

FOODFULLY TERMS OF USE

Updated: August 10, 2015

ACCEPTANCE OF TERMS OF USE AND CONDITIONS

These Terms of Use of Use (the "Terms of Use of Use") govern your access and use of www.foodfully.com, the Foodful.ly mobile application, and any other mobile applications offered by Foodfully, Inc. ("Foodfully," "we," "us," or "our") to you, the user of the Site ("you" or "your"). The Terms of Use set forth the legally binding Terms of Use and conditions for your use of the Site. By using or accessing the Site in any manner, including, but not limited to, visiting or browsing the Site, you acknowledge that you have read, understand, and agree to be bound by the Terms of Use, including Foodfully's privacy policy located at foodful.ly/privacy (the "Privacy Policy"). If you do not agree to all of the terms and conditions of the Terms of Use, or you do not have such authority, or you do not meet the eligibility requirements, you should cease any and all access or use of the Site. **THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE IN THE DISPUTE RESOLUTION SECTION BELOW WHICH WILL REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST FOODFULLY TO BINDING AND FINAL ARBITRATION.**

WHAT WE DO

Foodful.ly provides kitchen inventory management and cooking assistance to users with the goal of reducing food waste. Foodful.ly allows users to enter items

USE OF THE SITE AND SERVICES

You are responsible for all of your activity in connection with accessing the Site. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your access to the Site. You will be required to choose a username and password to access the Site and you and you alone are responsible for the confidentiality and safe-keeping of your account information. You must comply with all applicable local, state, national and international laws and regulations that relate to your use of or activities on the Site. We reserve the right to report potentially criminal activity to appropriate law enforcement agencies.

As a condition of your access to the Site and use of the services, you agree that you shall not use the Site and/or access any of the services provided by us in any way that will violate any applicable laws, rules or regulations, these Terms of Use, or the Privacy Policy, or which Foodfully, in its sole and absolute discretion, deems to be inappropriate. Examples of such prohibited conduct include, without limitation, the following:

- Using the Site or services in any manner that violates any privacy right, publicity right, patent, trademark, trade secret, copyright or other proprietary right, or contract right or other right of any party.
- Copying, reproducing, modifying (including, without limitation, altering, obscuring, deleting, etc. any copyright or other legally required notices, credits, logos, trademarks, etc.), creating derivative works from, or distributing in any manner or medium any content posted on the Site in any manner that is in violation of the Terms of Use or any applicable laws, rules or regulations.
- Impersonating any person or entity (including the use of another's user's account or information), or submitting any information that is false, inaccurate, deceptive, misleading, unlawful, or are otherwise in violation of the Terms of Use or Privacy Policy.

- Engaging in any action or inaction that could disable, overload, impair the infrastructure of the Site or impair the proper functioning of the Site or services, including, without limitation, transmitting any software or materials which contain a virus or other harmful or disruptive component; circumventing, altering or interfering with any computer software, or security-related features of the Site or the services; or deciphering, decompiling, disassembling or reverse engineering any of the software comprising or in any way utilized in connection with the Site or the services.
- Accessing or attempting to access the Site or the services using automated means (such as harvesting bots, robots, spiders, or scrapers) or gaining, or attempting to gain, unauthorized access to any servers, computer systems or databases utilized in connection with the Site or the services.

ACCESS TO THE SITE AND THE SERVICES

Subject to your compliance with the Terms of Use, Foodfully hereby grants to you a non-exclusive, non-transferable, revocable, limited license to access and use, over the Internet, our Site, provided that: (i) your use of the Site as permitted is solely for your personal use and not on behalf of any third party, and you will not resell or charge others for use of or access to the Site, (ii) you will not duplicate, reproduce, transfer, give access to, copy, or distribute any part of the Site in any medium without our prior written consent, (iii) you will not attempt to reverse compile, reverse engineer, alter, make derivative works of, disassemble, or modify any part of the Site; (iv) You will not access any part of the Site in order to build a similar or competitive service, and (v) You will otherwise comply with the terms and conditions of the Terms of Use and the Privacy Policy.

OWNERSHIP OF PROPRIETARY PROPERTY

Foodfully retains all right, title and interest in and to all intellectual property rights in (i) the Site including, without limitation, text, scripts, graphics, interactive features and the like, and (ii) the trademarks, service marks and logos contained therein owned by or licensed to us. Any and all comments, suggestions, ideas, notes, drawings, concepts, problems or other information with respect to the Site disclosed or offered by you to us (collectively, "Feedback") is hereby unconditionally and irrevocably assigned by you to us, including any and all worldwide intellectual property rights relating thereto. We shall be entitled to unrestricted use of the Feedback for any and all purposes whatsoever, commercial or otherwise, without any payment or other obligation to you or any other person involved with the creation of the Feedback. Foodfully reserve all rights not expressly granted in and to the Site and no implied license is granted by Foodfully. You agree not to engage in the use, copying, or distribution of any of the Site other than expressly permitted herein, including any use, copying, or distribution of content of third parties obtained through the Site for any commercial purposes.

