

Berkeley Bowl Terms of Use

IMPORTANT- THESE TERMS OF USE CONTAIN A MANDATORY INDIVIDUAL ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

THE TERMS AND CONDITIONS OF THESE TERMS OF USE (THE "AGREEMENT") SET FORTH BELOW GOVERN YOUR USE OF THE BERKELEY BOWL PRODUCE WEBSITE AND/OR MOBILE APPLICATIONS (COLLECTIVELY, THE "PLATFORM") AND ECOMMERCE AND OTHER SERVICES AVAILABLE ON AND THROUGH THE PLATFORM (THE "SERVICES"). THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU ("YOU" OR "YOUR") AND BERKELEY BOWL PRODUCE AND GOVERN YOUR ACCESS TO, AND USE OF, THE PLATFORM AND THE SERVICES. IF YOU DO NOT AGREE WITH ANY OF THE TERMS OF THIS AGREEMENT, DO NOT ACCESS OR OTHERWISE USE THIS PLATFORM OR THE SERVICES, OR ANY INFORMATION ON OR RELATED TO THIS PLATFORM OR THE SERVICES. BY CLICKING THE BOX TO USE THE PLATFORM OR THE SERVICES OR USING THIS PLATFORM OR THE SERVICES, YOU AGREE TO ABIDE BY EACH OF THE TERMS SET FORTH BELOW.

Overview

This Agreement is a legal agreement with Berkeley Bowl Produce, located at 920 Heinz Avenue Berkeley, CA, and you.

This Agreement governs Berkeley Bowl Produce's relationship with you. To the extent stated below, this Agreement also governs each party's relationship with other parties with whom those parties transact utilizing the Services, and all such parties remain free to have additional agreements and terms between themselves as they may agree in writing, provided that no such additional terms shall be interpreted to conflict with or supersede this Agreement with respect to Berkeley Bowl Produce specifically.

Berkeley Bowl Produce provides online and mobile technology that connects Customers, Stores, and Delivery Persons. Using the Platform and Services, Customers place purchase orders for grocery products that are available to purchase online on the Platform. Items purchased online are available for pickup or delivery.

If you submit orders through a third party site or application, such as GrubHub or DoorDash, you may be required to have an account with such third party and may be transferred to such third party's website or application to complete transactions. Any orders submitted through such third party sites or applications are solely between you and the applicable third party, not Berkeley Bowl Produce. This Agreement does not apply to orders placed through a third party's website or application. If you use a third party's website or application for an order from one of our Stores, you will be subject to the terms and policies posted by that third party and we are not responsible for those terms or policies or acts or omissions of those third parties.

Terms

- **Parties.** All parties to this Agreement are independent contractors with respect to one another, such that no party exercises control over any other party or has any liability or responsibility for any other party.
 - **Third-Party Service Providers.** Berkeley Bowl Produce in partnership with its service providers (“Third-Party Service Providers”) provides information, and online methods for Customers to purchase and obtain delivery of products. Third-Party Service Providers do not provide any items for online sales but do provide the necessary infrastructure in order to provide customers of the Services a method to order items available online and provide delivery services.
 - **Customers.** Customers utilize the Services to purchase products from Stores, and to obtain delivery of such products from Delivery Persons. Customers do not control and have no liability or responsibility for any Store or Delivery Person, or for Berkeley Bowl Produce.
 - **Stores.** Stores are Berkeley Bowl Produce’s stores and/or warehouses that showcase and sell consumer products to Customers via the Platform and Services. Stores fulfill orders for Customers unless specified otherwise. Stores do not themselves provide delivery services unless the Store expressly advises the Customer otherwise. Stores may provide Customers with pick-up options in each Store’s discretion.
 - **Delivery Persons.** Delivery Persons utilize Berkeley Bowl Produce’s Third-Party Service Providers’ services, to independently select and execute delivery jobs to deliver products that Customers purchase on the Platform in exchange for a fee from the Third-Party Service Provider. Delivery Persons do not themselves provide products. Delivery Persons are independent contractors to Berkeley Bowl Produce’s Third-Party Service Providers and are not engaged in any employment or agency relationship with Berkeley Bowl Produce, Stores or Customers.

