregnancy, marital status, familial status, sexual orientation, gender identity or expression, religion, ancestry, national origin, disability, or age except that programs may target beneficial services for specific participant groups, as agreed upon between Portier and the Merchant. The Merchant acknowledges and agrees that upon Portier's receipt of evidence of the Merchant's discrimination under any of these categories, Portier will have the right to immediately terminate this Agreement following notice to the Merchant.

31. General terms.

31.a. Amendments.

This Agreement may be amended, modified, or updated by Portier, in its sole discretion, from time to time, effective upon posting an updated version of this Agreement. The Merchant is responsible for updating contact information and regularly reviewing the Agreement updates and information from Portier. Continued use of the Driver for Hire (D4H) Services, Driver for Hire (D4H) Tools, or Driver for Hire (D4H) Platforms after any such modifications or updates constitutes the Merchant's consent to such changes.

31.b. Assignment and novation.

This Agreement may not be assigned, transferred, delegated or subcontracted, in whole or in part, by a party without the prior written consent of the other party, provided that each party may assign this Agreement, upon written notice to the other party:

31.b.i. to an affiliate of such party; or

31.b.ii. in connection with the sale of all or substantially all of such party's equity, business or assets to which this Agreement relates,

provided that in the event of any such transfer by the Merchant, the Merchant explicitly consents that any such transferee will have access to and control of all the Merchant accounts related to such transfer, including its accounts with Portier, access to historical reporting information about Items related to such transfer, and other account data relating to such transfer. If there is a change of ownership of a Location, the parties must execute a change of ownership form and the Merchant acknowledges and agrees that the Location will not be able to accept or process any Customer orders on the Driver for Hire (D4H) Platforms until the change of ownership form is executed. Any purported assignment, transfer, delegation or subcontract in violation of this section will be null and void.

31.c. Counterparts.

If the Merchant is agreeing to this Agreement through an order form or other signed instrument, such order form or written instrument may be executed in one or more counterparts and by exchange of electronically signed counterparts transmitted by pdf format, each of which will be deemed an original and all of which, when taken together, will constitute one and the same original instrument.

31.d. Entire agreement.

This Agreement contains the full and complete understanding and agreement between the parties relating to the subject matter hereof and supersedes all prior and contemporary understandings and agreements, whether oral or written, relating to the Agreement's subject matter.

31.e. Force majeure.

Nonperformance by either party due to a Force Majeure Event is excused. If either party is unable to perform pursuant to this section, such party will timely deliver written notice with sufficient information detailing the nature of the applicable Force Majeure Event. Such impacted party will exercise all commercially reasonable efforts to minimize any Force Majeure Event and resume full performance as soon as reasonably practicable. If the Merchant is unable to perform for more than thirty days, Portier may elect to terminate this Agreement without liability.

31.f. Governing law.

This Agreement is governed by the law of the State of New York, except that the mutual arbitration provision is governed by both the Federal Arbitration Act (9 U.S.C. §§ 1-16) and the law of the State of New York. The parties agree that all disputes outside of the arbitration provisions will be heard in federal or state courts of the State of New York.

31.g. Relationship.

The parties to this Agreement are independent contractors. The parties are not partners, agents, parties to a joint venture, nor do the parties have an employee and employer relationship. Except as set forth in this Agreement, each party is responsible for its own costs of conducting business and performing its obligations under the Agreement.

31.h. Severability.

If any provision of this Agreement is determined to be invalid or unenforceable by ruling of an arbitrator or court of competent jurisdiction, the remainder of this Agreement (and each of the remaining terms and conditions) will remain in full force and effect.

31.i. Survival.

The terms and conditions of this Agreement which, by their nature, are intended to still apply, even if the Agreement is terminated, or expired, (e.g., confidentiality terms, or indemnification terms), will continue to apply even if the Agreement is terminated or expires.

31.j. Territory.

This Agreement applies in the United States of America (excluding Puerto Rico) and does not apply to the Merchant's use of the Driver for Hire (D4H) Platforms, or Driver for Hire (D4H) Tools, outside of the United States of America.

31.k. Waiver.

If a party waives a breach of this Agreement by the other party, it will not by that waiver be deemed to have waived any other breaches of this or any other agreement between the parties.

