

## **FREEVO™ MERCHANT AGREEMENT**

Updated Effective: December 25, 2017.

Upon electronic acknowledgment of acceptance by you as the Merchant (as defined below), this Merchant Agreement ("Agreement"); will be a legally binding contract between you and Roccabella Holdings, LLC, a Delaware Limited Liability Company, which conducts some business under the proprietary trademark and name "Freevo"<sup>SM</sup>, together with its affiliates, shareholders, directors and officers (called "Freevo", "we" or "us" in this Agreement).

This Agreement governs your access to and use of the Platform and participation in the Program (as such terms are defined below).

**A. DEFINITIONS** – unless otherwise clearly stated, the following words used in this Agreement have the meanings specified.

**"ACCOUNT"** – A Freevo merchant account.

**"ACCOUNT MANAGEMENT WEBSITE"**- the online portal, currently located at <http://live.freevo-app.com/store> through which you may access and utilize the Platform to, among other things (i) register with Freevo and establish an Account; (ii) purchase Vouchers; and (iii) establish and administer marketing campaigns which include a Merchant Offering.

**"APPLICATION"** - the proprietary software application developed and owned by Freevo that is installed on a Consumer's Device and which is the sole means by which he or she may participate in Merchant Offerings.

**"BUSINESS DAY"** – any day other than a Sunday or legal holiday in the location provided by you in connection with the registration of your Account.

**"CATEGORIES"** - the permissible categories of goods, merchandise and services that are the permissible subjects of a Merchant Offer. Freevo may change the list of Categories at any time without prior notice. The current list of Categories will be maintained on the Account Management Website.

**"COMMENCEMENT DATE"** – the first day on which a Merchant Offering becomes available and a Coupon may be redeemed.

**"CONSUMER"** - a natural person who (i) installs the Application on his or her Device; and/or (ii) accesses the Application in order to obtain one or more Merchant Offerings for his or her personal use or consumption.

**"CONSUMER DATA"** - all personally identifiable, nonpublic information about a Consumer generated or collected through the Platform by Freevo or you, including, but not limited to, email addresses, phone numbers, purchase preferences and tendencies, and financial transaction data.

**"COUPON"** - an electronic image appearing on a Consumer's Device, which must be displayed by the Consumer to you in order to participate in a Merchant Offering.

**"DEVICE"** - a Consumer's mobile phone, tablet or similar mobile electronic communication device.

**"EXPIRATION DATE"** – the expiration date indicated on a Coupon.

**"FREEVO INTELLECTUAL PROPERTY"** - all interest in and to the Platform, Consumer Data, Freevo trade names, logos, trademarks, service marks, domain names, social media identifiers, all data collected through or from the Platform, all audiovisual content, video recordings, audio recordings, photographs, graphics, artwork, text or any other content

created by Freevo or at Freevo's direction, and any materials, software, technology or tools used or provided by Freevo to promote and conduct its business.

**"GOODS"** – merchandise offered by you to Consumers for free, at a discount or at full value as part of a Merchant Offering.

**"LAWS"** – federal, state and local statutes, rules, regulations and ordinances.

**"MERCHANT"** - a retail provider of Goods or Services.

**"MERCHANT ACCOUNT"** – your account with Freevo, established through the Account Management Website.

**"MERCHANT INTELLECTUAL PROPERTY"** - your name, logos, trademarks, service marks, domain names, and any associated audiovisual content, video recordings, audio recordings, photographs, graphics, artwork or text used or provided by you in connection with any Merchant Promotion

**"MERCHANT OFFERING"** - the Goods and/or Services, offered by you through the Platform to Consumers in accordance with Coupon.

**"MERCHANT PROMOTION"** – a promotion created by you utilizing the Platform.

**"PAYMENT ACCOUNT"**- a valid credit or deposit account against which Freevo is authorized to initiate charge or debit transactions for your purchase of Vouchers.

**"PLATFORM"** - the proprietary technology platform developed by Freevo through which the Program operates.

**"PROGRAM"** – the promotional program through which you may, by accessing the Platform, create Merchant Promotions and create and redeem Merchant Offers.

**"SERVICES"** – personal services offered by you to Consumers for free, at a discount or at full value as part of a Merchant Offering.

**"VOUCHER"** - an electronic credit purchased from Freevo by you.

## **B. YOUR AND FREEVO'S RIGHTS AND OBLIGATIONS**

### **1. Your Purchase and Use of Vouchers.**

#### **a. In General.**

- i. Vouchers are the sole means by which you may access the promotional and marketing services and tools available on and through the Platform. The cost of each Voucher will be set from time to time by Freevo in its sole discretion, and You may obtain and use Vouchers only (i) if your Account is active and in good standing and (ii) in connection with the offer, marketing or promotion of goods or services in a single Category.