- **Mobile Applications.** With respect to the mobile versions of the Platform, you will only use the Platform and Services (i) on an Apple-branded product that runs the iOS (Apple’s proprietary operating system) or a product that runs on Android; and (ii) as permitted by applicable “Usage Rules” set forth in the Apple App Store Terms of Use or the Google Play Terms of Use. With regard to your use of the iOS version of the Platform and Services, you acknowledge and agree that (i) this Agreement is an agreement between you and Berkeley Bowl Produce only, and not Apple, and (ii) Berkeley Bowl Produce, not Apple, is solely responsible for the Platform and Services and content thereof. Your use of the Platform and Services must comply with the App Store Terms of Use. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Platform or the Services. In the event of any failure of the Platform or the Services to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Platform and Services (if any) to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Platform or the Services. As between Berkeley Bowl Produce 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 Berkeley Bowl

Produce, subject to this Agreement. You and Berkeley Bowl Produce acknowledge that, as between Berkeley Bowl Produce and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the Platform or the Services or your possession and use of the Platform or the Services, including, but not limited to: (i) product liability claims; (ii) any claim that the Platform or the Services fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. You and Berkeley Bowl Produce acknowledge that, in the event of any third-party claim that the Platform or the Services or your possession and use of the Platform or the Services infringes that third party's intellectual property rights, as between Berkeley Bowl Produce and Apple, Berkeley Bowl Produce, 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, and subject to, this Agreement. You and Berkeley Bowl Produce acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement as related to your license of the Platform or the Services, and that, upon your acceptance of the Terms of Use and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as related to your license of the Platform or the Services against you as a third-party beneficiary thereof.

- **As Is.** Unless agreed otherwise in writing by the party providing the product or service, all products and services are provided "as is", and without warranties of any kind.
- **Privacy.** In accordance with Berkeley Bowl Produce's [Privacy Notice](#), by using the Services, you consent to the collection, sharing, and use of personally identifiable information you provide to Berkeley Bowl Produce.
- **Accounts.** You must register for an account and provide information about yourself to use the Services, such as profile and payment information. You are responsible for providing accurate information, for maintaining the confidentiality of their own account and password (including for example any third-party login password such as Google), and for any activities occurring under or through their account. If you have a reasonable belief that your account integrity or privacy has been jeopardized, they must immediately notify the Services through the contact page. You shall not create multiple accounts.
- **Accuracy of Information.** While Berkeley Bowl Produce and the Stores endeavor to provide accurate product information, you should know that product information accessed through the Platforms is obtained from information made by product manufacturers and producers; on occasion they may change their labels or ingredient lists; and actual product packaging and materials may contain more and/or different information than that shown on the Platforms. Accordingly, you should not rely solely on the product information presented on the Platforms, but should always read carefully the labels, warnings, and directions before using or consuming a product and contact the product manufacturer or producer directly for any questions. Berkeley Bowl Produce and the Stores do not assume any liability for inaccuracies, misstatements, or omissions related to any product information listed on the Platforms. In addition, even though we make an effort to describe and display our products and services accurately on the Platforms, products on the Platform may be mispriced, described inaccurately,

or unavailable and we may experience delay in updating information on the Platforms and in our advertising on the Platforms.

- **Intellectual Property License.** The Services and the Platform are owned by Berkeley Bowl Produce, and all rights are reserved to Berkeley Bowl Produce. Berkeley Bowl Produce grants to each party using the Services a limited, revocable, non-transferable license to use the Services on appropriate and compatible devices that the party owns or controls solely for its personal use. You shall not (1) modify, replicate, distribute, share, or otherwise cause the Platform or the Services to be made available to multiple devices simultaneously, or (2) sell, transfer, redistribute, or sublicense the Services or the Platform.
- **Service Limitations and Requirements.**
 - Customers must be at least eighteen years old to utilize the Services.
 - Alcohol purchases can only be dropped off with a person aged 21 or older. For alcohol purchases, you represent and warrant that you are age 21 or older. For alcohol purchases, the Delivery Person reserves the right to refuse delivery where the recipient cannot provide proper Identification matching the order and showing legal age. Valid forms of identification must include a photo identification, such as: a valid driver license; a passport, or (iii) a valid Armed Forces ID card. Delivery Persons may also refuse to deliver alcohol to anyone visibly intoxicated or otherwise presenting an observable danger to themselves or others.
 - Alcohol and tobacco deliveries may be limited in some markets and locales.
 - You agree not to modify, create derivative works of, sell, license or in any way exploit Berkeley Bowl Produce, the Platform or the Services. You agree not to reproduce, distribute, publish, stream or broadcast any part of the Services without prior written authorization from Berkeley Bowl Produce.
 - The parties agree not to circumvent or attempt to circumvent any security or other features of the Services or the Platform designed to limit access.
 - The parties agree not to harvest or mine content from the Platform or otherwise access or use the Services inconsistently.
- **Representations.** By using the Platform or the Services, you represent that you are at least eighteen (18) years old; you are in good standing with the Services (i.e., no previous suspensions of service with Berkeley Bowl Produce); and you will comply with and all applicable laws and regulations for your jurisdiction; if you are using the Services on behalf of an organization or entity, then you represent that you have authority to agree to this Agreement on behalf of that organization or entity. You agree that the information you provide to the Services is accurate and that you will keep it up to date at all relevant times.
- **Payments.** The Services will process your payment information as a Customer to make payments for your orders. You will be prompted to confirm payments before submitting your order finally to Berkeley Bowl Produce. Unless otherwise agreed mutually in writing, all payments are non-refundable. There may be a fee or surcharge to the party requesting or utilizing the service, and such fees and surcharges may change over time in Berkeley Bowl Produce's discretion. You are encouraged to check Berkeley Bowl Produce's current statement of fees for up-to-date information before executing new orders.