THIRD PARTY SITES

The Site may contain links to independent third-party websites and/or services (collectively, "Third Party Sites"). Third Party Sites are not under Foodfully's control, and Foodfully does not endorse, is not responsible for and shall have no liability to you with respect to the business practices, privacy policies or content including, without limitation, any and all materials, information, merchandise, products or services displayed, featured, mentioned, advertised, distributed or sold on or through such Third Party Sites. If you access any Third Party Site, you acknowledge and agree that you do so at your own risk and that it is your responsibility to read and understand the privacy, membership, payment and other policies of the Third Party Sites and to determine on your own whether or not you will have any interaction with any of the Third Party Sites.

FOODFULLY COMMUNICATIONS

We may use the email address or phone number provided by you to contact you regarding matters concerning your use your account and to send you notifications related to certain activities taking place on your account or to respond to your requests. You agree to our use of your email address to contact you for any services related to your account. If you do not wish to receive any communication from us, write to us at theteam@foodful.ly

DISCLAIMER

THE SITE AND THE SERVICES, AND ALL OF THE CONTENT, AND OTHER MATERIALS POSTED ON OR PROVIDED BY OR THROUGH THE SITE OR THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF TITLE, ACCURACY, COMPLETENESS, NONINFRINGEMENT, SATISFACTORY PURPOSE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BY USING THE SITE AND/OR THE SERVICES, YOU AGREE TO USE YOUR OWN JUDGMENT, CAUTION AND COMMON SENSE IN MANAGING ALL CONTENT, INFORMATION, AND MATERIALS OFFERED OR PROVIDED TO YOU AND YOU AGREE THAT ANY USE YOU MAKE OF SUCH CONTENT, INFORMATION, OR MATERIALS IS AT YOUR OWN RISK. YOU ACKNOWLEDGE THAT FOODFULLY DOES NOT EVALUATE OR MONITOR AND SHALL NOT BE RESPONSIBLE FOR THE, INFORMATION, MATERIALS, CONTENT POSTED OR TRANSMITTED THROUGH THE SITE OR THE SERVICES.

FOODFULLY IS NOT RESPONSIBLE FOR AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY USER OR THIRD-PARTY CONTENT POSTED ON, THROUGH OR IN CONNECTION WITH THE SITE OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY CONTENT THAT IS UNAUTHORIZED OR VIOLATES THE TERMS OF USE, AND SUCH CONTENT DOES NOT NECESSARILY REFLECT THE OPINIONS OR POLICIES OF FOODFULLY. UNDER NO CIRCUMSTANCES SHALL FOODFULLY BE RESPONSIBLE FOR ANY LOSS OR DAMAGE RESULTING FROM USE OF THE SITE OR THE SERVICES, FROM ANY CONTENT POSTED ON THE SITE OR THROUGH THE SERVICES, FROM ANY SERVICES OFFERED THROUGH THE SITE OR FROM THE CONDUCT OF ANY USER OF THE SITE OR THE SERVICES OR ANY USER OF ANY THIRD PARTY SITE.

FOODFULLY ASSUMES NO RESPONSIBILITY FOR ANY ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, ANY OF YOUR COMMUNICATIONS ON OR THROUGH THE SITE. FOODFULLY DOES NOT GUARANTEE ANY RESULTS (SPECIFIC OR OTHERWISE) FROM YOUR USE OF THE SITE OR THE SERVICES AND FOODFULLY MAKES NO REPRESENTATION OR WARRANTY THAT THE SITE, THE SERVICES OR THE INFORMATION OR SERVICES PROVIDED THEREBY WILL MEET YOUR REQUIREMENTS. IF YOU ARE IN ANY WAY DISSATISFIED WITH THE SITE OR THE SERVICES, YOUR SOLE REMEDY IS TO DISCONTINUE YOUR USE OF THE SITE AND/OR THE SERVICES.

LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL FOODFULLY, ITS AFFILIATES, LICENSORS, SPONSORS, OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST PROFITS, LOSS OF DATA, OR OTHER INTANGIBLE LOSSES WHATSOEVER RESULTING FROM (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT DISPLAYED ON THE SITE OR THROUGH THE SITE OR THE SERVICES, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND/OR USE OF (OR

YOUR INABILITY TO ACCESS AND USE) THE SITE OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE CAUSED TO YOUR COMPUTER OR SOFTWARE OR INFORMATION STORED THEREON, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF FOODFULLY'S SERVERS AND/OR ANY AND ALL PERSONAL AND/OR OTHER INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE OR THROUGH THE SITE OR ANY OF THE SERVICES, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE OR THE SERVICES BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT OR SERVICES POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE OR THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT FOODFULLY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL FOODFULLY'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR THE SITE OR ANY SERVICES, EXCEED FIFTY U.S. DOLLARS (\$50.00). THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT SERVE TO ENLARGE THIS LIMIT. THIS LIMITATION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY SET FORTH HEREIN. YOU ACKNOWLEDGE THAT THE DISCLAIMERS AND LIMITATIONS HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

APPLICATION OF LIMITATIONS AND DISCLAIMERS

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages with respect to consumers (i.e., a person acquiring goods otherwise than in the course of a business), so the exclusions set forth in immediately preceding paragraphs above may not apply to you if you are a consumer. The limitations or exclusions of warranties and liability contained in the Terms of Use does not affect or prejudice the statutory rights of a consumer. The limitations or exclusions of warranties and remedies contained in the Terms of Use shall apply to you as a consumer only to the extent such limitations or exclusions and remedies are permitted under the laws of the jurisdiction where you are located.