#### **b. Categories.**

- i. Vouchers are specific to individual Categories (e.g. meals). You may use a Voucher only for Merchant Offerings comprised of Goods or Services in the purchase Category.
- ii. In the event you misapply a Voucher, Freevo may immediately, without any refund or adjustment obligation to you, remove the associated Merchant Offering from the Platform.

- c. **Purchase Price.**
- i. You agree to pay the then-current purchase price of each Voucher, plus any applicable sales, use, VAT or other taxes Freevo may be obligated to charge and collect, as calculated based on your stated location at the time your Account was registered.
  - ii. Freevo may (but will not be obligated to) offer volume purchase discounts or other financial incentives to you or other Merchants. The availability of any such incentive will be communicated to you in writing via the Account Management Website and will be subject to all accompanying terms, limits and conditions.
  - iii. Freevo may suspend or cancel your Account if we do not receive an on time, full payment from you for any purchase of Vouchers, or if the funding of such purchase is reversed or rejected.
- d. **Payment Account.** You must:
- i. Maintain a Payment Account and provide through the Account Management Website information sufficient to enable Freevo, without further action or approval by you, to initiate credit card, Automated Clearing House (ACH) or other valid electronic charges or debits to or against the Payment Account.
  - ii. Provide all necessary authorization or instruction required by any third party holding or servicing your Payment Account; and
  - iii. Maintain at all times credit availability or a deposit balance on or in the Payment Account sufficient to fund your purchase of Vouchers.
- e. **Recurring Purchase Option.** Freevo may (but will not be obligated to) offer you the option of purchasing Vouchers on an automatically recurring basis. If we do so:
- i. You will take all actions necessary to authorize a recurring debit or charge to your Payment Account;
  - ii. Such authorization will remain in effect until we receive notice of its cancellation and have a reasonable opportunity to act on that notice.
  - iii. All such cancellations must be communicated implemented through the Merchant Account via the Account Management Website and must take place prior to the renewal purchase. Any cancellation pursuant to the renewal purchase will not be entitled to a refund or charge back.
- f. **Account Information.** Information regarding your Voucher purchases will be available to you solely via the Account Management Website We will endeavor to keep that information up to date, but do not guarantee that we will be able to do so in every instance.
- g. **Purchase Account Errors.** If you believe we have made an error in the amount or other aspect of any charge or credit to your Purchase Account, you must notify us in writing within 90 days after the error first appears on the Account Management Website We will promptly investigate the charge and report our conclusions and provide any necessary adjustments. If you do not give us notice within 90 days, we will have no obligation to correct any errors or provide any related credits or adjustments.

- h. **Refund Policy.** Except as provided in B4 C below, or as otherwise provided by law or by a particular Voucher Category, all Voucher purchases are **final and non-refundable. Freevo expressly does not provides any guarantees or warranties for Vouchers purchased.**
- i. **Price Changes.** We may change the price of any Voucher at any time. A notice of such change will appear on the Account Management Website at least fifteen (15) days before the price change. If you have authorized a recurring charge in connection with a recurring purchase option and do not agree to the price change, you must cancel and stop using the reoccurring payment or automatic renewal feature before the price change takes effect.

## 2. Promotion by Freevo

- a. Freevo will promote the availability of your Merchant Offers and distribute Coupons on your behalf through any electronic or other channel or platform, including, but not limited to, the Freevo Platform.
- b. The terms and conditions applicable to a Consumer's redemption of a Coupon will be established by Freevo in its sole discretion and will be set forth on the Coupon.
- c. Other than your authority and obligation set forth in subparagraph 4. b. below (to (i) limit the total number of Coupons made available; (ii) specify the timing of Coupon availability to Consumers and (iii) set any minimum order value), the extent, scope, nature and other particulars of promotion and distribution of Coupons shall be established by Freevo in its sole discretion.
- d. Notwithstanding subparagraphs B.1 a. and b, you are the offeror of each Merchant Offering and the creator and issuer of all related Coupons. As such, you are solely responsible for ensuring that:
  - i. Each Merchant Offer complies in all respects with any applicable law, regulation, license, ordinance or contractual agreement; and
  - ii. All material terms, conditions and restrictions applicable to a Merchant Offering are clearly disclosed on the related Coupon.

