

Food Fling LLC Terms and Conditions

(Last Updated December 10, 2020)

Overview

PLEASE READ THE TERMS AND CONDITIONS CAREFULLY. THE TERMS AND CONDITIONS (“AGREEMENT”) CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND FOOD FLING LLC, AND ITS SUBSIDIARIES, (COLLECTIVELY, “FOOD FLING LLC,” “WE,” “US,” OR “OUR”).

SECTION 12 OF THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS THAT YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS THAT AROSE OR WERE ASSERTED BEFORE THE EFFECTIVE DATE OF THIS AGREEMENT. IN PARTICULAR, SECTION 12 SETS FORTH OUR ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, EXCEPT AS SET FORTH IN SECTION 12(G); AND (2) YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS. THE ARBITRATION AGREEMENT COULD AFFECT YOUR RIGHT TO PARTICIPATE IN PENDING PROPOSED CLASS ACTION LITIGATION. PLEASE SEE SECTION 12 FOR MORE INFORMATION REGARDING THIS ARBITRATION AGREEMENT, THE POSSIBLE EFFECTS OF THIS ARBITRATION AGREEMENT, AND HOW TO OPT OUT OF THE ARBITRATION AGREEMENT.

1. Acceptance of this Agreement

Food Fling LLC, provides an online marketplace connection, using web-based technology that connects you and other nearby restaurants and their meals. Food Fling LLC’s App permits consumers to place orders for food from various nearby restaurants, either for delivery or pickup.

If you access our website located at <https://www.foodfling.co/>, install or use our Food Fling LLC mobile application, or access any information, function, or service available or enabled by Food Fling LLC (each, a “Service” and collectively, the “Services”), or complete the Food Fling LLC account registration process, you, your heirs, assigns, and successors (collectively, “you” or “your”) hereby represent and warrant that:

- a) You have read, understand, and agree to be bound by this Agreement;
- b) You are of legal age in the jurisdiction in which you reside to form a binding contract with Food Fling LLC; and

- c) You have the authority to enter into the Agreement personally and, if applicable, on behalf of any organization on whose behalf you have created an account and to bind such organization to the Agreement.

The terms “User” and “Users” refer to all individuals and other persons who access or use the Services, including, without limitation, any organizations that register accounts or otherwise access or use the Services through their respective representatives. Except as otherwise provided in this Agreement, if you do not agree to be bound by the Agreement, you may not access or use the Services.

2. Modifications

Subject to Section 12(k) of this Agreement, Food Fling LLC reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Software or Services at any time, effective upon posting of an updated version of this Agreement through the Services. You should regularly review this Agreement, as your continued use of the Services after any such changes constitutes your agreement to such changes.

3. Additional Terms and Policies

By using the Services, you agree to be bound by this Agreement and acknowledge and agree to the collection, use, and disclosure of your personal information in accordance with Food Fling LLC’s Privacy Policy, which is incorporated in this Agreement by reference. You also agree to abide by any additional Food Fling LLC policies for Users that are published on our website or mobile application. Certain features of our Services may be subject to additional terms and conditions, which are incorporated herein by reference.

4. Rules and Prohibitions

Without limiting other rules and prohibitions in this Agreement, by using the Services, you agree that:

- (a) You will only use the Services for lawful purposes; you will not use the Services for sending or storing any unlawful material or for deceptive or fraudulent purposes; and you will not engage in conduct that harms other Users, Food Fling LLC employees, or our community.
- (b) You will only use the Services in accordance with all applicable laws, including copyrights, trade secrets, or other rights of any third party, including privacy or publicity rights.
- (c) You will only access the Services using means explicitly authorized by Food Fling LLC.
- (d) You will not use another User’s account, impersonate any person or entity, or forge or manipulate headers or identifiers to disguise the origin of any content transmitted through the Services.
- (e) You will not use the Services to cause nuisance, annoyance or inconvenience.
- (f) You will not use the Services, or any content accessible through the Services, for any commercial purpose, including but not limited to contacting, advertising to, soliciting or

selling to, any Merchant, User or Contractor, unless Food Fling LLC has given you prior permission to do so in writing.

(g) You will not copy or distribute the Software or any content displayed through the Services, including Merchants' menu content and reviews, for republication in any format or media.

(h) You will not compile, directly or indirectly, any content displayed through the Services except for your personal, noncommercial use.

(i) The information you provide to us when you register an account or otherwise communicate with us is accurate, you will promptly notify us of any changes to such information, and you will provide us with whatever proof of identity we may reasonably request.