TERMINATION AND CANCELLATION

We reserve the right, in our sole discretion, without any obligation and without any notice requirement, to change, improve or correct the information, materials and descriptions on the Site and to suspend and/or deny access to the Site for any reason. We further reserve the right, in our sole discretion, to block or otherwise discontinue your access and use of the Site at any time and for any reason, including your breach of the Terms of Use or Privacy Policy, or a violation of any law or regulation. You agree that Foodfully and its subsidiaries and affiliates will not be liable to you or to any third party for any such

INDEMNIFICATION

You agree to defend Foodfully, its subsidiaries, affiliates, licensors and assignees and their respective officers, directors, managers, stockholders, members, agents, partners and employees (the "Foodfully Indemnities"), from and against any and all claims, actions, suits, demands or other proceedings brought by or on behalf of any third party, and to indemnify and hold the Foodfully Indemnities harmless against any losses, liabilities and other damages (including, but not limited to, reasonable attorneys' fees), in any case arising out of or related to (i) your access to and/or use of the Site and/or the services, or (ii) a

violation or breach by you of any provision of the Terms of Use or Privacy Policy including, without limitation, a breach of any of the representations, warranties or terms set forth in the Terms of Use and the Privacy Policy. This defense and indemnification obligation will survive following the termination of your use of the Site and the services.

GOVERNING LAW

The Terms of Use and Privacy Policy shall be governed by the laws of the State of California without giving effect to any conflicts of laws principles.

DISPUTE RESOLUTION

In the event a dispute cannot be resolved through communications with Foodfully, any dispute, claim, or controversy arising out of or relating to the Terms of Use, the Privacy Policy or your use of the Site, shall be resolved through final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and such dispute shall be resolved in the County and City of San Francisco. If the parties are unable to select an arbitrator then AAA shall select the arbitrator. Judgment on any award entered by the arbitrator may be entered in any court having jurisdiction thereof. User agrees that it may bring claims against Foodfully only in an individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. You agree that Foodfully and its Site are deemed a passive website that does not give rise to jurisdiction over Foodfully or our parents, subsidiaries, affiliates, assigns, employees, agents, directors, officers, or shareholders, either specific or general, in any jurisdiction other than the State of California. ANY CAUSE OF ACTION BROUGHT BY YOU AGAINST FOODFULLY, OR ITS AFFILIATES, OFFICERS, DIRECTORS, OR AGENTS, MUST BE INSTITUTED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES OR BE DEEMED FOREVER WAIVED AND BARRED.

OTHER TERMS

In any action to enforce the Terms of Use or Privacy Policy, the prevailing party will be entitled to costs and attorneys' fees. You may not assign your rights and obligations under the Terms of Use to any party, and any purported attempt to do so will be null and void. Foodfully may freely assign its rights and obligations under the Terms of Use. If any part of the Terms of Use is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. Any failure by Foodfully to enforce or exercise any provision of the Terms of Use or related rights shall not constitute a waiver of that right or provision. All notices to you shall be made in writing and delivered via email to the email address designated by you in your user account or by otherwise posting such notices on the Site. These Terms of Use, together with the Privacy Policy available at foodful.ly/privacy and any other legal notices published by Foodfully, constitute the entire agreement and understanding between the parties concerning the subject matter of the Terms of Use and supersede all prior agreements and understandings of the parties with respect to that subject matter. The Terms of Use may not be altered, supplemented, or amended by the use of any other document(s), except as modified by Foodfully as provided for in the Terms of Use. Any attempt by you to alter, supplement or amend this document or to enter an order for products or services which are subject to additional or altered Terms of Use and conditions shall be null and void, unless otherwise agreed to in a written agreement signed by the parties. To the extent that anything in or associated with this Site is in conflict or inconsistent with the Terms of Use, the Terms of Use shall take precedence. Foodfully reserves the right to broadcast notices or messages through the Site to inform you of changes to the Site or other matters of importance, and such broadcasts shall constitute notice to you at the time of publication

REPORTING VIOLATIONS

If you become aware of any misuse of the Site or the services or any violation of the Terms of Use or Privacy Policy please report such misuse and/or violation by sending an email to Foodfully at theteam@foodful.ly.

CHANGES TO THE TERMS

We may update or change the Terms of Use from time to time. If we make material changes to the Terms of Use, we will notify you by posting the revised Terms of Use on our Site or by notifying you at your designated email address as specified in your account. Your continued use of the Site after such notification of changes as described above will constitute your agreement to such changes. If you object to any change, your sole recourse shall be to immediately terminate your account and cease using the Site. We advise you review our Terms of Use periodically for any such changes.

QUESTIONS OR ADDITIONAL INFORMATION

If you have any questions regarding the Terms of Use, please contact us by e-mail at theteam@foodful.ly "Attention: Terms of Use."