32. Definitions.

Capitalized words not otherwise defined in these Agreement Terms and Conditions will have the meanings assigned to those words in the rest of this Agreement, or in any exhibits, schedules, or attachments to this document, and documents incorporated by reference or by hyperlink. If there is a conflict between these Agreement Terms and Conditions and any of the other terms and conditions of this Agreement, the Agreement Details (if applicable), and then these Agreement Terms and Conditions will control, to the extent of the conflict. Capitalized words in this Agreement otherwise have the meanings set out below:

32.a. ACH means automated clearing house.

32.b. Additional Information means additional information pertaining to the Merchant's Location, Merchant establishment type (e.g., restaurant vs. grocery), particular Items or particular sales of Items, which Portier may, from time to time, require Merchant to provide for the proper determination, calculation, collection, and remittance of Sales Taxes, or to comply with other applicable Laws. Additional Information may include, without limitation, Universal Product Codes (UPCs), Global Trade Item Numbers (GTINs), Stock Keeping Units (SKUs), ingredients, temperature, container, weight, volume, quantities, serving/portion size, nutritional factors, inclusion of utensils, method of preparation (e.g., sliced), whether the Item is "ready-to-eat", or intended used.

32.c. Ads Manager means Portier's proprietary, automated, self-service tool to create Bids, manage campaigns, and track campaign performance.

32.d. Adverse Delivery Events means events such as inclement weather, high traffic, or poor driving conditions.

32.e. Affiliate means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party.

32.f. Aggregator Platform means a third party website, application, technology or social media platform, search engine, or similar method of collecting, mapping, or reviewing products, and the companies, businesses or entities that own, operate or control them.

32.g. Agreement means the Agreement Terms and Conditions, plus any exhibits, schedules, or attachments, documents incorporated by reference or by hyperlink, and any documents that incorporate the Agreement Terms and Conditions by reference or hyperlink, such as an order form or similar written instrument.

32.h. Agreement Terms and Conditions means the part of this Agreement titled "Driver for Hire (D4H) Eats U.S. Merchant Terms and Conditions".

32.i. Alcohol means an alcoholic beverage or alcoholic food product that is governed in whole or in part by the Laws that govern alcoholic beverages.

32.j. Alcohol Safety Standards means all applicable Laws for the sale, handling and labeling of Alcohol Items.

32.k. Alcohol Service Fee means a flat dollar fee (e.g. \$X) charged to the Merchant by Portier on Alcohol Items in certain jurisdictions with respect to certain services, determined by Portier in its discretion, and as permitted under applicable Laws.

32.l. Apps or App(s) means the proprietary technology known as the “Driver for Hire (D4H) Eats App”, the “Postmates App”, and similar proprietary technology of Driver for Hire (D4H) or its Affiliates that enables Customers to purchase Items from the Merchant and request delivery services for said Items from Delivery People.

32.m. AV means, as applicable, an Automated Vehicle or an Autonomous Vehicle, each as defined below.

32.m.i. Automated Vehicle means a device or vehicle manufactured for transporting cargo and goods that is capable of being operated remotely or without a human onboard.

32.m.ii. Autonomous Vehicle means a vehicle that is capable of operating at or is equipped with an automated driving system that will enable the vehicle to operate at either of SAE Levels 3-4-5 of driving automation as defined in J3016 Apr2021 SAE International specification.

32.n. AV Fleet Provider means a company that operates a fleet of AVs and that may employ or contract with individuals to manage, monitor, or operate its AVs while such vehicles are in motion.

32.o. Bid means the maximum offer the Merchant agrees to pay for a Sponsored Listing on the Driver for Hire (D4H) Platforms, inclusive of the budget amounts. For clarity, the Merchant is only charged the Bid amount when the Sponsored Listing is clicked.

32.p. Brand means the collection of a party’s brand identifiers which are generally used together, including but not limited to a combination of Trademarks, product photography, product lists and descriptions, slogans, and color schemes. To the extent that a party is a licensee of a third party’s Brand, that Brand is deemed to be the licensee’s Brand for the purposes of this Agreement. For clarity, a party may hold, own, or license more than one Brand.

32.q. Brand Matter means an event involving the Merchant that, in Portier’s reasonable judgment, causes it or its affiliates to have significant concern for the reputation of its respective Trademarks or Brand, including matters related to the alleged violation of any applicable retail food or other health or safety code.

32.r. Claim means taxes, losses, liabilities, damages, claims, suits, liabilities, costs and expenses including reasonable attorney’s fees and other legal costs.

32.s. Co-Funded Promotion means a Merchant Promotion where Portier has agreed to fund a portion of that Merchant Promotion.

