

## MERCHANT TERMS AND CONDITIONS

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE OR (2) EXECUTING AN ORDER FORM OR ADDENDUM THAT REFERENCES THESE TERMS, MERCHANT AGREES TO THE TERMS OF THIS AGREEMENT.

IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS, IN WHICH CASE THE TERM “MERCHANT” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

### General Terms:

These Everreat Merchant Terms and Conditions are hereby accepted and agreed to by the company identified within the Everreat sign-up process ("Merchant" or "You"), and constitute a legally binding agreement by and between Merchant and HSD Group, LLC.

HSD Group makes available certain proprietary technology that facilitates the marketing, sale and fulfillment of orders for food and beverages from Merchant to Customers (“Everreat Services”), which includes the Everreat App.

Merchant shall provide Everreat current and accurate contact information and location information throughout the Term of this Agreement. Merchant agrees that HSD Group does not provide any delivery services. Rather, it provides technology services that enable Merchant to connect with Customers who may purchase food and beverage items from Merchant.

### Merchant Items:

Merchant will make the items available for purchase through the Everreat App (“Available Items”) during its normal business hours and ensure the

Available Items menu is accurate. Merchant will prepare, handle, store, label and package all Items in accordance with applicable laws and regulations, including without limitation all laws, rules and regulations governing time or temperature controls required for food safety (“Food Safety Standards”) and, if applicable, all applicable laws, rules, and regulations for the handling and labeling of Alcohol Items (“Alcohol Safety Standards”). Merchant will determine any quality, portion, size, ingredient or other criteria that apply to Items (“Criteria”) and Merchant is responsible for ensuring that all Items meet the applicable Criteria. If Merchant fails to prepare or supply Items in accordance with Food or Alcohol Safety Standards or if any Item fails to meet the Criteria (each, a “Substandard Item”), HSD Group may, in its sole discretion, remove such Item from the App. Items that contain (or may contain) an endangered species may not be made available for purchase through, and will be removed from, the App. Merchant represents and warrants that all nutritional information for Items, including calorie count or allergen information, that is made available through the App is, and at all times will remain, accurate. In addition, Merchant will ensure that the contents of its menu includes each Items Criteria (including any notifications about ingredients, nutritional information, allergen information, alcoholic content (if applicable), etc.) are accurate and comply with all applicable laws and regulations.

Merchant acknowledges and agrees that HSD Group does not take title to any Available Item at any time. Merchant shall be responsible for any reimbursement costs related to Customer refunds for Substandard Items or other related issues within Merchant’s control (including any costs associated with retrieving any such 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 Merchant’s internal standards. HSD Group may, in its sole discretion, deduct reimbursement costs from the payment it remits to Merchant in accordance with this section.

The following restricted Items may not be featured or sold via the Everreat App: illegal items, fragile items, dangerous items (like weapons, explosives, flammables, etc.), stolen goods, items containing endangered species or any items that Merchant does not have permission to offer.

### Gratuities:

Merchant agrees to allow Customers to provide gratuities through the Everreat App. HSD Group shall remit to Merchant the full value of any gratuities provided by Customers. It is the sole responsibility of the Merchant to comply with all applicable laws (including tax, gratuity, social security and employment laws where applicable) regarding the distribution of any gratuities.

### Fees and Taxes:

Merchant agrees to pay HSD Group a Fee of five per cent (5%) of the Retail Price (as defined below) of all Items that Merchant sells via the App (excluding any Sales Tax collected on Merchant's behalf). The Fee does not include any applicable taxes. HSD Group will remit to Merchant the total Retail Price collected for all Items Merchant sells via the App (including any Sales Taxes collected on its behalf) less: (a) the applicable retained Fee; and (b) any refunds given to Customers. HSD Group will typically make such payment on a weekly basis. If required by applicable law or regulation, HSD Group may adjust the Fee. All Fees under this Agreement will be paid in U.S. Dollars.

