

MERCHANT AGREEMENT

Effective 5/13/2018

Thank you for using Flutter! By registering for a merchant account ("Merchant" or "you") with the Flutter mobile application (the "Application"), you agree to abide by this Merchant Agreement (the "Agreement") made between you and Flutter Technologies, Inc. ("Flutter"). As used in this Agreement, "you" or "Merchant" means any company, person, or other entity for which you post an Offer (as defined below) on Flutter as a Merchant. The Company may modify the Agreement at any time by notifying you in Flutter or via email. If you do not agree to such amendments, you or Flutter may terminate the Agreement.

1. Offers and Pricing

- (a) You authorize Flutter to promote and/or sell vouchers for activities, events, and services offered by Merchant through the Application (collectively, "Offers") on Merchant's behalf subject to the terms of this Agreement and the terms of any third party payment processor utilized by Flutter. An electronic voucher representing fully paid admission to the Offer will be sent to the purchaser through the Application once payment is fully processed by the third party payment processor. The purchaser will redeem the Offer voucher with you by presenting the Offer voucher in paper or electronic form at the time of the Offer. The amount of the purchase collected from the purchaser, net of Flutter's fees as described herein, will be disbursed to Merchant.
 - i. Notwithstanding anything to the contrary herein, if you are a Merchant that sells alcoholic beverages and post Offers related to alcohol beverages or events at an establishment that primarily serves alcoholic beverages (collectively, "Bar Merchant"), you instead authorize Flutter to promote your events through the Application in lieu of selling vouchers for Offers. References to vouchers in this Agreement will not apply to Bar Merchants. References to "Offers" in this Agreement shall mean events promoted through the Application. Bar Merchant agrees that it shall honor the terms of the Offers for any events promoted on the Application.
 - ii. Notwithstanding anything to the contrary herein, if you are a Merchant that does not use Flutter's third party payment processor to collect payments (collectively, "Unpaid Merchant"), you instead authorize Flutter to promote your activities or events through the Application in lieu of selling vouchers for Offers. References to vouchers in this Agreement will not apply to Unpaid Merchants. References to "Offers" in this Agreement shall mean events or activities promoted through the Application. Such "Offers" are either free for users or paid at the door of the merchant using cash or a third-party payment processor. Unpaid Merchant agrees that it shall honor the terms of the Offers for any events or activities promoted on the Application.

- iii. Notwithstanding anything to the contrary herein, if you have provided proof, accepted by Flutter, that you are a Merchant that operates a Not-For-Profit Business (collectively, “Nonprofit Merchant”), the full amount of the voucher purchase collected from the purchaser will be disbursed to Nonprofit Merchant, with the exception of the processing fees of the payment provider as explained in Section 2e. The Flutter fees described herein will not apply to or be collected from Nonprofit Merchant.
- (b) Flutter may promote and/or sell Offers on your behalf through any of its platforms or mediums, including (without limitation) the Application, its website, social media, or email. The Offers may be offered to all or part of Flutter's subscriber base and the users for whom each Offer is presented or made available shall be selected solely in Flutter's discretion. You grant Flutter the right to promote Offers in Flutter's discretion and as it sees fit.
- (c) Flutter may require that Merchant provide Flutter with a calendar of available appointment times for each Offer when necessary. In such cases, Merchant will allow Offer voucher holders to schedule appointments with the Merchant through Flutter and any third party service Flutter may use. Merchant will, as commercially reasonable, allow Offer voucher holders the opportunity to reschedule Offers requiring advanced scheduling, provided cancellation is provided by such voucher holder in a way that abides with the cancellation policy documented by the Merchant.
- (d) Flutter may refuse, discontinue, or limit any Offer at any time and for any reason in its sole discretion. In the event that an Offer is discontinued by Merchant while promoted and/or sold by Flutter, the Merchant shall either fully refund all purchased but unused Offer vouchers, or honor the Offer as sold, in Merchant’s sole discretion.
- (e) Merchant may set the details, pricing, availability (including quantity), and schedule of its Offers through its Merchant dashboard on the Application. Flutter may not deviate from information set by the merchant without explicit approval from said Merchant.
- (f) Merchant shall honor the Offer vouchers through the expiration or scheduling date set by Merchant, if any. Merchant agrees to abide by its own established refund or return policies (to the extent not in conflict with this Agreement) and to post such policies clearly in the applicable area of the Application.
- (g) Merchant will not (i) charge any Offer voucher holder any mandatory additional fees, costs, or expenses or (ii) impose any limitations or restrictions on any Offer unless clearly and unequivocally stated in the Offer on the Application.
- (h) Merchant is solely responsible for all services in connection with any Offer and for supplying all goods and services as stated in the Offer.