- Customers submitting payment information to the Services authorize Berkeley Bowl Produce and its Third-Party Service Providers to process payments for orders according to the payment method specified in the Customer account. New payment methods and certain existing payment methods (i.e., credit card) may incur a temporary pre-authorization hold prior to Berkeley Bowl Produce's verification of the Customer's account and available credit or balance for the intended purchase. Upon completion or cancellation of the Customer's order, the pre-authorization hold is lifted within approximately 2-4 business days, depending on the Customer's account holder.
- **Refunds.** Refunds, credits, and order changes are processed by the Services on a case-by-case basis in the discretion of Berkeley Bowl Produce. Berkeley Bowl Produce's policy is to diligently and with good faith assist Customers in processing these requests. This refund policy always applies regardless of any disruptions or downtime in the Services for any reason whatsoever.
 - **Returning Items To A Store.** Stores and Delivery Persons give the original receipt to the Customer. Delivery Persons are not obligated to return items to a Store for a Customer; however, Delivery Persons are free to independently agree to do so for a Customer subject to the Delivery Person's agreement with the Third-Party Service Provider.
 - **Order Changes.** Customers acknowledge that after placing an order through Berkeley Bowl Produce, the order may be processed quickly by a Store and Delivery Person. Once an order is in process, it may not be changed without the consent of the Store and Delivery Person where applicable.
 - **Surcharge.** Cancelled orders may incur a surcharge. Customers are encouraged to check Berkeley Bowl Produce's current statement of fees and cancellation policies.
- **Store Pricing.** Stores are required to provide up-to-date and accurate pricing to Customers through the Platform. If the product has already been purchased and delivered to the Customer (or is in the process of delivery by the Delivery Person), then the Store agrees to abide by the pricing then published on the Platform.
- **Store Inventory and Offers.** The Services monitor inventory data to ensure its accuracy before uploading to the Platform and after uploading while it is being showcased to Customers but some items may still be unavailable even if the Services indicate the item is available. Berkeley Bowl Produce may change or terminate any of the services, programs, promotions, and/or other offers, deals, coupons, and/or specials (collectively, "Offerings") described or offered through the Platform at any time without notice to you. Not all products are available at all of our Stores or for online ordering or at all times. Some or all of the Offerings or products may not be available in your location (or your delivery or preferred pickup location). You shall not misuse or reproduce Offerings, such as by creating multiple accounts to use the same Offering.
- **Customer Specifications.** When purchasing a product, Customers have the option to make comments & specifications (i.e., "large ripe tomatoes please") and also replacement options (i.e., 'If no organic free trade shade-grown bird-friendly coffee, then regular organic coffee'). Stores and Delivery Persons will use reasonable efforts to read and attempt to fulfill Customer comments and specifications, but Berkeley Bowl Produce makes no guarantees regarding the fulfillment of such comments and specifications. Customers agree to be reasonable with

Delivery Persons and Stores in all parties' requests. Please note that any request is subject to availability.

