

# **Frevora Merchant – Merchant Policy**

## **Terms and Conditions**

### **1. Fees Structure:**

The Fees set out in the table below correspond to specific Sales Channels. If the Merchant does not use a Sales Channel, the Merchant will not be charged the Fees for that Sales Channel.

Marketplace Fees: (Orders placed through the application and picked up by the customers)

Listing Subscription: CAD \$89 Per Month.

Product Fee: This cost of items sold is determined and managed by the merchant.

Order Fee: Frevora charges a 10% Fees on the retail price. This Fee is paid by the customer placing the order through the Frevora App.

Merchant Initiated Return Fee: Frevora partners with Stripe for payment processing on the application. The merchant will bear the fees associated with payment processor incase the order is placed and rejected by the merchant. Customers will bear this fee associated with payment processor for orders cancelled by the customers upon placing the order with the merchant.

### **2. Agreement to terms and conditions:**

Merchants agree to terms and conditions by:

- 1.b.i. accepting an order through Frevora platform.
- 1.b.ii. clicking to agree to this Agreement on Frevora website; or
- 1.b.iii. completing the intake application form for Frevora Manager and taking up the Frevora subscription on Frevora Manager Application

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).

### **3. Sales Channels**

- a. Pickup Sales Channel : Merchant will leverage Frevora Manager application to sell items via the platform
  - i. Transaction: Customer transactions will take place between customer and merchant via Frevora platform at the retail price, and the operative price for each Item will be the actual In-Store Price (plus, if agreed, the corresponding Markup).
  - ii. Each customer transaction will be completed upon Merchant's acceptance of customer order
  - iii. Merchant is required to manage inventory, pickup schedule and orders placed on their store through the Frevora application.
  - iv. Orders for a scheduled date will be closed 48 hours before the scheduled date by the Merchant. Merchants must accept or reject the order on the Frevora Manager application 24 hours prior to the planned pickup date
  - v. Merchant must pack and have the items ready for pickup at the scheduled pickup date. Customers will meet the merchant at the scheduled pickup slot and share OTP for Order fulfillment. Merchants are required to validate the OTP and complete the order on the Frevora application

#### **4. Stripe Account for Merchants**

- a. Frevora partners with Stripe for managing the payout process. Merchants are required to onboard stripe using the custom stripe application link and instructions shared by Frevora during the registration process.
- b. Stripe requires your business and banking information to process payments to your bank account
- c. All payouts will be aggregated and done weekly upon deduction of stripe processing fees and Frevora application fees as applicable
- d. Stripe automatically calculates taxes based on business type. Merchants are required to enroll in automatic tax collection to ensure HST/PST/GST can be calculated for the products sold during the checkout process

#### **5. Taxes**

- a. Merchant as a retailer

The Merchant is the “merchant”, “retailer”, or “seller” of all Items to be made available for sale through the Frevora 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.
- b. Authorization to collect taxes

The Merchant authorizes Stripe and Frevora 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 Stripe and Frevora through their platform in a manner as otherwise agreed to by the parties.
- c. Automatic tax enrollment and calculation

While Frevora provides tools to calculate the tax through Stripe, however it may not currently support Sales Tax configurations applicable to certain Items which the Merchant desires to sell through the Frevora Platforms. In such cases, Frevora retains sole discretion regarding whether the Merchant may offer such Items for sale through its platform. Frevora 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 Frevora 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, Frevora expressly reserves the right to, upon prior notice to the Merchant, remove affected Items from the Merchant's listing on the Frevora Platforms and/or deactivate the Merchant on the Frevora Platforms.

d. 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.