2. Payment

- (a) Flutter shall process the payments for the Offers (except for Bar Merchants and Unpaid Merchants) using its billing practices, which may involve third party billing solutions, and shall retain a fee as provided for on the Merchant dashboard, which may be modified from time-to-time in Flutter's discretion.
- (b) Flutter is authorized to initiate ACH credit transaction entries to Merchant's depository account at the depository financial institution designated in this Agreement or as otherwise provided to Flutter by Merchant in writing (the "Merchant Bank Account"). Only in the event of an error or a refund pursuant to Flutter's written refund policy will Flutter is authorized to initiate debit entry adjustments to the Merchant Bank Account to correct any error or adjust for a refund. Merchant hereby acknowledges that Flutter's origination of all ACH transactions to Merchant Bank Account must comply with provisions of U.S. law. ACH payments take up to five business days to become available in the Merchant Bank Account after processing.
- (c) Merchant agrees and acknowledges that it is Merchant's sole responsibility to determine what, if any, taxes apply to the payments Merchant makes or receives, and it is Merchant's responsibility to collect, report and remit the correct tax to the appropriate tax authority when necessary. Under no circumstance shall Flutter be responsible for identifying, collecting, withholding, or paying taxes on behalf of Merchant. Flutter may issue IRS Form 1099 in Merchant's name for the value of payments made.
- (d) Notwithstanding anything to the contrary herein, Merchant will not process payments for Bar Merchant Offers but will instead promote Bar Merchant Offers for a set subscription rate, renewable automatically on a monthly basis, as provided for in the Application. Bar Merchant agrees to pay the monthly subscription fee while enrolled. Bar Merchant or Flutter may terminate the subscription at any time and for any reason.
- (e) Payment processing services for Providers on Flutter are provided by Stripe and are subject to the [Stripe Connected Account Agreement](#), which includes the [Stripe Terms of Service](#) (collectively, the "Stripe Services Agreement"). By agreeing to these terms or continuing to operate as a Provider on Flutter, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of Flutter enabling payment processing services through Stripe, you agree to provide Flutter accurate and complete information about you and your business, and you authorize Flutter to share it and transaction information related to your use of the payment processing services provided by Stripe.

3. Merchant Representations, Warranties, and Covenants

- (a) Merchant agrees that it shall:

- i. Abide by all laws, rules, and regulations applicable to the provision of any of its services.
- ii. Abide by and honor Flutter's policies, including its payment and refund policies, as described from time to time on the Application.
- iii. Provide the Offers and all services related to the Offers in a timely, safe, and as-described manner.
- iv. Not use the Application for any purpose other than expressly permitted herein or by the Application's Terms of Service.
- v. Not misrepresent or inaccurately describe any Offer or any aspect of Merchant.
- vi. Not use purchase or Offer voucher holder data (including names, email addresses, phone numbers, or other information) for any purpose other than providing the services directly related to the Offer.

4. Term and Termination

- (a) This Agreement will continue in effect until terminated by either Merchant or Flutter in accordance with this Section 4 (the "Term").
- (b) Flutter may terminate this Agreement at any time and for any reason upon notice to Merchant.
- (c) Merchant may terminate this Agreement at any time upon notice to Flutter. Termination of this Agreement will not in any way affect Merchant's obligation to redeem or refund any offer as required by this Agreement.

5. Intellectual Property

- (a) Merchant hereby grants to Flutter a worldwide, non-exclusive, royalty free, perpetual license and right to use, display, reproduce, distribute, broadcast, transmit, stream, and publish Merchant's name, logos, trademarks, service marks, domain names, and any audiovisual content, video recordings, audio recordings, photographs, graphics, artwork, text and any other content provided by Merchant to Flutter or submitted to the Application, solely in relation to Merchant's Offers and its account with Flutter. These rights are perpetual unless explicitly revoked in writing (electronic communications accepted) by the Merchant; receipt of revocation must be confirmed in writing by Flutter, and a revocation will be deemed accepted within three days of its receipt by Flutter. Merchant reserves all rights in and to its intellectual property.
- (b) Merchant acknowledges and agrees that, as between the parties, Flutter owns all interest in and to the Application, its websites, social media, and other content utilized on the Application (including, but not limited to, trademarks and

copyrights). Merchant shall not, without Flutter's express written approval, display, reproduce, modify, reproduce, distribute, broadcast, transmit, stream, or publish any such intellectual property. Flutter reserves all rights in and to its intellectual property.

- (c) Flutter hereby grants to Merchant the right to mention Merchant's Offers with Flutter, link directly to the Merchant's Offers or Flutter's homepage through Merchant's social media accounts or websites, and mention its participation with Flutter.

6. Additional Terms

- (a) Merchant agrees to defend, indemnify and hold harmless Flutter and its affiliates, shareholders, directors, officers, employees, and agents from and against any losses, claims, lawsuits, investigations, costs, or expenses (including but not limited to reasonable attorneys' fees and costs) arising out of or relating to: (a) any breach by Merchant of this Agreement; (b) any claim for state or federal income, sales, use, or similar tax obligations of Merchant arising from its activities on or through Flutter; (c) any claim arising out of a violation of any law, rule, regulation, or contract governing Merchant's goods and/or services; (d) any claim by a purchaser relating to Merchant's Offer; and (e) any claim arising out of Merchant's negligence, fraud or willful malfeasance.
- (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) The relationship between Merchant and Flutter shall at all times be that of an independent contractor.
- (d) Merchant may not assign its rights or obligations under this Agreement without the express written consent of Flutter. Flutter may assign its rights and/or obligations under this Agreement pursuant to a merger, reorganization, or sale of any of its assets.
- (e) If any provision of this Agreement should be held to be invalid or unenforceable, the remainder of this Agreement shall be enforced to the greatest extent possible.
- (f) This Agreement shall be governed and construed according to the laws of the state of New York, without regard for its conflict of laws. Any dispute arising hereunder, or related to the terms hereof, shall be brought exclusively in the state or federal courts sitting in the state of New York.
- (g) This Agreement constitutes the complete and final understanding of the parties as it relates to the subject matter hereof.