

## Peach Terms of Use

Last revised on: November 18<sup>th</sup>, 2015

The website located at [www.peachd.com](http://www.peachd.com) (the “**Site**”) is copyrighted and belong to Peach Labs, Inc. (“**Peach**”, “**us**”, “**our**”, and “**we**”). Peach provides an online service focused on providing users with the ability to place orders for daily meals (each, an “**Offering**”) from its restaurant partners (each, a “**Restaurant**”) that are delivered to the particular location specified in the Offering (each, a “**Location**”) (collectively, with all other services provided through the Site, the “**Services**”). Certain features of the Services or Site may be subject to additional guidelines, terms, or rules, which will be posted on the Service or Site in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into this Agreement.

THESE TERMS OF USE (“**AGREEMENT**”) SET FORTH THE LEGALLY BINDING TERMS FOR YOUR USE OF THE SITE AND SERVICES. BY ACCESSING OR USING THE SITE OR SERVICES, YOU ARE ACCEPTING THIS AGREEMENT AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THIS AGREEMENT. YOU MAY NOT ACCESS OR USE THE SITE OR SERVICES OR ACCEPT THE AGREEMENT IF YOU ARE NOT OF LEGAL AGE TO AGREE TO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THIS AGREEMENT, DO NOT ACCESS AND/OR USE THE SITE OR SERVICES. IF YOU ARE USING THE SITE OR SERVICES ON BEHALF OF A COMPANY, ENTITY, OR ORGANIZATION, YOU REPRESENT AND WARRANT THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF SUCH COMPANY, ENTITY, OR ORGANIZATION WITH THE AUTHORITY TO BIND IT TO THIS AGREEMENT.

**THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

### 1. ACCOUNTS

**1.1 Account Creation.** In order to use certain features of the Services, you must register for an account with Peach (“**Account**”) and provide certain information about yourself as prompted by the Services registration form. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; and (b) you will maintain the accuracy of such information. You may delete your Account at any time, for any reason, by following the instructions on the Site. Peach may suspend or terminate your Account in accordance with Section 9.

**1.2 Account Responsibilities.** You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify Peach of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. Peach cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

**1.3 Social Networking Services.** Alternatively, we may permit you to login to the Service with your login credentials from certain social networking sites (e.g., Facebook) (“**SNS**”). If you log in or otherwise associate your Account with your login credentials from a SNS, we may receive information about you from such SNS, in accordance with the terms and conditions (e.g., terms of use and privacy policy) of the SNS (“**SNS Terms**”). If you elect to share your information or content with these SNS, we will share information with them in accordance with your election. The SNS Terms of these SNS will apply to the information we disclose to them.

**2. ORDER TERMS.** From time to time, Peach may make available Offerings that you can purchase by following the directions on the Site. If you place an order for an Offering (each, an “**Order**”), your payment method on file will automatically be billed in accordance with the directions on the Site. By placing an Order, you agree to pay the then-current applicable fee listed on the Site. All payments are non-refundable. **You here by authorize Peach to bill your credit card as described above.** Unless otherwise stated on the Site, fees are inclusive of all sales or use taxes imposed by taxing authorities, and you are responsible for payment of all such taxes. Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less. If any fee cannot be charged to your credit card for any reason, Peach may provide you, via email, notice of such non-payment and a link for you to update your payment information. Once you have placed and paid for an Order, your Order will be delivered to the Location by the Restaurant in accordance with the details provided in the Offering description.

### 3. SITE

**3.1 License.** Subject to the terms of this Agreement, Peach grants you a non-transferable, non-exclusive, license to use the Site and Services for your personal use.

**3.2 Certain Restrictions.** The rights granted to you in this Agreement are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, or host the Site or Services; (b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Site or Services; (c) you shall not access the Site or Services in order to build a similar or competitive service; and (d) except as expressly stated herein, no part of the Site or Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Any future release, update, or other addition to functionality of the Site or Services shall be subject to the terms of this Agreement. All copyright and other proprietary notices on any Site or Services content must be retained on all copies thereof.