(j) You will keep secure and confidential your account password or any identification credentials we provide you which allows access to the Services.

(k) You will use the App and Services only for your own use and will not directly or indirectly resell, license or transfer the Software, Services or content displayed by the Services to a third party.

(l) You will not use the Services in any way that could damage, disable, overburden or impair any Food Fling LLC server, or the networks connected to any Food Fling LLC server.

(m) You will not attempt to gain unauthorized access to the Services and/or to any account, resource, computer system, and/or network connected to any Food Fling LLC server.

(n) You will not probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures Food Fling LLC may use to prevent or restrict access to the Services or use of the Services or the content therein.

(o) You will not deep-link to our websites or access our websites manually or with any robot, spider, web crawler, extraction software, automated process and/or device to scrape, copy, index, frame, or monitor any portion of our websites or any content on our websites.

(p) You will not scrape or otherwise conduct any systematic retrieval of data or other content from the Services.

(q) You will not try to harm other Users, Food Fling LLC, or the Services in any way whatsoever.

(r) You will not engage in threatening, harassing, racist, sexist or any other behavior that Food Fling LLC deems inappropriate when using the Services.

(s) You will report any errors, bugs, unauthorized access methodologies or any breach of our intellectual property rights that you uncover in your use of the Services.

(t) You will not abuse our promotional or credit code system, including by redeeming multiple coupons at once or by opening multiple accounts to benefit from offers available only to first-time users.

(u) You will not attempt to undertake any of the foregoing.

In the event that we believe or determine that you have breached any of the aforementioned, we reserve the right to suspend and/or permanently deactivate your account at our sole discretion.

5. Contractors and Merchants Are Independent

You understand and agree that Food Fling LLC provides a technology platform connecting you with meals of nearby restaurants and others that provide the products offered through the Services (“**Merchants**”), and independent third-party contractors who provide delivery services (“**Contractors**”). You acknowledge and agree that Food Fling LLC does not itself prepare food or offer delivery services, and has no responsibility or liability for the acts or omissions of any Merchant or any Contractor. Merchant is the retailer; the services offered by Food Fling LLC pursuant to this Agreement do not include any retail services or any food preparation services. Food Fling LLC is not in the delivery business nor is it a common carrier. Food Fling LLC provides a technology platform that promotes restaurants meals to nearby people of that restaurant for pickup or delivery by Contractors. Food Fling LLC will not assess or guarantee the suitability, legality or ability of any Contractor or Merchant. You agree that Food Fling LLC is not responsible for the Merchants’ food preparation or the safety of the food or whether the photographs or images displayed through the Services accurately reflect the food prepared by the Merchants and/or delivered by the Contractor, and does not verify Merchants’ compliance with applicable laws or regulations. Food Fling LLC has no responsibility or liability for acts or omissions by any Merchant or Contractor.

You agree that the food that you purchase will be prepared by the Merchant you have selected, that title to the food passes from the Merchant to you at the Merchant’s location, and that, for delivery orders, the Contractor will be directed by your instructions to transport the food to your designated delivery location. You agree that neither the Contractor nor Food Fling LLC holds title to or acquires any ownership interest in any food that you order through the Services.

6. User Account

You may be required to register for an account to use parts of the Services. You must provide accurate, current, and complete information during the registration process and at all other times when you use the Services, and to update the information to keep it accurate, current, and complete. You are the sole authorized user of any account you create through the Services. You are solely and fully responsible for all activities that occur under your password or account. You agree that you shall monitor your account to prevent use by minors, and you will accept full responsibility for any unauthorized use of your password or your account. You may not authorize others to use your User status, and you may not assign or otherwise transfer your User account to any other person or entity. Should you suspect that any unauthorized party may be using your password or account, you will notify Food Fling LLC immediately. Food Fling LLC will not be liable and you may be liable for losses, damages, liability, expenses, and fees incurred by Food Fling LLC or a third party arising from someone else using your account, regardless of whether you have notified us of such unauthorized use. If you provide any information that is untrue, inaccurate, not current, or incomplete, or Food Fling LLC has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, Food Fling LLC has the right to suspend or terminate your account and refuse any and all current or future use of the Services (or any portion thereof). We may enable or require you to use a single pair of login credentials to use the Food Fling LLC. You agree not to create an account or use the Services if you have been previously removed by Food Fling LLC, or if you have been previously banned from use of the Services.