Merchant agrees that it is the Merchant's responsibility to correctly calculate, account for, and remit all applicable sales and/or service taxes. Each party will be responsible for its expenses and costs during its performance under this Agreement.

### Retail Prices and Taxes:

The Everreat App connects you with Customers who wish to purchase your Items. You are the "merchant", "retailer", or "seller" of all Items to be made available for sale via the App. As such, you are responsible for determining and setting the retail price for each Item (the "Retail Price"), and you are ultimately responsible for the collection and remittance of all applicable Sales Taxes, where required under applicable law. The term "Sales Tax" includes any sales, sellers use, service, transaction privilege, privilege, general excise, gross receipts, and similar transaction taxes, as well as any bottle, bag, plastic, or other similar fees. For the sake of clarity, the Retail Price for each Item excludes separately stated Sales Taxes. The Merchant

agrees not to inflate the Retail Price for any item offered through the App relative to the price offered to all other customers.

Appointment of Limited Payment Collection Agent:

Merchant is solely responsible for providing HSD Group with, and maintaining, accurate bank account information. Merchant hereby appoints HSD Group as Merchant's limited payment collection agent solely for the purpose of: (i) accepting payment of the Retail Price of Items sold by Merchant via the App plus any applicable Sales Tax collected on Merchant's behalf, and (ii) remitting the Retail Price plus Sales Tax collected on Merchant's behalf less the retained Fee and, if applicable, any refunds given to Customers on behalf of Merchant ("Item Revenue"). Further, Merchant agrees that payment collected on its behalf by HSD Group or its affiliates will be considered the same as payment made directly to Merchant. Merchant agrees that if Merchant does not receive payment from HSD Group or its affiliates, Merchant's only recourse will be against HSD Group.

HSD Group may, from time to time, request information from Merchant to confirm Merchant's identity as may be necessary under any applicable compliance obligations before remitting any amounts to Merchant and may refuse to process amounts owed to Merchant if there exists a legal or regulatory risk or potential breach of law or regulation associated with such remittance to Merchant. HSD Group reserves the right to collect any amounts in connection with such adjustments via a deduction from the remittance of Item Revenue collected on Merchant's behalf, by debiting the payment method or Merchant's bank account on record, or otherwise seeking reimbursement from Merchant by any lawful collection methods available. Merchant authorizes HSD Group to use any or all of the above methods to seek such adjustments and reimbursements. In more serious situations, such as fraud (including any charges for Items that Customers did not place) or Customer complaints, HSD Group and its affiliates reserve the right to cancel a payment entirely.

By agreeing to these terms, Merchant gives HSD Group and its affiliates express consent to adjust payments collected on Merchant's behalf as set forth in this Section.

## Publicity:

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 the other party.

## Proprietary Information and Personal Data:

“Proprietary Information” means any confidential, proprietary or other non-public information disclosed by or on behalf of one party (“Discloser”) to the other (“Recipient”), whether disclosed verbally, in writing, or by inspection of tangible objects, and includes transactional, operational, performance and other data or information that is related to the sale of Merchant’s Items to Customers through the App and the terms and conditions of this Agreement.

Proprietary Information will not include information that: (i) was previously known to the Recipient without an obligation of confidentiality; (ii) was acquired by the Recipient without any obligation of confidentiality from a third party with the right to make such disclosure; or (iii) is or becomes publicly available through no fault of the Recipient. 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 Proprietary Information.

Each Recipient will ensure that Proprietary Information will only be made available to Recipient’s affiliates and Recipient’s and Recipient’s affiliates officers, directors, employees and agents who have a need to know such Proprietary Information and who, prior to any disclosure of such Proprietary Information, are bound by written obligations of confidentiality with respect to such Proprietary Information that are no less stringent than those set forth in this Agreement (each, a “Representative”). 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 Proprietary Information.