32.t. Company Card means a valid credit card that may be charged for monthly billing.

32.u. Community Guidelines means Driver for Hire (D4H)’s community guidelines, currently available at [https://www.Driver for Hire \(D4H\).com/legal/community-guidelines/us-en-Driver for Hire \(D4H\)-eats/](https://www.Driver for Hire (D4H).com/legal/community-guidelines/us-en-Driver for Hire (D4H)-eats/).

32.v. Confidential Information means any confidential, proprietary or other non-public information disclosed by one party to the other party whether disclosed verbally, in writing, in electronic form, or by inspection of tangible objects, including but not limited to any Personal Information. Confidential Information does not include information that:

32.v.i. was previously known to the Recipient without an obligation of confidentiality;

32.v.ii. was acquired by the Recipient without any obligation of confidentiality from a third party with the right to make such disclosure; or

32.v.iii. is or becomes publicly available through no fault of the Recipient.

32.w. Customer means an individual that purchases Merchant's Items using the Driver for Hire (D4H) Platforms.

32.x. Customer Feedback means a rating of Items and comments or feedback related to the Customer's experience with the Merchant, Delivery People, MMDS, or the relevant Items on the Apps.

32.y. Customer Payments means payments from a Customer for Items that the Customer purchases from the Merchant via the Driver for Hire (D4H) Platforms.

32.z. Customer Transaction means the sale of one or more Items by the Merchant to a Customer via the Driver for Hire (D4H) Platforms.

32.aa. Damage Fee means the reasonable cost of repairing or replacing a Device.

32.ab. Data Security Incident means an actual or suspected unauthorized access to, acquisition or disclosure of Personal Information, or other actual or suspected breach of security or confidentiality with respect to Personal Information in the Merchant's or its Representatives' control or possession.

32.ac. Delivery Fee means the fee determined by the Merchant for orders placed through the Merchant Managed Delivery Sales Channel, provided that for Customers with a Renewable Membership the Merchant agrees to charge the Customer a Delivery Fee of \$0.

32.ad. Delivery Network Fee means a flat dollar amount, but only where the parties have agreed to such amount, which may be done through an order form, selection of a specific pricing package during an online sign-up process, or similar process incorporating this Agreement.

32.ae. Delivery Persons means independent contractors that use the Driver for Hire (D4H) Platforms to complete the delivery of Items from a Location to a Customer, inclusive of AVs and AV Fleet Providers.

32.af. Developer Account means an account created by the Merchant completing the online sign up process available at [developer.Driver for Hire \(D4H\).com](https://developer.DriverforHire.com), which, among other things, requires the Merchant to agree to the Driver for Hire (D4H) API Terms of Use.

32.ag. Device means an electronic tablet or other electronic mobile device capable of receiving order information, and may also include a printer for receipts, and other associated electronic devices provided to the Merchant by Portier.

32.ah. Device Fee means the fee Portier charges for a Device, which may be changed by Portier in its sole discretion, but which, on the Effective Date, is:

32.ah.i. \$4.99 per week for a Device that is only able to use wi-fi or local internet connections;

32.ah.ii. \$6.99 per week for a Device that includes a wireless data plan; and

32.ah.iii. \$8.99 per week for a Device that includes a wireless data plan and a printer for receipts,

each unless varied by agreement between the parties, which may be done through an order form, selection of a specific pricing package during an online sign-up process, or similar process incorporating this Agreement

32.ai. Discloser means a party that provides Confidential Information to the other party.

32.aj. Effective Date means the date that the Merchant agreed to this Agreement.

32.ak. Feedback means feedback, suggestions, comments, ideas, or other concepts relating to Portier's and its Affiliate's products and services.

32.al. Fees or Services Fee means the Alcohol Service Fee, Damage Fees, Device Fees, Marketplace Fee, MMDC Fee, Pick & Pack Fee, Pickup Fee, Sponsored Listings Fees, and Webshop Online Ordering Fee, but does not include, if applicable, the Delivery Fee, the Return Fee, or the Merchant Managed Return Fee.

32.am. Fee Cap Laws means Laws that limit the Fees that Portier may charge the Merchant under this Agreement, or otherwise change, restrict, or vary the terms and conditions of this Agreement (e.g., by changing termination rights, or requiring that Portier provide the Merchant with certain benefits).