**6. Items being sold**

- a. Item availability - The Merchant must make Items available for purchase through the Frevora Platform during its normal business hours and ensure the list of available Items is accurate.
- b. Item standards - The Merchant must:
  - 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;
  - ii. When using the Frevora Tools, or otherwise making Items available through the Frevora Platforms, identify Items correctly, particularly where the Items may be subject to age restrictions or identification requirements (e.g., tagging Items, pharmaceutical Items);
  - iii. Determine any Item Criteria, and is responsible for ensuring that all Items meet the applicable Item Criteria;
  - iv. Ensure that the description of the Item includes the Criteria for each Item (including any notifications or descriptions about ingredients, nutritional information, allergen information, size, weight, specific contents (if applicable), etc.), which are accurate and comply with all applicable Laws; and
  - 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.
- c. Item Packaging - The Merchant must package Items appropriately for carry out

- i. ensuring that Items provided to a Delivery Person are collectively able to fit into, and are appropriate for transport per package, box, or parcel;
  - ii. any protection necessary to prevent tampering or damage due to any cause, including inclement weather or the nature of the Items themselves;
  - 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
  - iv. providing any certifications, labeling, protection, or instructions:
    - 1. required by Laws
    - 2. appropriate for the Customer to properly and safely use, handle, or consume Items;
    - 3. prevent tampering or damage due to any cause, including inclement weather; or
    - 4. appropriate for the Customer to use, handle, or dispose of any packaging materials,
- 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, and Items not prepared in accordance with the Merchant's internal standards. The Merchant authorizes Frevora to deduct such reimbursement costs from the payment Frevora remits to the Merchant.
- e. Item title – The merchant agrees that Frevora does not take ownership of the title to any item at any time
- f. Prohibited items – The merchant may not request sale of any prohibited items through any sales channel
- g. Restricted items – The merchant may not request sale of any restricted items as governed by local and government applicable laws
- h. Item removal – Frevora, in its sole discretion reserves the right to remove substandard items, and prohibited/restricted items from its platforms
- i. 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 Frevora Competitor.
- j. Records required by Laws
  - Where applicable:
    - i. Laws require the Merchant to collect and retain certain information in relation to the sale of Items (which may include Personal Information);
    - ii. it is impossible for the Merchant to directly collect that information; and Frevora is reasonably able to collect and retain that information, then the Merchant instructs Frevora to, and Frevora, pursuant to the

Merchant's instruction: will collect and retain that information as required by the applicable Laws; and

- iii. may disclose that information directly to the applicable authorities instead of providing it to the Merchant where the applicable Laws allow.

k. Alcohol items.

This section highlights that Frevora does not allow sale of alcoholic items its Platforms. 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 Frevora Platform.

l. Meat products:

This section highlights that Frevora does not allow sale of meat products on its Platforms. The Merchant acknowledges and agrees that signing this Agreement, without taking additional steps, does not give Merchant the authorization to sell meat Items on the Frevora Platform.

- m. Returns and refunds – The merchant acknowledges that customers may be required to return the items or cancel the order. The merchant agrees to accept the returns if the cancelation if

## **7. Customer service**

- a. The Merchant is solely responsible for providing all Customer support for Items sold through the Frevora platform. The Merchant will provide Frevora 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 Frevora platform and will accept and respond to all related customer service inquiries from Customers. The merchant agrees that all customer feedback are subject to user generated content terms
- b. The Merchant acknowledges and agrees that:
  - i. after receiving Items, a Customer may be prompted by the Apps to provide Customer Feedback; and
  - ii. the Apps may allow for In-App Communications.
- c. Use of customer feedback:
  - i. Frevora 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 Frevora and its Affiliates without attribution or approval with the Merchant.
- d. Content restriction:
  - i. 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, or any other policy or terms and conditions published by Frevora.