7. User Content

(a) **User Content.** Food Fling LLC may provide you with interactive opportunities through the Services, including, by way of example, the ability to post User ratings and reviews (collectively, “User Content”). You represent and warrant that you are the owner of, or otherwise have the right to provide, all User Content that you submit, post and/or otherwise transmit through the Services. You further represent and warrant that any User Content that you submit, post and/or otherwise transmit through the Services (i) does not violate any third-party right, including any copyright, trademark, patent, trade secret, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) does not contain material that is false, intentionally misleading, or defamatory; (iii) does not contain any material that is unlawful; (iv) does not violate any law or regulation; and (v) does not violate this Agreement. You hereby grant Food Fling LLC a perpetual, irrevocable, transferable, fully paid, royalty-free, non-exclusive, worldwide, fully sublicenseable right and license to use, copy, display, publish, modify, remove, publicly perform, translate, create derivative works, distribute and/or otherwise use the User Content in connection with Food Fling LLC’s business and in all forms now known or hereafter invented (“Uses”), without notification to and/or approval by you. You further grant Food Fling LLC a license to use your username, first name and last initial, and/or other User profile information, including without limitation, your ratings history, to attribute User Content to you in connection with such Uses, without notification or approval by you. You agree that this license includes the right for other Users to access and use your User Content in conjunction with participation in the Services and as permitted through the functionality of the Services. In the interest of clarity, the license granted to Food Fling LLC herein shall survive termination of the Services or your account. Food Fling LLC reserves the right in its sole discretion to remove or disable access to any User Content from the Services, suspend or terminate your account at any time, or pursue any other remedy or relief available under equity or law if you post any User Content that violates this Agreement or any community or content guidelines we may publish or that we consider to be objectionable for any reason. You agree that Food Fling LLC may monitor and/or delete your User Content (but does not assume the obligation) for any reason in Food Fling LLC’s sole discretion. Food Fling LLC may also access, read, preserve, and disclose any information as Food Fling LLC reasonably believes is necessary to (a) satisfy any applicable law, regulation, legal process, or governmental request, (b) enforce this Agreement, including investigation of potential violations hereof, (c) detect, prevent, or otherwise address fraud, security, or technical issues, (d) respond to User support requests, or (e) protect the rights, property or safety of Food Fling LLC, its Users and the public.

(b) **Feedback.** You agree that any submission of any ideas, suggestions, and/or proposals to Food Fling LLC through its suggestion, feedback, wiki, forum or similar pages (“Feedback”) is at your own risk and that Food Fling LLC has no obligations (including without limitation, obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback and you hereby grant to Food Fling LLC a perpetual, irrevocable, transferable, fully paid, royalty-free, non-exclusive, worldwide, fully sublicenseable right and license to use, copy, display, publish, modify, remove, publicly perform, translate, create derivative works, distribute and/or otherwise use such Feedback.

(c) **Ratings and Reviews.** To the extent that you are asked to rate and post reviews of Merchants or other businesses (“Ratings” and “Reviews”), such Ratings and Reviews are considered User Content and are governed by this Agreement. Ratings and Reviews are not

endorsed by Food Fling LLC and do not represent the views of Food Fling LLC or its affiliates. Food Fling LLC shall have no liability for Ratings and Reviews or for any claims for economic loss resulting from such Ratings and Reviews. Because we strive to maintain a high level of integrity with respect to Ratings and Reviews posted or otherwise made available through the Services, you agree that: (i) you will base any Rating or Review on first-hand experience with the Merchant or business; (ii) you will not provide a Rating or Review for any Merchant or business for which you have an ownership interest, employment relationship or other affiliation or for any of that company's competitors; (iii) you will not submit a Rating or Review in exchange for payment, free food items, or other benefits from a Merchant or business; (iv) any Rating or Review you submit will comply with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising; and (v) your Rating or Review will comply with the terms of this Agreement. If we determine, in our sole discretion, that any Rating or Review could diminish the integrity of the Ratings and Reviews or otherwise violates this Agreement, we may remove such User Content without notice.

8. Communications with Food Fling LLC

By creating a Food Fling LLC account, you electronically agree to accept and receive communications from Food Fling LLC, Contractors, or third parties providing services to Food Fling LLC including via email, text message, calls, and push notifications to the cellular telephone number you provided to Food Fling LLC. You understand and agree that you may receive communications generated by automatic telephone dialing systems and/or which will deliver prerecorded messages sent by or on behalf of Food Fling LLC, its affiliated companies and/or Contractor. If you do not wish to receive promotional emails, text messages, or other communications, you may change your notification preferences by accessing Settings in your account. To opt out of receiving promotional text messages from Food Fling LLC, you must reply "STOP" from the mobile device receiving the messages. For purposes of clarity, delivery text messages between you and Food Fling are transactional text messages, not promotional text messages.