## 3. Appointments and Reservations

If you require Consumers to schedule an appointment or reservation in order to participate in any Merchant Offering:

- a. That condition must be clearly disclosed on the associated Coupon;
- b. You will on request provide an up-to-date calendar of available appointment times and allow Consumers to schedule appointments with you through Freevo or any third party service Freevo may use; and
- c. if a Consumer who has scheduled an appointment or reservation before the Coupon's Expiration Date is prevented by unforeseen circumstances from keeping that appointment, you agree to honor that Coupon beyond its Expiration Date.

## 4. Merchant Offerings

- a. In connection with each Merchant Offering you promise and agree:

- i. That such Merchant Offering will comply in all respects with any applicable Laws.
  - ii. That you, your employees and agents will have adequate training, be of legal age and hold any license or permit required by any applicable Laws in order to provide Goods or Services, redeem Coupons or otherwise participate in the Merchant offering.
  - iii. To provide to Consumers using Coupons the same level, quality and quantity of Goods or Services as would be provided to any customer paying the usual retail price for such Goods or Services;
  - iv. To maintain, up to and including the final day of the Merchant Offering, a supply of goods, staff or other resources reasonably calculated to enable you to honor the number of Coupons you have authorized Freevo to distribute in connection with any Merchant Offering and to offer substitute Goods or Services of comparable quality and retail value in the event supplies of the offered Goods or Services are exhausted before the Expiration Date;
  - v. To honor every Coupon for the Merchant Offering from the Commencement Date through and including the close of business on the date on which the Merchant Offering is removed from or deactivated on the Platform,
  - vi. To promptly and courteously address any Customer complaints regarding the quality or delivery of the associated Goods or Services;
  - vii. To honor any customer loyalty program as though the Consumer was a non-Freevo customer or client.
  - viii. Not to inflate prices or impose any fee, charge, condition or restriction not stated on the Coupon; and
  - ix. Not to impose a more onerous appointment or reservation, cancellation or no show” policy than you apply to non-Freevo customers or clients.
- b. In connection with each Merchant Offering and its associated Coupons, you will be responsible for setting (i) the maximum number of Coupons available to the Consumer per day; (ii) the schedule of when Merchant Offerings will appear on the Application and (iii) the minimum order value (before tax, gratuity and delivery charges) if applicable. Freevo reserves the right to delay the scheduled Commencement Date for any Merchant Offering as setout on the Merchant Account Management Website if, in Freevo’s judgment, such delay is necessary in order to ensure that a commercially reasonable minimum number of Merchant Offerings are available in a given location.
- c. If Freevo elects to delay the scheduled Commencement Date of any Merchant offering in accordance with subparagraph 4.b. above, you may prior to the Commencement Date, at your option, terminate (i) the Merchant Offering; or (ii) this Agreement. Provided you are not otherwise in default of any obligation under this Agreement, Freevo will refund the purchase price paid for the affected Vouchers.

## **5. Rejection or Removal of Merchant Promotions and Offerings**

Freevo reserves the right to:

- a. Reject, revise, or discontinue any Merchant Offering or Merchant Promotion, at any time and for any reason in Freevo's sole discretion;
- b. Terminate any Merchant Promotion and any associated Merchant Offering; and
- c. Remove all references to any Merchant Promotion or Merchant Offering and Coupon from the Platform; and redirect or delete any URL used in connection with the Merchant Promotion or Merchant Offering.

## **6. Issuing and Recording of the Check**

You must (i) issue to each Consumer one combined check/receipt for the Coupon redeemed together with any other product or service acquired by the Consumer (or any person(s) accompanying the Consumer) at the time; and (ii) allow the Consumer to take a picture of such check/receipt using the Freevo Consumer mobile phone Platform.

## **7. Taxes**

You are solely responsible for the calculation and payment of any taxes that may apply to you or to any payments you make to or receive from Consumers or Freevo.

## **8. Consumer Data Use and Protection**

- a. You shall use Consumer Data solely:
  - i. In accordance with applicable law and in a manner not inconsistent with Freevo's Privacy Policy as then in effect.
  - ii. For the purpose of fulfilling your redemption obligations in connection with a Merchant Offering.
- b. You shall immediately notify Freevo if you become aware of or reasonably suspect any unauthorized access to or use of Consumer Data or any confidential information of Freevo, and shall cooperate with Freevo in the investigation of such incidents and the mitigation of any damages.
- c. You will indemnify and hold Freevo harmless from and against all expenses incurred by Freevo arising from any unauthorized access, misuse or misappropriation of Consumer Data while such data is in your possession or control.