32.an. Fee Cap Law Requirements means any requirement pursuant to a Fee Cap Law that Portier:

32.am.i. charge the Merchant lower Fees than the Fees set out in this Agreement:

32.an.i.A. at a Location;

32.an.i.B. for certain Items; or

32.an.i.C. for certain Sales Channels;

32.an.ii. allow the Merchant to terminate this Agreement earlier than otherwise would be permitted by the terms and conditions of this Agreement; or

32.an.iii. provide certain benefits to the Merchant.

32.ao. Food Safety Standards means all Laws governing controls required for food safety.

32.ap. Force Majeure Event means any circumstance beyond the reasonable control of the affected party, which occurs on or after the Effective Date, which may include, but are not limited to, acts of God, fire, flood, explosion, war, terrorism, epidemics, pandemics, quarantine, unusually severe weather, embargo, action or request of governmental or judicial authority, strikes, labor stoppages or other industrial disturbances, civil commotion, civil riot or insurrection. For the avoidance of doubt, known Covid-19 variants at the time of execution of this Agreement should be construed as a known risk and will not constitute a Force Majeure Event; however, new variants of Covid-19 or any new variants of known diseases or new epidemic or pandemic events after the execution of the Agreement, may in fact, constitute a Force Majeure Event if such event triggers events beyond control of the affected party.

32.aq. Found Rate means, for the Merchant and its various Locations selling Items via the Pick & Pack Sales Channel, the ratio of the number of Items found at such Merchant Locations by Delivery Persons to the number of Items requested by Customers in orders via the Pick & Pack Sales Channel.

32.ar. IABD means the Iowa Alcoholic Beverages Division.

32.as. In-App Communications means communications within the Apps between:

32.as.i. the Merchant and Customers;

32.as.ii. the Merchant and MMDS;

32.as.iii. the Merchant and Delivery People;

32.as.iv. Customers and MMDS; or

32.as.v. Customers and Delivery People.

32.at. Indemnified Party means a party to this Agreement that has received or is subject to a Claim, and includes that party's subsidiaries, Affiliates, officers, directors, agents, or employees, individually and collectively.

32.au. Indemnifying Party means the party to this Agreement that is not the Indemnified Party.

32.av. In-Store Price means, with respect to an Item sold via the Pick & Pack Sales Channel, the actual price of such Item at Merchant's Location at the moment of checkout by a Delivery Person.

32.aw. In-Store Services means certain services rendered by a Delivery Person at the Merchant's Location, including the collection of Items and submission of the Reconciliation Method.

32.ax. Item or Available Items or Meal means food, beverage or other products from the Merchant.

32.ay. Item Criteria or Criteria means quality, portion, size, ingredient or other criteria that apply to Items.

32.az. Item Revenue means the Retail Price plus Sales Tax collected on the Merchant's behalf for Items ordered through the Driver for Hire (D4H) Platforms, less the Fees and, if applicable, any refunds given to Customers on behalf of Merchant, which in the case of any Items sold via the Pick & Pack Sales Channel, is disbursed to the Merchant's bank account via the Reconciliation Method, in accordance with the Merchant's instructions herein.

32.ba. JAMS means Judicial Arbitration and Mediation Service, Inc.

32.bb. Laws means codes, laws, legislation, licenses, orders (including court orders), ordinances, rules, regulations, or any other requirement imposed by a government authority.

32.bb. Location means a location owned and operated by the Merchant or a Participant.

32.bd. Marketing Photographs or Photographs means video and still images for marketing and other efforts related to the Driver for Hire (D4H) Platforms.

32.be. Marketplace Facilitator Jurisdictions means jurisdictions where Marketplace Facilitator Laws apply to Portier due to this Agreement. A list of Marketplace Facilitator Jurisdictions may be found at [https://merchants.Driver for Hire \(D4H\)eats.com/us/en/resources/learning-center/marketplace-facilitator/](https://merchants.Driver for Hire (D4H)eats.com/us/en/resources/learning-center/marketplace-facilitator/), as updated from time to time.

32.bf. Marketplace Facilitator Laws means certain Laws commonly known as “marketplace facilitator laws”.

32.bg. Marketplace Fee means 30%, unless varied by agreement between the parties, which may be done through an order form, selection of a specific pricing package during an online sign-up process, or similar process incorporating this Agreement.

32.bh. Marketplace Sales Channel, Full Service (Marketplace) Sales Channel, or Full Service Sales Channel means the Sales Channel where the Merchant’s Items are presented in the Apps to Customers who access and request on-demand delivery services provided by a Delivery Person.