9. E-SIGN Disclosure

By creating a Food Fling LLC account, you also consent to the use of an electronic record to document your agreement. You may withdraw your consent to the use of the electronic record by emailing Food Fling LLC at foodflingllc@gmail.com with "Revoke Electronic Consent" in the subject line.

To view and retain a copy of this disclosure, you will need (i) a device (such as a computer or mobile phone) with a web browser and Internet access and (ii) either a printer or storage space on such device. For a free paper copy, or to update our records of your contact information, email Food Fling LLC at foodflingllc@gmail.com with contact information and your mailing address.

10. Intellectual Property Ownership

Food Fling LLC alone (and its licensors, where applicable) shall own all right, title and interest, including all related intellectual property rights, in and to the Software and the Services. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Software or the Services, or any intellectual property rights owned by Food Fling LLC. Food Fling LLC names, Food Fling LLC logos, and the product names associated with the Software and Services are trademarks of Food Fling LLC or third parties, and no right or license is granted to use them. You agree that you will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Software or the Services.

11. Payment Terms

(a) **No Refunds.** Charges paid by you for completed and delivered orders are final and non-refundable. Food Fling LLC has no obligation to provide refunds or credits.

(b) **Promotional Offers and Credits.** Food Fling LLC, at its sole discretion, may make promotional offers with different features and different rates to any User. These promotional offers are subject to the terms of this Agreement and may be valid only for certain Users as indicated in the offer. You agree that promotional offers: (i) may only be used by the intended audience, for the intended purpose, and in a lawful manner; (ii) may not be duplicated, sold or transferred in any manner, or made available to the general public, unless expressly permitted by Food Fling LLC; (iii) are subject to the specific terms that Food Fling LLC establishes for such promotional offer; (iv) cannot be redeemed for cash or cash equivalent; and (v) are not valid for use after the date indicated in the offer or in Food Fling LLC's Terms and Conditions for Promotional Offers and Credits. Food Fling LLC reserves the right to withhold or deduct credits or benefits obtained through a promotion in the event that Food Fling LLC determines or believes that the redemption of the promotion or receipt of the credit or benefit was in error, fraudulent, illegal, or in violation of the applicable promotion terms or this Agreement. Food Fling LLC reserves the right to modify or cancel an offer at any time.

(c) **Fees for Services.** Food Fling LLC may change the fees for our Services as we deem necessary or appropriate for our business, and may change the merchant fees as we deem necessary or appropriate for our business or to comply with applicable law.

12. Dispute Resolution.

PLEASE READ THE FOLLOWING SECTION CAREFULLY. IT REQUIRES YOU TO ARBITRATE DISPUTES WITH FOOD FLING LLC AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF. THIS SECTION 12 OF THIS AGREEMENT SHALL BE REFERRED TO AS THE "ARBITRATION AGREEMENT".

(a) **Scope of Arbitration Agreement.** You agree that any dispute or claim relating in any way to your access or use of the Services as a User of the Services, to any advertising or marketing communications regarding Food Fling LLC or the Services, to any products or services sold or distributed through the Services that you received as a User of our Services, or to any aspect of your relationship or transactions with Food Fling LLC as a User of our Services will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify, so long as the matter remains in such court and

advances only on an individual (non-class, non-representative) basis; and (2) you or Food Fling LLC may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). This Arbitration Agreement shall apply, without limitation, to all claims that arose or were asserted before the Effective Date of this Agreement.

CASES HAVE BEEN FILED AGAINST FOOD FLING LLC—AND OTHERS MAY BE FILED IN THE FUTURE —THAT ATTEMPT TO ASSERT CLASS ACTION CLAIMS, AND BY ACCEPTING THIS ARBITRATION AGREEMENT YOU ELECT NOT TO PARTICIPATE IN SUCH CASES.

IF YOU AGREE TO ARBITRATION WITH FOOD FLING LLC, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY SUCH CLASS, COLLECTIVE, AND/OR REPRESENTATIVE LAWSUIT. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST FOOD FLING LLC IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR.