## **9. Term and Termination**

- a. This Agreement shall be effective upon your electronic acceptance and shall remain in effect indefinitely unless and until:
  - i. It is terminated by you or Freevo without cause on the thirtieth calendar day following the terminating party's written notice to the other;
  - ii. By Freevo, immediately and without prior notice upon your breach of any material provision of this Agreement; or
  - iii. Immediately and without prior notice upon either party's receipt of an order from any court or regulatory body of competent jurisdiction directing that it cease, as the case may be, offering participation in or participating in the Program.
- b. Effect of Termination. On the effective date of termination by either party:

- i. Your Account will be deactivated;

All Merchant Offerings and Merchant Promotions will be cancelled and deactivated; and

- c. Provisions in this Agreement that are intended to survive termination will continue in full force and effect after termination.

#### **10. Amendment by Freevo**

In its sole discretion, Freevo reserves the right at any time to amend or impose any new provision of this Agreement.

We will post the revised Agreement on the Account Management Website. Your continued use of the Platform after the stated effective date of such amendments will constitute your acceptance thereof.

#### **11. Intellectual Property Rights**

- a. Grant of License By You. You grant to Freevo a royalty free, perpetual, irrevocable, non-exclusive license to use Merchant Intellectual Property in connection with the operation of the Program.
- b. Reservation By Freevo. Freevo owns all Freevo Intellectual Property. Except with the prior express written consent of Freevo, you may not use, sell, rent, lease, sublicense, distribute, broadcast, transmit, stream, place shift, transfer, copy, reproduce, download, time shift, display, perform, modify or timeshare any Freevo IP or any portion thereof, or use any Freevo IP as a component of or a base for products or services prepared for commercial use, sale, sublicense, lease, access or distribution.

#### **12. Your Representations and Warranties**

You represent and warrant that you: (a) you have the right, power and authority to accept and comply with these Terms and Conditions; (b) if required by applicable law, you are registered for sales and use tax collection purposes in all jurisdictions where your goods and services will be provided; (c) own all interest in and to the Merchant Intellectual Property (d) the Merchant Intellectual Property will not infringe upon or otherwise violate any patent, copyright, logo, trademark, service mark, trade name, trade secrets, rights in designs, or other intellectual property right or right of privacy or publicity of any third party or any applicable law

#### **13. Indemnification**

- a. To the extent allowed under applicable law, you will defend, indemnify and hold Freevo, its affiliated and related entities, and any of its respective officers, directors, agents and employees, harmless from and against any claims, lawsuits, investigations, penalties, damages, losses or expenses arising out of or relating to any of the following (each, a "Claim"): (a) your actual or alleged breach of this Agreement or any of the representations and warranties made herein; (b) any Claim for tax obligations arising from your issuance or redemption of a Coupon; (c) any Claim arising out of the quality, composition or other characteristic of your Goods or Services; (d) any Claim arising out of your violation of law or regulation governing the use, sale, and distribution of your Goods or Services; (e) any claim by a Consumer or purchaser or anyone else arising out of or relating to your Goods or Services, including but not limited to, any Claims for false advertising, product defects, personal injury, death, or property damages; (g) any claim arising out of

yours misuse or mishandling of Consumer Data, or any violation of an applicable data privacy or security law or policy; (h) any claim arising out of your negligence, fraud or willful misconduct; (i) any Claim (including, but not limited to, one alleging infringement) arising out of or associated with the Merchant Intellectual Property or (j) any claim arising out of marketing or reporting materials which include or are linked to an applicable disclaimer.

- b. Freevo shall have the right to control its own defense and to choose and appoint its own defense counsel, regardless of the presence or absence of a conflict of interest between you and Freevo. Your duty to defend and indemnify Freevo includes the duty to pay Freevo's reasonable attorneys' fees and costs, including any expert fees.

#### **14. Confidentiality**

- a. In the course of your participation in the Program, you may become privy to Freevo's confidential and proprietary information ("Confidential Information"), including, but not limited to, the content of these Terms and Conditions, trade secrets, pricing and customer lists. Except as provided in subparagraph 13 b. below, you may not disclose Confidential Information to any party.
- b. Provided you have taken all reasonable steps to preserve its confidential nature, you may disclose Confidential Information:
  - i. To your employees, parent companies, shareholders, lawyers and accountants on a strict need-to-know basis; or
  - ii. As required by applicable court rules, public records and other law.
- c. In the event of wrongful disclosure of Confidential Information, Freevo shall be entitled to injunctive relief and a decree for specific performance, and any other relief allowed under applicable law (including monetary damages if appropriate).