**3.3 Ownership.** You acknowledge that all the intellectual property rights, including copyrights, patents, trade marks, and trade secrets, in the Site and Services are owned by Peach or Peach's licensors. The provision of the Site and Services does not transfer to you or any third party any rights, title or interest in or to such intellectual property rights. Peach and its suppliers reserve all rights not granted in this Agreement. If you provide Peach any feedback or suggestions regarding the Site or Services ("**Feedback**"), you hereby assign to Peach all rights in the Feedback and agree that Peach shall have the right to use such Feedback and related information in any manner it deems appropriate.

**4. ACCEPTABLE USE POLICY.** You agree not to use the Site or Services to: (a) upload, transmit, or distribute any content that violates any third-party right, intellectual property right, or otherwise is tortious, offensive, or in violation of any law or regulation; (b) upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (c) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (d) harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (e) interfere with, disrupt, or create an undue burden on servers or networks connected to the Site or Services or violate the regulations, policies or procedures of such networks; (f) attempt to gain unauthorized access to the Site or Services, other computer systems or networks connected to or used together with the Site or Services, through password mining or other means; (g) harass or interfere with another user's use and enjoyment of the Site or Services; or (h) introduce software or automated agents or scripts to the Site or Services so as to produce multiple accounts, generate automated searches, requests and queries, or to strip, scrape, or mine data from the Site or Services.

**5. INDEMNITY.** You agree to indemnify and hold Peach (and its officers, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (i) your use of the Site or Services, (ii) your interactions with any Restaurants, (iii) your violation of this Agreement; or (iv) your violation of applicable laws or regulations. Peach reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Peach. Peach will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

### 6. THIRD PARTY SITES; RESTAURANTS

**6.1 Third Party Sites.** The Site might contain links to third party websites, services, and advertisements for third parties (collectively, "**Third Party Sites**"). Such Third Party Sites are not under the control of Peach and Peach is not responsible for any Third Party Sites. Peach provides these Third Party Sites only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Sites. You use all Third Party Sites at your own risk. When you link to a Third Party Site, the applicable third party's terms and policies apply, including the third party's privacy and data gathering practices. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction in connection with such Third Party Sites.

**6.2 Restaurants.** Peach is strictly facilitating the relationship between you and each Restaurant and is not liable for the acts or omissions of the Restaurants (including, but not limited to, any food or other materials provided to you by a Restaurant). Because we do not control the actions of Restaurants or anything that they might provide to you, you acknowledge and agree that we are not responsible for any acts, omissions, statements, or otherwise of the Restaurants (including the results of any Orders you place with a Restaurant) and we make no guarantees regarding the accuracy, currency, suitability, or quality of any content, information, or Orders provided by the Restaurants. Your interactions with

other Site or Service users or Restaurants are solely between you and such user or Restaurant. You agree that Peach will not be responsible for any loss or damage incurred as the result of any such interactions. If there is a dispute between you and any Site or Service user or a Restaurant, we are under no obligation to become involved.

**6.3 Release.** You hereby release and forever discharge us (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or relates directly or indirectly to, any interactions with, or act or omission of, other Site or Service users, Restaurants, or Third Party Sites. IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

**7. DISCLAIMERS.** THE SITE AND SERVICES (AND ALL CONTENT THEREIN) ARE PROVIDED "AS-IS" AND "AS AVAILABLE" AND WE (AND OUR SUPPLIERS) EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SITE OR SERVICES: (A) WILL MEET YOUR REQUIREMENTS; (B) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (C) WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. THE CONTENT PROVIDED ON THIS SITE, WHETHER PROVIDED BY US OR OTHER USERS, IS FOR INFORMATION PURPOSES ONLY. PEACH DOES NOT OFFER NUTRITIONAL OR HEALTH ADVICE, ANY CONTENT ACCESSED THROUGH THE SITE OR SERVICES IS FOR INFORMATIONAL PURPOSES ONLY. YOU AGREE THAT PEACH IS NOT LIABLE FOR THE CONDUCT OF THIRD PARTIES (INCLUDING RESTAURANTS) AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