(b) **Informal Resolution.** You and Food Fling LLC agree that good-faith informal efforts to resolve disputes often can result in a prompt, low-cost and mutually beneficial outcome. You and Food Fling LLC therefore agree that, before either you or Food Fling LLC demands arbitration against the other, we will personally meet and confer, via telephone or videoconference, in a good-faith effort to resolve informally any claim covered by this mutual Arbitration Agreement. If you are represented by counsel, your counsel may participate in the conference, but you shall also fully participate in the conference. The party initiating the claim must give notice to the other party in writing of its, his, or her intent to initiate an informal dispute resolution conference, which shall occur within 60 days after the other party receives such notice, unless an extension is mutually agreed upon by the parties. To notify Food Fling LLC that you intend to initiate an informal dispute resolution conference, email foodflingllc@gmail.com, providing your name, telephone number associated with your Food Fling LLC account (if any), the email address associated with your Food Fling LLC account, and a description of your claim. In the interval between the party receiving such notice and the informal dispute resolution conference, the parties shall be free to attempt to resolve the initiating party's claims. Engaging in an informal dispute resolution conference is a requirement that must be fulfilled before commencing arbitration. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution process required by this paragraph.

(c) **Arbitration Rules and Forum.** This Arbitration Agreement is governed by the Federal Arbitration Act ("FAA") in all respects. If for whatever reason the rules and procedures of the FAA cannot apply, the state law governing arbitration agreements in the state in which you reside shall apply. Before a party may begin an arbitration proceeding, that party must send notice of an intent to initiate arbitration and certifying completion of the informal dispute resolution conference pursuant to paragraph 12(b). If this notice is being sent to Food Fling LLC, it must be sent by email to the counsel who represented Food Fling LLC in the informal dispute resolution process, or if there was no such counsel then by mail to the General Counsel. The arbitration will be conducted by JAMS under its rules and pursuant to the terms of this Agreement. Arbitration demands filed with JAMS must include (1) the name, telephone number, mailing address, and e-mail address of the party seeking arbitration; (2) a statement of the legal claims being asserted and the factual bases of those claims; (3) a description of the remedy sought and an accurate, good-faith calculation of the amount in controversy, enumerated in United States Dollars (any request for injunctive relief or attorneys' fees shall

not count toward the calculation of the amount in controversy unless such injunctive relief seeks the payment of money).

(d) **Arbitrator Powers.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to any claim that all or any part of this Arbitration Agreement is void or voidable. All disputes regarding the payment of arbitrator or arbitration-organization fees including the timing of such payments and remedies for nonpayment, shall be determined exclusively by an arbitrator, and not by any court. The arbitration will decide the rights and liabilities, if any, of you and Food Fling LLC. Except as expressly agreed to in Section 12(g) of this Agreement, the arbitration proceeding will not be consolidated with any other matters or joined with any other proceedings or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim or dispute. The arbitrator will have the authority to award, on an individual basis, monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and this Agreement (including this Arbitration Agreement). The arbitrator will issue a written statement of decision describing the essential findings and conclusions on which any award (or decision not to render an award) is based, including the calculation of any damages awarded. The award shall be binding only among the parties and shall have no preclusive effect in any other arbitration or other proceeding involving a different party. The arbitrator shall follow the applicable law. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The arbitrator's decision is final and binding on you and Food Fling LLC.

(e) **Waiver of Jury Trial.** YOU AND FOOD FLING LLC WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND RECEIVE A JUDGE OR JURY TRIAL. You and Food Fling LLC are instead electing to have claims and disputes resolved by arbitration, except as specified in Section 12(a) above. There is no judge or jury in arbitration, and court review of an arbitration award is limited.

(f) **Waiver of Class or Consolidated Actions.** EXCEPT AS EXPRESSLY AGREED TO IN SECTION 12(G) OF THIS AGREEMENT, YOU AND FOOD FLING LLC AGREE TO WAIVE ANY RIGHT TO RESOLVE CLAIMS WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT ON A CLASS, COLLECTIVE, OR REPRESENTATIVE BASIS. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS EXCEPT AS SET FORTH IN SECTION 12(G). CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER EXCEPT AS SET FORTH IN SECTION 12(G) . This clause shall constitute a class preclusion clause for the purposes of JAMS Class Action Procedures Rule 1(a). If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable with respect to a particular claim or dispute, neither you nor Food Fling LLC is entitled to arbitration of such claim or dispute. Instead, all such claims and disputes will then be resolved in a court as set forth in Section 20. This provision does not prevent you or Food Fling LLC from participating in a class-wide settlement of claims.