#### **15. Limitation of Liability**

- a. NEITHER PARTY WILL BE LIABLE OR OBLIGATED TO THE OTHER FOR ANY LOST PROFITS, LOST BUSINESS, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE.
- b. FREEVO'S SOLE AND COMPLETE LIABILITY TO YOU FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR ANY ERRORS, OMISSIONS OR MISPLACEMENTS OF ANY COUPONS OR VOUCHERS IS LIMITED TO THE TOTAL VOUCHER PURCHASE PRICE PAID BY YOU DURING THE PRECEDING SIX (6) MONTHS AFTER FINAL CALCULATION AND RECONCILIATION OF ALL REFUNDS. THIS LIMITATION OF LIABILITY APPLIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY.
- c. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS NOR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

- d. FREEVO DOES NOT WARRANT OR GUARANTEE THAT THE SERVICES OFFERED ON OR THROUGH THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE COUPONS ARE ERROR-FREE, OR THAT ANY MERCHANT OFFERING OR MERCHANT PROMOTION WILL RESULT IN ANY INCREASE IN REVENUE OR PROFIT BY YOU.

## **16. Dispute Resolution**

- a. All disputes arising out of, or relating in any way to this Agreement, shall be resolved pursuant to this Section 16.

- b. **Binding Arbitration**

EXCEPT AS SPECIFICALLY STATED HEREIN, ANY DISPUTE OR CLAIM BETWEEN YOU AND FREEVO ARISING OUT OF, OR RELATING IN ANY WAY TO, THESE TERMS AND AGREEMENT ("**DISPUTES**") SHALL BE RESOLVED EXCLUSIVELY BY FINAL, BINDING ARBITRATION. BY VIRTUE OF THE AGREEMENT IN THIS SECTION 16 TO ARBITRATE, MERCHANT AND FREEVO ARE EACH GIVING UP THE RIGHT TO GO TO COURT AND HAVE A DISPUTE HEARD BY A JUDGE OR JURY (EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 16). The provisions of this Section 16 shall constitute Merchant's and Freevo's written agreement to arbitrate Disputes under the Federal Arbitration Act. The arbitration will be administered by the American Arbitration Association ("AAA") and conducted before a single arbitrator pursuant to its applicable rules, including those applicable to Commercial Disputes, available at <http://www.adr.org> or by calling 800-778-7879. The arbitrator will apply and be bound by this Agreement, apply applicable law and the facts, and issue a reasoned award.

### **Class Action Waiver**

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

### **Choice of Law/No Jury Trial**

- a. You and Freevo agree that the Federal Arbitration Act, the AAA rules, applicable federal law and the laws of the State of Pennsylvania, without regard to principles of conflicts of law, will govern this Agreement and any Disputes
- b. YOU AND FREEVO EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY

## **17. Injunctive Relief/Attorneys' Fees**

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

In the event Freevo is the prevailing party in any Dispute, subject to any exceptions in this Section 16, you shall pay to Freevo all reasonable attorneys' fees and costs incurred by Freevo.

#### **18. Assignment**

- a. You may not transfer, assign or delegate your rights or obligations under this Agreement, whether by operation of law or otherwise, without Freevo's express written consent, which may be withheld by Freevo for any reason in its discretion
- b. Without prior notice to or consent from you, Freevo may assign its rights and delegate its obligations under this Agreement to a present or future affiliate or in interest (by merger or otherwise) or by operation of law.

#### **19. Miscellaneous**

- a. The parties are independent contractors. Nothing in this Agreement is to be construed to create a joint venture, partnership, franchise, or an agency relationship between the parties. Neither party has the authority, without the other party's prior written approval, to bind or commit the other in any way.
- b. This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter.
- c. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement are not affected.
- d. You agree that Freevo and any third party authorized by Freevo may contact you via postal mail or the e-mail address you provide in connection with registration of your Account in connection with good, services or products Freevo or such third party believes may be of interest to you. Freevo may also solicit your opinion from time to time for market research and quality assurance purposes.

#### **20. Testimonials**

By registering an Account with Freevo, you grant us a royalty-free, perpetual, irrevocable, non-exclusive license to, at any time and in any physical or virtual location, use for any commercial or non-commercial purpose, reproduce, modify, publish, edit, translate, distribute, perform, license, sublicense and display the results generated from any Merchant Promotion, alone or as part of other works in any form, media, or technology whether now known or hereafter developed.

#### **21. Acknowledgment and Acceptance**

By completing the Account registration process on the Account Management Website, you, the named Merchant acknowledge and agree to the terms and conditions set forth in this Agreement.

Freevo Merchant Agreement v1. Effective August 21, 2016  
Freevo Merchant Agreement v2. Update Effective 1 May, 2017