#### **8. Agreement Term and Termination**

- a. This Agreement starts on the Effective Date, and continues for the Term.
- b. 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 or Sponsored Listing is live.
- c. Termination for a cause - Either party may terminate the Agreement with immediate effect by giving the other party written notice, if that other party:
  - i. materially breaches the terms of this Agreement
  - ii. becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors;
  - 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
  - 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 Frevora's prior consent

#### **9. Marketing, sponsored listings and promotions**

- a. Marketing – Frevora 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
- b. Control of Frevora platform
  - i. the Merchant controls the list of Items and the Retail Price of Items available through the Frevora Platforms;
  - ii. Frevora controls the factors that impact the order, frequency and ranking in which all merchants appear to Customers in the Frevora Platforms, including in search results and presentation of merchants by category;
  - iii. the Frevora platform is 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 Frevora Platforms;
  - iv. nothing in this Agreement prevents Frevora 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 Frevora Platforms
  - 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 Frevora and may be adjusted or updated by Frevora in its sole discretion

- vi. the Merchant is not entitled to any compensation for marketing on the Merchant’s “storefront” through the Frevora Platforms; and
- vii. Frevora has sole control over adding, removing or otherwise modifying any feature or functionality made available through the Frevora Platforms, including the visibility or availability of the Merchant’s “storefront” to Customers, to optimize reliability, efficiency, or experience on the Frevora Platforms.

c. Sponsored Listings

- i. 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
- ii. Sponsored Listings. Subject to the terms and conditions of this Agreement and any other guidelines or eligibility criteria for Sponsored Listings that Frevora may make available from time to time, by providing the Merchant access to the Frevora Tools or Ads Manager, Frevora authorizes the Merchant to submit a Bid. A selected Bid will be placed on the applicable Frevora Platforms. For clarity, a Sponsored Listing may be posted anytime after it is selected and will continue until:
  - 1. the budget is exhausted;
  - 2. Frevora removes it for any reason permitted by this Agreement; or
  - 3. pursuant to the “termination of Bids” section of this Agreement
- iii. Creating campaigns. When the Merchant uses the Frevora Tools or Ads Manager to create a Sponsored Listing, the Merchant authorizes Frevora 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 Frevora tools, 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).
- iv. Merchant agrees that if a Frevora representative is requested to submit a Bid on the Merchant’s behalf, the Merchant will provide authorization to Frevora representatives via email or other written means, outlining the Merchant’s budget.
- v. The Merchant acknowledges and agrees that, if a selected Bid becomes a Sponsored Listing, Frevora 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.
- vi. 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 sponsored listing

- vii. Frevora 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
- viii. Unless otherwise agreed by the Merchant and Portier, the Merchant agrees that Frevora may deduct the Sponsored Listing Fees as part of additional fee from any payment due to the Merchant, via a deduction from the remittance of Item Revenue collected on the Merchant's behalf.
- ix. 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.
- x. 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.

**10. 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.

**11. Privacy and Security:**

- a. Passwords: The Merchant is responsible for maintaining the integrity of information related to the Merchant's access and use of the Frevora 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.
- b. The terms and conditions of the Frevora Privacy Notice, will apply to Frevora's collection, use and processing of Personal Information
- 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.
- d. Frevora's Personal Information: In relation to Portier Personal Information, the Merchant agrees to:



- i. use, disclose, store, retain or otherwise process Personal Information solely for the purpose of performing its obligations under this Agreement
- ii. maintain the accuracy and integrity of any Personal Information in Merchant's possession, custody or control
- iii. access Frevora's Personal Information solely by using the software and tools provided by it
- iv. implement appropriate technical and organizational measures to protect Frevora's Personal Information against Data Security Incidents. If Merchant becomes aware of any Data Security Incident, Merchant will immediately notify Frevora and provide any information reasonably requested by Portier;
- v. retain Personal Information for only so long as necessary to perform its obligations under this Agreement, unless otherwise required under applicable laws; and
- vi. comply with all applicable privacy and data protection Laws with respect to all Frevora's Personal Information
- vii. Where Frevora is required by Laws to share certain Personal Information with the Merchant (other than Frevora Personal Information), Frevora will share only that Personal Information with the Merchant as required by the applicable Laws. If the Merchant receives any Personal Information from Frevora 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.