(g) **Batch Arbitrations.** To increase efficiency of resolution, in the event 100 or more similar arbitration demands presented by or with the assistance of the same law firm or organization are submitted to JAMS or another arbitration provider against Food Fling LLC within a 30-day period, the arbitration provider shall (i) group the arbitration demands into batches of no more than 100 demands per batch (plus, to the extent there are less than 100 arbitration

demands left over after the batching described above, a final batch consisting of the remaining demands); and (ii) provide for resolution of each batch as a single arbitration with one filing fee due per side and one arbitrator assigned per batch. You agree to cooperate in good faith with Food Fling LLC and the arbitration provider to implement such a batch approach to resolution and fees.

(h) **Opt Out.** Food Fling LLC's updates to these Terms and Conditions do not provide a new opportunity to opt out of the Arbitration Agreement for customers or Users who had previously agreed to a version of Food Fling LLC's or 's Terms and Conditions and did not validly opt out of arbitration. Food Fling LLC will continue to honor the valid opt outs of customers or Users who validly opted out of the Arbitration Agreement in a prior version of the Terms and Conditions. If you are a customer or User who creates a Food Fling LLC account for the first time on or after November 10, 2020, you may opt out of this Arbitration Agreement. If you do so, neither you nor Food Fling LLC can force the other to arbitrate as a result of this Agreement. To opt out, you must notify Food Fling LLC in writing no later than 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Food Fling LLC username (if any), the email address you currently use to access your Food Fling LLC account (if you have one), and a CLEAR statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may have entered into with us or may enter into in the future with us.

(i) **No Effect on Independent Contractor Agreement.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTHING IN THIS AGREEMENT SHALL SUPERSEDE, AMEND, OR MODIFY THE TERMS OF ANY SEPARATE AGREEMENT(S) BETWEEN YOU AND FOOD FLING LLC RELATING TO YOUR WORK AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR, INCLUDING WITHOUT LIMITATION, ANY INDEPENDENT CONTRACTOR AGREEMENT GOVERNING YOUR SERVICES AS A CONTRACTOR. FOR THE AVOIDANCE OF DOUBT, IF YOU ARE A CONTRACTOR, OPTING-OUT OF THE ARBITRATION AGREEMENT SET FORTH IN THIS SECTION 12 HAS NO EFFECT ON YOUR AGREEMENT TO ARBITRATE DISPUTES COVERED BY YOUR INDEPENDENT CONTRACTOR AGREEMENT WITH FOOD FLING LLC.

(j) **Survival.** This Arbitration Agreement will survive any termination of your relationship with Food Fling LLC.

(k) **Modification.** Notwithstanding any provision in the Agreement to the contrary, we agree that if Food Fling LLC makes any future material change to this Arbitration Agreement, it will not apply to any individual claim(s) that you had already provided notice of to Food Fling LLC.

13. Third-Party Interactions.

(a) **Third-Party Websites, Applications and Advertisements.** The Services may contain links to third-party websites (“Third-Party Websites”) and applications (“Third-Party Applications”) and advertisements (“Third-Party Advertisements”) (collectively, “Third-Party Websites & Advertisements”). When you click on a link to a Third-Party Website, Third-Party Application or Third-Party Advertisement, Food Fling LLC will not warn you that you have left Food Fling LLC's website or Services and will not warn you that you are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Websites & Advertisements are not under the control of Food Fling LLC. Food Fling

LLC is not responsible for any Third-Party Websites, Third-Party Applications or any Third-Party Advertisements. Food Fling LLC does not review, approve, monitor, endorse, warrant, or make any representations with respect to such Third-Party Websites & Advertisements, or their products or services. You use all links in Third-Party Websites & Advertisements at your own risk. You should review applicable terms and policies, including privacy and data gathering practices of any Third-Party Websites or Third-Party Applications, and make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

(b) **App Stores.** You acknowledge and agree that the availability of the Software and the Services is dependent on the third party from which you received the application license, e.g., the Apple iPhone or Android app stores (“**App Store**”). You acknowledge and agree that this Agreement is between you and Food Fling LLC and not with the App Store. Food Fling LLC, not the App Store, is solely responsible for the Software and the Services, including the mobile application(s), the content thereof, maintenance, support services and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the Software and the Services, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with the Software or the Services. You agree to comply with, and your license to use the Software and the Services is conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store’s terms and policies) when using the Software or the Services. You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country, and you represent and warrant that you are not listed on any U.S. Government list of prohibited or restricted parties. You acknowledge and agree that each App Store (and its affiliates) is an intended third-party beneficiary of this Agreement and has the right to enforce the terms and conditions of this Agreement.