32.bi. Master File means a digital data file, in comma-separated value (CSV) format or as otherwise agreed by the parties, for each Location containing all information relevant to Items to be made available for sale by Merchant on the Driver for Hire (D4H) Platforms with respect to such Location, including a description, the UPC/item number, sizing information, image, alcohol by volume (if applicable), and then-current In-Store Prices for each Item on offer.

32.bj. Merchant means the non-Driver for Hire (D4H) legal entity that has agreed to this Agreement, and includes that entity’s, or those entities’, subsidiaries, Affiliates, directors, employees, agents, successors and assignees, as applicable.

32.bk. Merchant Brand means the Brand(s) used by the Merchant pursuant to this Agreement. Merchant’s Brand means the same as Merchant Brand.

32.bl. Merchant Delivery Area means the geographic area in which MMDS will be able to deliver Merchant’s Items to Customers.

32.bm. Merchant FBO Account means a “for the benefit of” account into which Customer Payments would be held once collected from Customers on the Merchant’s behalf, administered by Portier or its Affiliates on behalf of, pursuant to the instructions of, and for the benefit of the Merchant or a Participant, as applicable.

32.bn. Merchant Managed Delivery Sales Channel or Merchant Managed Delivery Channel means the Sales Channel where the Merchant’s Items are presented on the Driver for Hire (D4H) Platforms to Customers who then access and request on-demand delivery services provided by Merchant Managed Delivery Staff.

32.bo. Merchant Managed Delivery Staff means employees, contractors, workers or agents of the Merchant who provide delivery services on the Merchant’s behalf, arranged independently of Portier.

32.bp. Merchant Managed Return Fee means a fee that the Customer may be charged for the return of one or more Alcohol Items, the amount of which fee will be determined by Portier, and that the Merchant will receive.

32.bq. Merchant Marketing Materials means videos, still images, advertising or marketing claims, or other materials provided to Portier or its Affiliates by the Merchant.

32.br. Merchant Marketplaces means the Merchant's native desktop and/or mobile webpages.

32.bs. Merchant Promotions means Promotions that are designed and fulfilled by Merchant.

32.bt. MMDC Fee means 15%, unless varied by agreement between the parties, which may be done through an order form, selection of a specific pricing package during an online sign-up process, or similar process incorporating this Agreement.

32.bu. MMDS means Merchant Managed Delivery Staff.

32.bv. MMDS Customer Personal Information means information about a Customer or that Customer's Personal Information made available to the Merchant or Merchant Managed Delivery Staff in connection with a request for and use of delivery devices, which may include delivery drop-off location, a Customer's name or company name, a Customer's contact information, a Customer's signature, and a Customer's photo, as well as any other relevant details specific to the items to be delivered.

32.bw. Multi-Brand Licensee means a Participant, franchisee or licensee of the Merchant, that also operates as a licensee or franchisee of brands not affiliated with the Merchant.

32.bx. Olo means Mobo Systems, Inc. doing business as Olo, as may be rebranded from time to time.

32.by. Olo APIs means automated programming interfaces owned by Olo which facilitate the receipt and transmission of menu and order data between Portier and third-party partners who are mutual customers of both Olo and Portier, such as the Merchant.

32.bz. Participant means an independent owner and operator of a business selling Items using the Merchant's Brand, and includes that entity's, or those entities', subsidiaries, Affiliates, directors, employees, agents, successors and assignees, as applicable.

32.ca. Personal Information means any information obtained in connection with this Agreement:

32.ca.i. relating to an identified or identifiable natural person;

32.ca.ii. that can reasonably be used to identify or authenticate an individual, including name, contact information, precise location information, persistent identifiers; and

32.ca.iii. any information that may otherwise be considered "personal data" or "personal information" under applicable Laws.

32.cb. Pick & Pack Markup means, with respect to each Item, a percentage set out in the Agreement Details (if applicable), which is multiplied by and added to the In-Store Price of such Item, such sum being the Retail Price.

32.cc. Pick & Pack Fee means the Fee applicable to the Pick & Pack Sales Channel, set out in the Agreement Details (if applicable).

32.cd. Pick & Pack Sales Channel means the Sales Channel where the Merchant's Items are presented in the Apps to Customers who access and request on-demand delivery services provided by a Delivery Person, including In-Store Services.