The foregoing prohibition on use and disclosure of Proprietary Information will not apply to the extent: (i) the Discloser has authorized such use or disclosure (and Merchant hereby authorizes HSD Group to disclose the terms of this Agreement to Merchant's franchisees and/or franchisor as applicable in connection with executing contracts that reference this Agreement) and (ii) a Recipient is required to disclose certain Proprietary Information of the Discloser as a matter of law or by order of a court, 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. Upon expiration or termination of this Agreement and as requested by 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 Proprietary Information, together with all copies thereof in whatever form.

Merchant agrees to use, disclose, store, retain or otherwise process Personal Data solely for the purpose of providing Items under this Agreement. Merchant will maintain the accuracy and integrity of any Personal Data provided by HSD Group and in Merchant's possession, custody or control. Merchant agrees to retain Personal Data provided to Merchant by HSD Group solely by using the software and tools provided by HSD Group. "Personal Data" means any information obtained in connection with this Agreement (i) relating to an identified or identifiable natural person; (ii) that can reasonably be used to identify or authenticate an individual, including name, contact information, precise location information, persistent identifiers, and (iii) any information that may otherwise be considered "personal data" or "personal information" under the applicable law.

Merchant is responsible for maintaining the integrity of information related to Merchant's access and use of the App, including any password, login or key information. Merchant represents and warrants that Merchant will not share such information with any third party.

#### Ratings:

Merchant acknowledges and agrees that, after receiving Item(s), a Customer may be prompted by the App to provide a rating of such Item(s) and, at such Customer's option, to provide comments or feedback related to the Customer's experience with Merchant and the relevant Item(s) on the

App (“Customer Feedback”). HSD Group reserves the right to use, share, and display Customer Feedback in any manner in connection with the business of HSD Group without attribution to or approval of Merchant.

Representations and Warranties:

Each party hereby 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 the jurisdiction of its origin; (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 under this Agreement; (iv) it will comply with all applicable laws and regulations in the performance of this Agreement and any activities hereunder (including all applicable consumer protection, data protection and privacy laws and, in the case of Merchant, all applicable Food Safety Standards); and (v) the Marks used or provided by one party to the other pursuant to this Agreement shall not infringe or otherwise violate the intellectual property rights, rights of publicity, or other proprietary rights of any third party.

Disclaimer:

EXCEPT AS SET FORTH HEREIN, EACH PARTY MAKES NO REPRESENTATIONS, AND HEREBY 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.

Indemnity:

Each Party (“Indemnifying Party”) will indemnify, defend and hold harmless the other, its affiliates and respective directors, officers, employees and agents (the “Indemnified Party”) from and against any and all claims, damages, liabilities, causes of action, and losses (including reasonable attorney’s fees) (collectively, “Losses”) with respect to any third party claim arising out of or related to: (i) the negligence or willful misconduct of the Indemnifying Party or its employees or agents in their performance of this Agreement; (ii) any claims that, if true, would be a

breach of any of the Indemnifying Party's representations, warranties or covenants in this Agreement; or (iii) any claims that the Marks provided by the Indemnifying Party infringe a third party's intellectual property rights, to the extent the Indemnified Party used such Marks in accordance with the manner approved by the Indemnifying Party. In addition, you will indemnify, defend and hold harmless the HSD Group Indemnified Parties from and against any and all Losses with respect to any third party claim arising out of or related to: (A) Merchant's violation or alleged violation of any applicable retail food or other health and safety code, rule or regulation; (B) Sales Tax applicable to sales of Merchant Items; (C) Merchant's failure to provide accurate and complete descriptions or additional information for Merchant Items; or (D) any claim related to Merchant's failure to perform obligations contained in this Agreement.

Procedure:

We will provide you prompt written notice of any potential claim subject to indemnification hereunder. You will assume the defense of the claim through counsel you designate, however, such counsel must be reasonably acceptable to the Indemnified Party. You will not settle or compromise any claim, or consent to the entry of any judgment, without written consent of the Indemnified Party, which will not be unreasonably withheld. The Indemnified Party will reasonably cooperate with the Indemnifying Party in the defense of a claim, at Indemnifying Party's expense.