**12. Participants:** This section applies if the Merchant has Participants

- a. 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:
  - i. execute an agreement with Portier on similar terms to this Agreement;
  - ii. execute an opt-in to this Agreement; or
  - iii. execute such other documentation that the Merchant and Portier agree in writing to have Participants execute pursuant to this section.
  - iv. The Merchant must provide Portier with contact information of all Participants and prospective Participants.
- b. 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.
- c. 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.

- d. 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.
- e. The Merchant represents and warrants that it has all required authorizations to receive information from Frevora about the Participants and Participants' Locations, including Confidential Information. If the Merchant is also a Participant, the Merchant authorizes Frevora 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 Frevora 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.

**13. License to Frevora Platform** - Subject to the Merchant's compliance with the terms of this Agreement, Frevora grants to the Merchant, for the Term, a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to access and use the its platform and services.

**14. Use restrictions**

- a. In connection with the access to and use of the Frevora Platforms and Frevora Tools, the Merchant must not (and must not allow any third party to):
- b. remove any copyright, trademark or other proprietary notices from any portion of the Frevora Platforms, Frevora Tools, or Frevora Services;
- c. reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Frevora Platforms, Frevora Tools, or Frevora Services except as expressly permitted by Frevora;
- d. decompile, reverse engineer or attempt to discover any source code or underlying ideas or algorithms used to provide the Frevora Services (except to the extent applicable Laws prohibits reverse engineering restrictions);
- e. link to, mirror or frame any portion of the Frevora Services;
- f. 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 Frevora Services;
- g. attempt to gain unauthorized access to or impair any aspect of the Frevora Services or its related systems or networks; or
- h. 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 Commerce Department, Treasury Department's Office of Foreign Assets Control, or any other government agency applicable. The Merchant must not (and will not allow any third party to) use the Frevora Platforms or Frevora Tools or any other Frevora Data to directly or indirectly compete with Portier or its Affiliates or the Frevora Platforms, including,

without limitation, Frevora Data that the Merchant receives from Frevora by way of a Third Party Access Service.

- i. 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, Frevora retains all right, title and interest in and to the technology and software Frevora uses to provide the Frevora APIs. Similarly, as between the parties, Frevora retains all right, title and interest in and to the Frevora Platforms, including the technology and software Frevora uses to provide them.
- j. Platform integration with 3<sup>rd</sup> party website –
  - i. The Merchant acknowledges and agrees that Frevora or its Affiliates may enter into agreements with the operators of Aggregator Platforms in order to integrate the Frevora 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 Frevora Platforms, or directly from the Aggregator Platform. The Merchant authorizes Frevora and its Affiliates to share the following information with Aggregator Platforms in relation to Locations:
    - 1. address;
    - 2. operating hours;
    - 3. telephone number(s);
    - 4. ratings and reviews;
    - 5. Item lists, descriptions, and images;
    - 6. pricing information;
    - 7. pickup and delivery time estimates;
    - 8. the Merchant's Trademarks;
    - 9. Marketing Photographs and Merchant Marketing Materials;
    - 10. whether a Customer purchased Items through the Frevora Platforms after being directed to the Frevora Platforms from the Aggregator Platform and other information related to the order including the total basket size; and
    - 11. any other information which Frevora or its Affiliates decides, in their discretion, to provide to the Aggregator Platform.

**15. Feedback:** The Merchant may, but is not obligated to, provide or otherwise make Feedback available to Frevora or its Affiliates. However, to the extent that the Merchant provides or otherwise makes available Feedback to Frevora or its Affiliates, the Merchant grants to Frevora 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 Frevora Services and Frevora'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.