14. Social Media Guidelines.

Food Fling LLC maintains certain social media pages for the benefit of the Food Fling LLC community. By posting, commenting, or otherwise interacting with these pages, you agree to abide by our Social Media Community Guidelines.

15. Transactions Involving Alcohol

You may have the option to request delivery of alcohol products in some locations and from certain Merchants. If you receive your delivery in the United States, you agree that you will only order alcohol products if you are 21 years of age or older. If you receive your delivery in another country, you agree that you will only order alcohol products if you are of legal age to purchase alcohol products in the relevant jurisdiction. You also agree that, upon delivery of alcohol products, you will provide valid government-issued identification proving your age to the Contractor delivering the alcohol products and that the recipient will not be intoxicated when receiving delivery of such products. If you order alcohol products, you understand and acknowledge that neither Food Fling LLC nor the Contractor can accept your order of alcohol products, and the order will only be delivered if the Merchant accepts your order. The Contractor reserves the right to refuse delivery if you are not 21 years old, if you cannot

provide a valid government issued ID, if the name on your ID does not match the name on your order, or you are visibly intoxicated. If the Contractor is unable to complete the delivery of alcohol products for one or more of these reasons, you are subject to a non-refundable \$20 re-stocking fee.

16. Indemnification

You agree to indemnify and hold harmless Food Fling LLC and its officers, directors, employees, agents and affiliates (each, an “**Indemnified Party**”), from and against any losses, claims, actions, costs, damages, penalties, fines and expenses, including without limitation, attorneys’ fees and expenses, that may be incurred by an Indemnified Party arising out of, relating to or resulting from (a) your User Content; (b) your misuse of the Software or Services; (c) your breach of this Agreement or any representation, warranty or covenant in this Agreement; or (d) your violation of any applicable laws, rules or regulations through or related to the use of the Software or Services. In the event of any claim, allegation, suit or proceeding alleging any matter potentially covered by the agreements in this Section, you agree to pay for the defense of the Indemnified Party, including reasonable costs and attorneys’ fees incurred by the Indemnified Party. Food Fling LLC reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Food Fling LLC in asserting any available defenses. This provision does not require you to indemnify any Indemnified Party for any unconscionable commercial practice by such party, or for such party’s negligence, fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the Software or Services. You agree that the provisions in this section will survive any termination of your account, this Agreement, or your access to the Software and/or Services.

17. Disclaimer of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE FULLEST EXTENT OF LAW, YOUR USE OF THE SOFTWARE AND SERVICES IS ENTIRELY AT YOUR OWN RISK. CHANGES ARE PERIODICALLY MADE TO THE SOFTWARE AND SERVICES AND MAY BE MADE AT ANY TIME WITHOUT NOTICE TO YOU. THE SOFTWARE AND SERVICES ARE PROVIDED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. FOOD FLING LLC MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS OR TIMELINESS OF THE CONTENT MADE AVAILABLE THROUGH THE SOFTWARE OR SERVICES, OR THE SERVICES, SOFTWARE, TEXT, GRAPHICS OR LINKS.

FOOD FLING LLC DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL OPERATE ERROR-FREE OR THAT THE SOFTWARE OR SERVICES ARE FREE OF COMPUTER VIRUSES AND OTHER HARMFUL MALWARE. IF YOUR USE OF THE SOFTWARE OR SERVICES RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, FOOD FLING LLC SHALL NOT BE RESPONSIBLE FOR THOSE ECONOMIC COSTS.

18. Internet Delays

The Software and Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Except as set forth in Food Fling LLC's Privacy Policy or as otherwise required by applicable law, Food Fling LLC is not responsible for any delays, delivery failures, or damage, loss or injury resulting from such problems.

19. Breach and Limitation of Liability

(a) **General.** You understand and agree that a key element of the Services and this Agreement is your and our mutual desire to keep the Services simple and efficient, and to provide the Software and Services at low cost. You understand and agree to the limitations on remedies and liabilities set forth in this Section 19 to keep the Software and Services simple and efficient, and costs low, for all Users.

(b) **Cap on Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, FOOD FLING LLC'S AGGREGATE LIABILITY SHALL NOT EXCEED THE GREATER OF AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU TO FOOD FLING LLC IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THIS CAP ON LIABILITY SHALL APPLY FULLY TO RESIDENTS OF NEW JERSEY.