32.ce. Pickup Fee means 6%, unless varied by agreement between the parties, which may be done through an order form, selection of a specific pricing package during an online sign-up process, or similar process incorporating this Agreement.

32.cf. Pickup Sales Channel or Pick-Up Sales Channel means the Sales Channel where the Merchant's Items are presented on the Apps for pick-up by the Customer at the Merchant's Location (i.e. without the use of a Delivery Person).

32.cg. Portier means Portier, LLC, a wholly owned subsidiary of Driver for Hire (D4H).

32.ch. Portier Personal Information means any Personal Information Portier provides to the Merchant in connection with this Agreement, including but not limited to, MMDS Customer Personal Information and Delivery Persons' photo, name, contact information and license plate number. For the avoidance of doubt, Portier Personal Information does not include Customer Personal Information.

32.ci. POS means a point of sale system.

32.cj. Postmates means Postmates, LLC, a wholly owned subsidiary of Driver for Hire (D4H), and formerly Postmates, Inc.

32.ck. Promotion Schedule means a verbal or written promotion schedule.

32.cl. Promotion Tool means Portier's proprietary, automated, self-service tool located within the Driver for Hire (D4H) Tools to create Promotions.

32.cm. Promotions means short-term offers that are available through the Apps to stimulate Customer demand.

32.cn. Recipient means a party that receives Confidential Information of the other party.

32.co. Reconciliation Method means technology provided or facilitated by Portier, which may be third-party technology or a payment card, or may be an alternative checkout method governed by the Delivery Person's agreement with Portier, for the purpose of reconciling the in-store checkout of Items.

32.cp. Reconciliation Operation Account means the account used to service the Reconciliation Method.

32.cq. Reconciliation Process means the following process:

32.cq.i. a Delivery Person will utilize the Reconciliation Method;

32.cq.ii. a Delivery Person will submit the Reconciliation Method to the Merchant at Merchant's Location; and

32.cq.iii. the Merchant will process the Reconciliation Method, which will:

32.cq.iii.A. confirm that the Delivery Person has collected the Items sold to the Customer as part of the Customer Transaction (including, if relevant, any modifications made by the Merchant after the completion of the Customer Transaction, per the process described above);

32.cq.iii.B. confirm the total amount of the In-Store Prices for Items in the order, as one element of establishing the appropriate consideration between the parties; and

32.cq.iii.C. initiate the transfer of the Merchant funds between the Reconciliation Operating Account controlled by the Merchant and a further account of the Merchant's choosing.

32.cr. Renewable Membership means the various subscription membership programs that are made available to customers through the Apps from time to time, and includes those subscription membership programs that use different names (e.g., Postmates Unlimited).

32.cs. Representatives means Recipient's Affiliates, officers, directors, employees and agents who:

32.cs.i. for the purposes of the "confidentiality" section of this Agreement, have a need to know such Confidential Information and who, prior to any disclosure of such Confidential Information, are bound by written obligations of confidentiality with respect to such Confidential Information that are no less stringent than those set forth in this Agreement; and

32.cs.ii. for the purposes of the "sponsored listings" section, or any other section, of this Agreement, are acting on the Merchant's behalf.

32.ct. Required Licenses means licenses, permits, approvals, authority, registrations, certifications, or similar authorizations that may be required to sell Items (including Restricted Items and Alcohol Items), to use certain packaging materials, to use the services of MMDS, or to otherwise conduct business pursuant to the terms of this Agreement.

32.cu. Restricted Items means:

32.cu.i. people or animals of any size (including, in particular, endangered species);

32.cu.ii. illegal items (whether such item is illegal to possess, transfer, or sell);

32.cu.iii. drugs, pharmaceutical products, controlled substances, or over-the-counter medications, vitamins, or supplements;

32.cu.iv. hemp-derived CBD;

32.cu.v. fragile items;

32.cu.vi. dangerous or hazardous items, including but not limited to, weapons, explosives, items that are poisonous or flammable (including paints or adhesives containing a flammable liquid), substances and material identified in the Hazardous Materials Table in 49 CFR section 172.10, or material determined to be hazardous under 49 U.S.C. section 5103 et. seq. and transported in a quantity requiring placarding according to regulations prescribed under 49 CFR, Subtitle B, Chapter I, Subchapter C;

32.cu.vii. stolen goods;

32.cu.viii. nicotine or tobacco products;

32.cu.ix. sexual aids;

32.cu.x. adult toys and movies;

32.cu.xi. money, gift cards, or transferable securities;

32.cu.xii. regulated species (e.g., plants, noxious weeds, prohibited seeds, etc.); or

32.cu.xiii. any items for which the Merchant does not have permission to send.