**8. LIMITATION ON LIABILITY.** IN NO EVENT SHALL WE (AND OUR SUPPLIERS) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR YOUR USE OF, OR INABILITY TO USE, THE SITE OR SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITE AND SERVICES ARE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING THEREFROM. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR (AND OUR SUPPLIERS') LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE GREATER OF FIFTY US DOLLARS (\$50) OR THE AMOUNTS PAID TO PEACH HEREUNDER IN THE SIX MONTHS PRIOR TO THE CLAIM. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

**9. TERM AND TERMINATION.** Subject to this Section, this Agreement will remain in full force and effect while you use the Site or Services. We may (a) suspend your rights to use the Site and/or Services (including your Account) or (b) terminate this Agreement, at any time for any reason at our sole discretion, including for any use of the Site or Services in violation of this Agreement. Upon termination of this Agreement, your Account and right to access and use the Site and Services will terminate immediately. Peach will not have any liability whatsoever to you for any termination of this Agreement, including for termination of your Account. Even after this Agreement is terminated, the following provisions of this Agreement will remain in effect: Sections 3.2-3.3, 4-10.

## 10. GENERAL

**10.1 No Support or Maintenance.** You acknowledge and agree that Peach will have no obligation to provide you with any support or maintenance in connection with the Site or Services. Peach reserves the right, at any time, to modify, suspend, or discontinue the Site or Services or any part thereof with or without notice. You agree that Peach will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Site or Services or any part thereof.

**10.2 Changes to Terms of Use.** This Agreement is subject to occasional revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any) and/or by prominently posting notice of the changes on our Site. Any changes to this agreement will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new users of our Site or Services. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Continued use of our Site or Services following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

**10.3 DISPUTE RESOLUTION. PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.** Except for disputes brought in small claims court, all disputes, claims, demands, or causes of action between you and Peach, past, present, or future, arising out of, relating to or in connection with the Site or Services or this Agreement shall be exclusively settled through binding arbitration pursuant to the then-current rules of the American Arbitration Association (“AAA”) for commercial arbitration. There is no judge or jury in arbitration. Arbitration procedures are simpler and more limited than rules applicable in court and review by a court is limited. You are thus GIVING UP YOUR RIGHT TO GO TO COURT to assert or defend your rights. YOU AND PEACH AGREE THAT ANY SUCH ARBITRATION SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. Notwithstanding any provision in these terms to the contrary, if the class-action waiver in the prior sentence is deemed invalid or unenforceable, however, neither you nor we are entitled to arbitration. This Agreement is subject to the Federal Arbitration Act. The arbitrator’s award may be entered in any court of competent jurisdiction. Notwithstanding any provision in these terms to the contrary, we agree that if Peach makes any future change to this dispute resolution provision, it will not apply to any individual claim(s) that you had already provided notice of to Peach. Information on AAA and how to start arbitration can be found at [www.adr.org](http://www.adr.org) or by calling 800-778-7879.

Notwithstanding the foregoing, claims of infringement or misappropriation of the other party’s patent, copyright, trademark, or trade secret shall not be subject to this arbitration agreement. Such claims shall be exclusively brought in the state or federal courts located in King County, Washington. Additionally, notwithstanding this agreement to arbitrate, either party may seek emergency equitable relief before the state or federal courts located in King County, Washington in order to maintain the status quo pending arbitration, and hereby agree to submit to the exclusive personal jurisdiction of the courts located within King County, Washington for such purpose. A request for interim measures shall not be deemed a waiver of the right to arbitrate.

If the arbitration in this section provision is found unenforceable or to not apply for a given dispute, then the proceeding must be brought exclusively in a court of competent jurisdiction in King County, Washington. The Services and these terms and conditions are governed by the laws of the State of Washington without regard to conflict of law provisions. This section will survive termination of your participation in the Services.

**10.4 Entire Agreement.** This Agreement constitutes the entire agreement between you and us regarding the use of the Site and Services. Our failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. The word including means including without limitation. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Your relationship to Peach is that of an independent contractor, and neither party is an agent or partner of the other. This Agreement, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Peach prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement shall be binding upon assignees.

**10.5 Contact Information:**

Peach Labs, Inc.  
1201 3<sup>rd</sup> Ave, Ste 1500  
Seattle, WA 98101