## **16. Representations and Warranties**

- a. Each party represents and warrants that:
  - i. it has full power and authority to enter into this Agreement and perform its obligations hereunder;
  - ii. it is duly organized, validly existing and in good standing under the Laws of its origin jurisdiction
  - 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
  - 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
  - v. the Trademarks, content, media, and other materials (including, without limitation, Merchant Marketing Materials) used or provided by one party to the other pursuant to this Agreement do not infringe, misappropriate, or otherwise violate any third party's intellectual property rights, rights of publicity, or other proprietary rights
- b. The Merchant represents and warrants that:
  - i. the following information will be provided to Frevora by the Merchant, will be accurate and complete, and will remain accurate and complete at all times:
  - ii. all nutritional information for Items made available through the Frevora Platforms, including calorie count or allergen information;
  - iii. 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
  - iv. address and opening hour information for each Location;
  - v. 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 Frevora, Frevora, or their Affiliates, are not false, misleading, or deceptive, AND are supported by sufficient prior substantiation, and comply with applicable Laws;
  - vi. it will comply with any applicable Food Safety Standards or other health and safety Laws;
  - vii. it will comply with all its obligations with respect to Items under this Agreement;
  - viii. it will comply with all applicable privacy and data protection Laws with respect to all Personal Information it receives from Frevora pursuant to this Agreement;

- ix. 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;
  - x. 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 Frevora Platforms and/or Required Licenses to sell and deliver Items in a given state or local jurisdiction; and
  - xi. it assumes all risks (including accuracy and reliability) associated with the Merchant Marketing Materials and shall not imply in any way that Frevora endorses or has verified the Merchant Marketing Materials.
- c. 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

#### **17. Indemnification**

- 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:
- i. the gross negligence or willful misconduct of the Indemnifying Party, or its employees, or agents in connection with the performance of this Agreement;
  - ii. any breach of representations, warranties, or covenants in this Agreement by the Indemnifying Party or its employees, or agents; or
  - 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:
  - 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
  - v. the Indemnified Party did not use the Indemnifying Party's Brands or Trademarks in accordance with the manner approved by the Indemnifying Party.
- b. Merchant indemnities - The Merchant will, at its own expense, indemnify, defend and hold Frevora, and their Affiliates, from and against all Claims brought against Frevora, or their Affiliates by a third party arising from or in connection with:
- i. the Merchant's violation or alleged violation of Food Safety Standards or other health and safety Laws;
  - ii. Merchant's loss, alteration, or misuse of Portier Personal Information, or unauthorized access to or destruction or disclosure of Portier Personal Information;
  - iii. 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;
- iv. Merchant's failure to comply with a notice with respect to Unsupported Items;
  - v. the Merchant's violation or alleged violation of its obligations with respect to Items under this Agreement; and
  - vi. any violation or claimed violation of a third party's rights resulting in whole or in part from use of the Merchant's Marketing Materials.
- c. Indemnification Process - The Indemnified Party will provide the Indemnifying Party with:
- i. prompt written notice of such Claim;
  - 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
  - iii. proper and full information and assistance to settle or defend any such Claim, at the Indemnifying Party's expense.
- d. Limitation of liability
- i. 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
  - ii. EXCEPT FOR LIABILITY ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, INDEMNIFICATION OBLIGATIONS, A DATA SECURITY INCIDENT IN CONNECTION WITH PORTIER PERSONAL INFORMATION, A BREACH OF EXCLUSIVITY OBLIGATIONS (IF ANY), A BREACH OF CASH BONUS PROVISIONS, OR A BREACH OF CONFIDENTIALITY OBLIGATIONS EACH PARTY'S TOTAL CUMULATIVE LIABILITY OF EACH AND EVERY KIND UNDER THIS AGREEMENT WILL NOT EXCEED \$10,000.
  - iii. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.
- e. 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

**18. Insurance**

- a. Insurance requirements- During the Term each party will maintain:
  - i. commercial general liability insurance
  - ii. if required by Laws, worker's compensation insurance; and
  - 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 where commercial automobile liability insurance is necessary for the Transportation Method used
- b. Minimum Insurance limitations –
  - i. Commercial general liability. The commercial general liability insurance policy limits will be one million dollars (\$1,000,000) per occurrence for bodily injury, death and property damage liability, and two million dollars (\$2,000,000) in aggregate.
  - 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.
  - iii. 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
  - iv. 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.
  - v. In no event will the limits of any policy be considered as limiting the liability of a party under this Agreement.