- **Communications.** Berkeley Bowl Produce may provide your contact information to a particular Store or Delivery Person solely for the purposes of communication regarding a transaction or order. The Store and/or Delivery Person is responsible for maintaining the privacy of your contact information, including but not limited to refraining from selling the contact information or using it for future promotional purposes.
 - By agreeing to this Agreement, you agree that all communications from us relating to your use of or access to the Platform may be provided or made available to you electronically by email, "in-Platform" messaging or by posting a communication on the Platform or via text or phone as set forth below. Your consent to receive communications and do business electronically, and our agreement to do so, applies to all your interactions and transactions with us and our agents concerning your Platform usage and access.
 - For purposes of the Services operations or a specific transaction, you agree to receive text messages and phone calls at the phone number provided to the Services, and also emails to the email address provided to the Services, and also written correspondence to the address provided to the Services. Such communications may be sent by Berkeley Bowl Produce and its Third-Party Service Providers and Delivery Persons. You will not be able to use the Services without agreeing to receive such communications.
 - For purposes of promotional communications, you may opt-out of promotional communications from Berkeley Bowl Produce at any time. Otherwise, you may receive text messages, emails, or written communications to the contact information provided.
 - For text messages, you can limit your receipt of push notifications by adjusting the settings of your mobile device. We may send four or fewer text messages per month, unless otherwise noted at the time of opt-in. You may opt out of receiving text messages at any time by replying "STOP" to the message. You may receive one confirming text. Message and data rates may apply.
 - For email messages, we may send ten or fewer email messages per month. You may opt-out of email messages at any time by following the instructions in the email.
- **Off-Platform Links.** The Services may contain links to third party websites and services, such as recipe providers, DoorDash or GrubHub or other delivery partners. Berkeley Bowl Produce is not responsible for and does not specifically endorse or accept any responsibility for the contents or use of these third-party websites. Berkeley Bowl Produce provides these links as a convenience only, and the inclusion of any link does not imply endorsement by Berkeley Bowl Produce. It is each party's responsibility to take precautions to ensure that whatever they select for their own use is suitable for their own needs and free of viruses or other harmful items.

- **Delivery Fees.** The Customer acknowledges that delivery fees will apply as will be displayed in your account and checkout.
- **Tips.** Customers are free and encouraged to give monetary tips to Delivery Persons. Such tips are solely the income of the Delivery Person and are not received or accounted in any manner by the Services or Stores.
- **User Submissions.** Except where expressly provided otherwise by Berkeley Bowl Produce, all comments, feedback, information or content submitted to the Services through or in association with the Services (“Submissions”) shall be considered non-confidential, and Berkeley Bowl Produce shall be free to use such Submissions on an unrestricted basis or as provided by an agreement with Berkeley Bowl Produce.
 - Each party making Submissions grants Berkeley Bowl Produce a royalty-free, perpetual, irrevocable, transferable, sublicensable, worldwide, nonexclusive license under all rights necessary to incorporate and use the Submissions for any reasonable purpose.
- **Nonpayments.** If payment for purchases on a Customer’s account is delinquent, your account information may be sent to a collection agency / debt collector and you may be subject to a collection action, and payment of collection related fees and costs. If you have questions regarding an outstanding balance on your account, please contact us.
- **Delivery.**
 - The Customer is responsible for providing the Delivery Person with access to the Customer’s designated delivery location. Delivery Persons are entitled to rely upon their reasonable interpretation of the description of the Customer’s delivery location.
 - If a Customer requires delivery to a person at a location, then the Delivery Person may only drop off the goods with a person at Customer’s designated location. If a person is not present at the designated delivery location when the Delivery Person arrives to complete the delivery, then the Delivery Person may either (1) attempt to contact the Customer to schedule delivery at a later time, or (2) return the order to the Store so that Customer can pick up at Customer’s earliest opportunity within a reasonable time – and in either case, Berkeley Bowl Produce reserves the right to charge the Customer the full amount of the Order, along with a redelivery surcharge.
 - If a Customer allows drop-off to an unmanned location, then the Delivery Person may drop off the goods at the Customer’s designated location. Delivery Person may take a photo of the dropped off order and upload to the Services for Customer’s convenience as proof of delivery.
 - Berkeley Bowl will use reasonable efforts to have deliveries made by the dates and times indicated in the Services for a particular order. Otherwise, delivery times are governed by general standards of reasonableness.
 - If goods are damaged in transit, the party that assumes the risk of damaged goods is Berkeley Bowl Produce, provided that (i) if the damage is apparent at the time of delivery, the damage is identified by the Customer at the time of delivery by the Customer notifying the Delivery Person or (ii) if the damage is not apparent at the time of delivery but after unpacking the delivery, Customer promptly notifies Berkeley Bowl Produce.