32.cv. Retail Price means the price of an Item on the Driver for Hire (D4H) Platforms exclusive of separately stated Sales Taxes.

32.cw. Return Fee means a fee that may be charged to the Customer for the return of one or more Alcohol Items, the amount of which fee will be determined according to the standard fares charged by Delivery People in the Region.

32.cx. Sales Channel means a method through which Customers may place orders for the Merchant's Items, including the Full Service (Marketplace) Sales Channel, Merchant Managed Delivery Sales Channel, Webshop Online Ordering Sales Channel, Pickup Sales Channel, and the Pick & Pack Sales Channel.

32.cy. Sales Tax means any sales, sellers use, transaction privilege, privilege, general excise, gross receipts, Item taxes and similar transaction taxes as well as any bottle, bag, plastic, or other similar fees.

32.cz. Sponsored Listings means a paid placement of the Merchant's Location(s) within the Driver for Hire (D4H) Platforms:

32.cz.i. in a manner determined by Portier, or otherwise selected by the Merchant in a Bid submission;

32.cz.ii. assembled and formatted based on the content provided in accordance with this Agreement; and

32.cz.iii. which may include, in Portier's discretion, some indicator to customers that the placement was purchased by the Merchant, with a tag such as "promoted" or "sponsored".

32.da. Sponsored Listings Fees means an amount based on the actual number of clicks on the Merchant's Sponsored Listing at the rate determined for each Bid.

32.db. Substandard Item means Items that have not been prepared or supplied in accordance with:

32.db.i. Food Safety Standards;

32.db.ii. Alcohol Safety Standards;

32.db.iii. Item Criteria;

32.db.iv. applicable Laws; or

32.db.v. requirements to include accurate and legally compliant:

32.db.v.A. notifications about ingredients, nutritional information, allergen information, alcoholic content (if applicable); or

32.db.v.B. instructions for the preparation, use, or assembly of Items.

32.dc. Supplemental Terms means the Community Guidelines and any supplemental terms that may apply to the Merchant's use of the Driver for Hire (D4H) Platforms and the Driver for Hire (D4H) Tools, such as use policies or terms related to certain features and functionality, which may be modified from time to time.

32.dd. Switchover Date means the date specified by Portier where Portier will begin to collect and remit Sales Tax to the taxing authority based on Item descriptions and Additional Information provided by the Merchant. A list of Switchover Dates may be found at [https://about.Driver for Hire \(D4H\)eats.com/en/marketplacefacilitator/](https://about.Driver for Hire (D4H)eats.com/en/marketplacefacilitator/), as updated from time to time.

32.de. Term means the time period from the Effective Date until the date that this Agreement is terminated or expires.

32.df. Third Party Access Service means a POS integration provider or similar third party service which the Merchant may use to access the Driver for Hire (D4H) Services and Driver for Hire (D4H) Tools and/or transmit information to Portier.

32.dg. Trademarks or Marks means trademarks, trade names, service marks, copyrights (such as product photography), logos, slogans and other identifying symbols and indicia of the applicable party.

32.dh. Transportation Method means a mode of transportation that will be used by the Merchant Managed Delivery Staff for the purpose of providing delivery services in accordance with, and subject to, any other applicable standards with respect to such Transportation Method.

32.di. Driver for Hire (D4H) means Driver for Hire (D4H) Technologies, Inc.

32.dj. Driver for Hire (D4H) API means an Driver for Hire (D4H) application programming interface and related developer tools (including any webhooks) made available by Driver for Hire (D4H) that permit provider applications to interface with Driver for Hire (D4H) Applications, including any underlying data or data structures therein, accompanying documentation, and any updates or revisions to the foregoing.

32.dk. Driver for Hire (D4H) API Terms of Use means the terms of use available at [https://developer.Driver for Hire \(D4H\).com/docs/riders/terms-of-use](https://developer.Driver for Hire (D4H).com/docs/riders/terms-of-use), as may be updated or modified from time to time without notice to the Merchant.

32.dl. Driver for Hire (D4H) Applications means Driver for Hire (D4H)'s software applications and other proprietary technology, including any underlying data or data structures therein, accompanying documentation, and any updates or revisions to the foregoing.