(c) **Disclaimer of Certain Damages.** TO THE FULLEST EXTENT OF LAW, FOOD FLING LLC SHALL NOT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING PERSONAL INJURY, LOST PROFITS, PAIN AND SUFFERING, EMOTIONAL DISTRESS, AND LOSS OF DATA, REVENUE, USE AND ECONOMIC ADVANTAGE). THE FOREGOING DISCLAIMER OF PUNITIVE AND EXEMPLARY DAMAGES, AND THE ENTIRE DISCLAIMER OF DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE, OR FOR ANY INJURY CAUSED BY FOOD FLING LLC'S FRAUD OR FRAUDULENT MISREPRESENTATION, SHALL NOT APPLY TO USERS WHO RESIDE IN THE STATE OF NEW JERSEY.

20. Exclusive Venue

To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Food Fling LLC agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the state or federal courts located in Dearborn Michigan if you are a resident of this location, and in the United States District Court for the District in which you reside.

21. Termination

If you violate this Agreement, Food Fling LLC may respond based on a number of factors including, but not limited to, the egregiousness of your actions and whether a pattern of harmful behavior exists.

In addition, at its sole discretion, Food Fling LLC may modify or discontinue the Software or Service, or may modify, suspend or terminate your access to the Software or the Services, for any reason, with or without notice to you and without liability to you or any third party. In addition to suspending or terminating your access to the Software or the Service, Food Fling LLC reserves the right to take appropriate legal action, including without limitation, pursuing civil, criminal or injunctive redress. Even after your right to use the Software or the Services

is terminated, this Agreement will remain enforceable against you. All provisions which by their nature should survive to give effect to those provisions shall survive the termination of this Agreement.

22. Procedure for Making Claims of Copyright Infringement.

It is Food Fling LLC's policy to terminate membership privileges of any User who repeatedly infringes copyright upon prompt notification to Food Fling LLC by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on the Services in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of the location on the Services of the material that you claim is infringing; (d) your address, telephone number and e-mail address; (e) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. Contact information for Food Fling LLC's Copyright Agent for notice of claims of copyright infringement is as follows: Food Fling LLC, 4631 Helen, Dearborn Michigan, 48126, USA.

23. General

(a) **No Joint Venture or Partnership.** No joint venture, partnership, employment, or agency relationship exists between you, Food Fling LLC or any third-party provider as a result of this Agreement or use of the Software or Services.

(b) **Choice of Law.** This Agreement is governed by the laws of the State of Michigan consistent with the Federal Arbitration Act, without giving effect to any principles that provide for the application of the law of any other jurisdiction.

(c) **Severability.** Except as otherwise provided in this Agreement, if any provision of this Agreement is found to be invalid, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

(d) **Consumer Complaints.** In accordance with California Civil Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

(e) **Accessing and Downloading the Application from iTunes.** The following applies to any Software accessed through or downloaded from the Apple App Store (an "App Store Sourced Application"):

(1) You acknowledge and agree that (i) the Agreement is concluded between you and Food Fling LLC only, and not Apple, and (ii) Food Fling LLC, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.

(2) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

(3) In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price, if any, for the App Store Sourced Application to you and to the fullest extent permitted by law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between Food Fling LLC and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Food Fling LLC.

(4) You and Food Fling LLC acknowledge that, as between Food Fling LLC and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

(5) You and Food Fling LLC acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Food Fling LLC and Apple, Food Fling LLC, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.

(6) You and Food Fling LLC acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

(7) Without limiting any other terms of the Terms, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

(f) **Notice.** Where Food Fling LLC requires that you provide an e-mail address, you are responsible for providing Food Fling LLC with your most current e-mail address. In the event that the last e-mail address you provided to Food Fling LLC is not valid, or for any reason is not capable of delivering to you any notices required or permitted by this Agreement, Food Fling LLC's dispatch of the e-mail containing such notice will nonetheless constitute effective notice.

(g) **Electronic Communications.** For contractual purposes, you (1) consent to receive communications from Food Fling LLC in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Food Fling LLC provides to you electronically satisfy any legal requirement that such communications would satisfy if they were in writing. You agree to keep your contact information, including email address, current. This subparagraph does not affect your statutory rights.

(h) **Transfer and Assignment.** This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Food Fling LLC without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

This Agreement binds and inures to the benefit of each party and the party's successors and permitted assigns.

(i) **Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter. However, nothing in this Agreement shall supersede, amend, or modify the terms of any separate agreement(s) between you and Food Fling LLC relating to your work as an employee or independent contractor, including, without limitation, any Independent Contractor Agreement governing your efforts as a Contractor.

24. Contact Information

For more information, kindly contact us through;

Food Fling LLC, Inc.

foodfling.co

Email: foodflingllc@gmail.com

Telephone Number: +1 (313) 899-0055