Limits of Liability:

EXCEPT FOR LIABILITY ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, INDEMNIFICATION OBLIGATIONS OR A BREACH OF CONFIDENTIALITY OBLIGATIONS: (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 (B) EACH PARTY'S TOTAL CUMULATIVE LIABILITY OF EACH AND EVERY KIND UNDER THIS



AGREEMENT WILL NOT EXCEED \$50,000. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

Insurance:

Merchant agrees to maintain Commercial General Liability and, if required by law, Worker's Compensation insurance. 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. All policies shall be written by reputable insurance companies with a Best's policyholder rating of not less than A-. Such insurance will not be cancelled or materially reduced without thirty (30) days' prior written notice to HSD Group. Upon HSD Group's request, Merchant agrees to provide evidence of the insurance required herein.

Term and Termination:

This Agreement will commence on the Effective Date and, unless earlier terminated as provided below, will continue for a period of one (1) year from the Effective Date and will automatically renew for successive one (1) year periods. Either party may terminate this Agreement in the event of a material breach by the other party with two (2) days' prior written notice thereof by the non-breaching party. Either party may terminate this Agreement at any time without cause by giving thirty (30) days' prior written notice of termination to the other party.

Notice:

Notices to HSD Group should be provided to HSD Group, LLC, Attn: Legal, 701 South St., Suite 100, Mountain Home, Arkansas 72653. Notices to Merchant will be provided to the address provided by Merchant.

Dispute Resolution and Arbitration:

All claims, disputes or disagreements that may arise out of the interpretation or performance of this Agreement, or that in any way relate to your use of the App, shall be submitted exclusively to binding arbitration,

except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. Arbitration means that an arbitrator and not a judge or jury will decide the claim. Rights to prehearing exchange of information and appeals may also be limited in arbitration.

You acknowledge and agree that you and HSD Group are each waiving the right to a trial by jury. You further acknowledge and agree that you waive your right to participate as a plaintiff or class member in any purported class action or representative proceeding. Further, unless both you and HSD Group otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of this Agreement. You further acknowledge that any claim arising under this Agreement will be brought within one year of its accrual or it will be waived.

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The arbitrator will be either a retired judge or an attorney licensed to practice law in the county in which you reside and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Unless you and HSD Group otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and HSD Group submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof.

The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim.

#### Additional Terms:

The territory of this Agreement is the United States, and all payments issued under this Agreement must be in U.S. dollars. Merchant agrees to receive calls, SMS messages and other communications, sent by or on behalf of HSD Group. The failure of either party to enforce, at any time or for any period of time, the provisions hereof, or the failure of either party to exercise any option herein, will not be construed as a waiver of such provision or option and will in no way affect that party's right to enforce such provisions or exercise such option. 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, (a) to an affiliate of such party, or (b) 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 Merchant, Merchant explicitly consents that any such transferee will have access to and control of all Merchant accounts related to such transfer,

including its accounts with HSD Group, access to historical reporting information about Items related to such transfer, and other account data relating to such transfer.

In the event of a change of ownership involving Merchant's Location(s), the parties will need to execute a Change of Ownership form and Merchant acknowledges and agrees that the Location will not be able to accept or process any Customer orders on the App until the Change of Ownership is executed. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of each party hereto and its respective successors and assigns. Any purported assignment, transfer, delegation or subcontract in violation of this Section will be null and void. In the event any provision of this Agreement is determined to be invalid or unenforceable by ruling of an arbitrator or a court of competent jurisdiction, the remainder of this Agreement (and each of the remaining terms and conditions contained herein) will remain in full force and effect.

Nothing in this Agreement will be deemed to create any joint venture, joint enterprise, or agency relationship among the parties (except as otherwise expressly set forth above), and no party will have the right to enter into contracts on behalf of, to legally bind, to incur debt on behalf of, or to otherwise incur any liability or obligation on behalf of, the other party hereto, in the absence of a separate writing, executed by an authorized representative of the other party.

Each party will be solely responsible for its employees and contractors used in connection with such party's performance obligations under this 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 such subject matter hereof.