32.dm. Driver for Hire (D4H) Competitor means any and all third parties engaged in similar facilitation of on-demand delivery services.

32.dn. Driver for Hire (D4H) Data means transactional, operational, performance or other data or information that is related to the sale of Items to Customers through the Driver for Hire (D4H) Platforms.

32.do. Driver for Hire (D4H) Olo Data means all data sent to the Merchant's POS by Olo via the Olo APIs on behalf of Portier (e.g., an end user's first name and certain other information as necessary for the Merchant to fulfill end user orders). For clarity, Driver for Hire (D4H) Olo Data constitutes Proprietary Information and must be treated as such under this Agreement. For added clarity, and for the purposes of this Agreement, Driver for Hire (D4H) Olo Data must not include any Personal Information. Should the parties mutually agree in writing to transfer any Personal Information in connection with this Agreement, the parties will enter into a separate data processing agreement or related agreement as required by applicable Laws.

32.dp. Driver for Hire (D4H) Platforms means the Full Service (Marketplace) Sales Channel, and Pickup Sales Channel, as made available through the Apps and Driver for Hire (D4H) websites, as well as the Merchant Managed Delivery Sales Channel, the Webshop Online Ordering Sales Channel, and the Pick & Pack Sales Channel.

32.dq. Driver for Hire (D4H) Privacy Notice means Driver for Hire (D4H)'s then-current privacy notice, currently available at: [https://privacy.Driver for Hire \(D4H\).com/policy](https://privacy.Driver for Hire (D4H).com/policy).

32.dr. Driver for Hire (D4H) Services or Services means certain proprietary technology services made available by Portier or its Affiliates that facilitate the marketing, sale and fulfillment of Items from the Merchant to Customers, including on-demand lead generation, payment processing, marketing, advertising and promotional services, proprietary information services, onboarding, operational and other support services.

32.ds. Driver for Hire (D4H) Tools or Tools means the website, mobile application or other technology interface for the Merchant to access and use the Driver for Hire (D4H) Services, which may include Portier's and its Affiliates' proprietary technology platform referred to as "Driver for Hire (D4H) Eats Manager" as may change from time to time, through which insights and analytics regarding the Merchant's performance and history using the Driver for Hire (D4H) Services are provided, and Portier and its Affiliates' proprietary technology platform referred to as "Driver for Hire (D4H) Eats Orders" as may change from time to time, through which the Merchant may, among other things, receive, accept and fulfill requests for Items from Customers.

32.dt. User Generated Content Terms means Driver for Hire (D4H)'s then-current user generated content terms currently available at: [https://www.Driver for Hire \(D4H\).com/legal/en/document/?name=user-generated-content-policy&country=united-states&lang=en](https://www.Driver for Hire (D4H).com/legal/en/document/?name=user-generated-content-policy&country=united-states&lang=en)

32.du. Unsupported Items means Items that are not supported by the Driver for Hire (D4H) Tools and must be removed from the Driver for Hire (D4H) Platforms.

32.dv. Webshop Online Ordering Fee means 2.5% plus \$0.29, unless varied by agreement between the parties, which may be done through an order form, selection of a specific pricing package during an online sign-up process, or similar process incorporating this Agreement.

32.dw. Webshop Online Ordering Sales Channel means the Sales Channel using the hyperlink embedded in the Merchant Marketplaces.

33. Interpretation.

The following also applies to the interpretation of this Agreement:

33.a. To the extent of any inconsistency between the terms and conditions or Fees set out in the Agreement Details (if applicable), or the terms and conditions included in the Agreement Terms and Conditions, the information in the Agreement Details prevails.

33.b. Terms used as plurals may also be interpreted as singular, and vice-versa.

33.c. Any references to dollars or currency means US dollars unless otherwise indicated.

33.d. If the words “including”, “such as”, “for example”, “e.g.”, or similar terms, are used in any section, the words “without limitation” are implied.

33.e. Any reference to a “party” or “parties” means a party to this Agreement.

33.f. Any references to the Merchant, if the Merchant includes multiple legal entities, means each of those entities jointly and severally.

33.g. Any hyperlinks included in this Agreement also refer to the future updated versions of those links, and if a hyperlink becomes inactive, or the hyperlinked location of a document in this Agreement is amended, the new hyperlink location of the same or updated version of that document applies instead of the incorrect or superseded hyperlink in this document.

33.h. Headings, notes, and captions used in this Agreement are for reference purposes only and should not have any effect on the interpretation of this Agreement.