**19. Confidentiality :**

- a. 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
- b. 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.
- c. 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

## **20. Disputes**

- 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.
- 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
- 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 Ontario
- d. No class action: 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.
- 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
- 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

## **21. Notices**

- a. Receipt of notices - Any and all notices permitted or required to be given under this Agreement will be sent and deemed duly given:
  - i. upon actual delivery, if delivery is by hand;
  - ii. one day after being sent by overnight courier, charges prepaid; or
  - iii. by electronic mail to the designated recipient.
- 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 Frevora platform
- c. Notice to Frevora: The parties agree that all legal documents (including complaints and subpoenas) directed to Frevora will be served on it's registered agent for service of process, with a copy addressed to the Frevora legal team at Frevora's then-current headquarters address.

**22. 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. Frevora 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 Frevora Platforms and Tools. By continuing to use the Frevora platform, the Merchant will be deemed to accept the Supplemental Terms.

**23. Diversity and inclusion:** The Merchant will not, in its use of the Frevora Platforms or 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 Frevora and the Merchant. The Merchant acknowledges and agrees that upon Frevora's receipt of evidence of the Merchant's discrimination under any of these categories, Frevora will have the right to immediately terminate this Agreement following notice to the Merchant.

## **24. General Terms**

### **a. Amendments**

- i. This Agreement may only be amended, modified, or updated by:
- ii. Frevora, in its sole discretion, from time to time, effective upon posting an updated version of this Agreement, or
- iii. by a written document executed by both parties, which may include electronic signatures.
- iv. The Merchant is responsible for updating contact information and regularly reviewing the Agreement updates and information from Frevora. Continued use of the Frevora Services, Frevora Tools, or Frevora Platforms after any such modifications or updates constitutes the Merchant's consent to such changes.

### **b. Assignment and novation**

- i. 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:
- ii. to an affiliate of such party; or
- iii. 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 Frevora, 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 Frevora 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.

### **c. Counterparts**

- i. 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.
- d. Entire agreement
  - i. 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.
- e. Force majeure
  - i. 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, Frevora may elect to terminate this Agreement without liability.
- f. Governing Law
  - i. This Agreement is governed by the law of the State of Ontario
- g. Relationship
  - i. 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
- h. Severability
  - i. 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.
- i. Survival
  - i. 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
- j. Territory
  - i. This Agreement applies in the Canada and does not apply to the Merchant's use of the Frevora platform and tools, outside of the Canada.
- k. Waiver

- i. No waiver by any party of any breach (whether actual or anticipated) of any of the terms, conditions, representations or warranties in this Agreement shall take effect or be binding upon that party unless the waiver is expressed in writing by an authorized representative of that party. 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.

## **25. Interpretation**

- a. The following also applies to the interpretation of this Agreement:
  - i. 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
  - ii. Terms used as plurals may also be interpreted as singular, and vice-versa
  - iii. any references to dollars or currency means CAD dollars unless otherwise indicated.
  - iv. If the words “including”, “such as”, “for example”, “e.g.”, or similar terms, are used in any section, the words “without limitation” are implied.
  - v. Any reference to a “party” or “parties” means a party to this Agreement.
  - vi. Any references to the Merchant, if the Merchant includes multiple legal entities, means each of those entities jointly and severally.
  - vii. 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
  - viii. 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

## **Contact Us**

If you have any questions about these Terms and Conditions, You can contact us  
By email: [help@frevora.com](mailto:help@frevora.com)