- **Intellectual Property.** All information, documents, logos, graphics, images, software and other materials provided on this Platform is the intellectual property of Berkeley Bowl Produce, and third parties where applicable, (“Content”). All trademarks, service marks, logos, trade names and trade dresses in or on the Platform, whether registered or unregistered, are proprietary to Berkeley Bowl Produce. You may not use, reproduce, or otherwise display any such trademarks, service marks, logos, trade names or trade dresses without the prior written consent of Berkeley Bowl Produce or the appropriate owner thereof. There are no implied rights. Except as permitted herein or otherwise agreed in writing, Content on the Services may not be copied, republished, mirrored, or transmitted without the express written permission of Berkeley Bowl Produce and/or the applicable third party. Where access is permitted, Berkeley Bowl Produce grants you permission to display, copy, download, and distribute for informational purposes the Content provided to you, so long as the appropriate copyright attribution is given to Berkeley Bowl Produce and/or applicable third parties. See the contact information below if you have any questions about such access or attribution. This permission terminates automatically if you breach any of terms of this Agreement. Upon termination, you agree to immediately delete or discard any downloaded Content in your possession. Except where expressly allowed herein by Berkeley Bowl Produce and/or the applicable third party, nothing on the Services shall be construed to confer any license or sale under any of Berkeley Bowl Produce’s or any of third party’s intellectual property rights. Parties utilizing the Services acknowledge sole responsibility for obtaining any such licensure rights through the appropriate channels. Please see the contact information below if you have any questions about obtaining licenses from Berkeley Bowl Produce.
- **Disclaimers.**
 - THE PLATFORM AND THE SERVICES ARE PROVIDED “AS IS,” AND BERKELEY BOWL PRODUCE DISCLAIMS ALL EXPRESS AND IMPLIED REPRESENTATIONS, WARRANTIES, AND GUARANTEES, TO THE FULLEST EXTENT ALLOWED BY LAW, INCLUDING WITHOUT LIMITATION WITH REGARD TO TIMELINESS, SECURITY, QUALITY, AVAILABILITY, SUITABILITY, ACCURACY, AND COMPLETENESS. THIS DISCLAIMER APPLIES ALSO TO CONTENT, SERVICE, AND CONSUMER PRODUCTS PROVIDED BY OTHER PARTIES.
 - BERKELEY BOWL PRODUCE RELIES UPON STORES AND CONSUMER PRODUCT LABELS TO PROVIDE ACCURATE DIETARY INFORMATION, ALLERGEN WARNINGS, AND GENERAL PRODUCT SAFETY INFORMATION AND DOES NOT ACTUALLY WARRANT THAT ANY SUCH INFORMATION IS ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE. RATHER, ALL CONTENT IS ONLY PROVIDED FOR INFORMATIONAL PURPOSES. THE RELIANCE ON ANY INFORMATION PROVIDED THROUGH BERKELEY BOWL PRODUCE IS SOLEY AT THE RISK OF PERSONS USING OR OTHERWISE HANDLING THE CONSUMER PRODUCTS.
 - BERKELEY BOWL PRODUCE DOES NOT ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY CONSUMER PRODUCT, AND BERKELEY BOWL PRODUCE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN CUSTOMERS OR THIRD PARTIES.
 - DELIVERY PERSONS ARE SOLELY RESPONSIBLE FOR MANAGING THEIR OWN VEHICLES, AND TRAVELLING PROPERLY, SAFELY, AND SECURELY. BERKELEY BOWL PRODUCE DOES

NOT ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY DELIVERY PERSON, AND BERKELEY BOWL PRODUCE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY DELIVERY SERVICE.

- **Limitation of Liability.** TO THE FULLEST EXTENT ALLOWED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL BERKELEY BOWL PRODUCE BE LIABLE TO YOU, ANY PARTY OR TO ANY OTHER PERSON FOR LOSS OF PROFITS, LOSS OF GOODWILL, PUNITIVE DAMAGES, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR NEGLIGENCE OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOSS OF DATA, COMPUTER OR NETWORK FAILURE OR MALFUNCTION, OR FOR ANY OTHER DAMAGE OR LOSS. IN NO EVENT SHALL BERKELEY BOWL PRODUCE'S TOTAL LIABILITY EXCEED THE CUSTOMER'S COST OF THE ORDER AT ISSUE, OR \$500, WHICHEVER IS LESS.
- **ASSUMPTION OF RISK AND RELEASE OF LIABILITY.** CUSTOMERS UNDERSTAND THAT BY USING DELIVERY PERSONS, THEIR ITEMS MAY BE EXPOSED TO SITUATIONS THAT ARE POTENTIALLY DANGEROUS, HARMFUL, UNSAFE OR OTHERWISE OBJECTIONABLE, AND THAT THE CUSTOMER CHOOSES TO USE THE SERVICES AND ENGAGE DELIVERY PERSONS AT THEIR OWN RISK. EACH PARTY EXPRESSLY WAIVES AND RELEASES BERKELEY BOWL PRODUCE FROM ANY AND ALL LIABILITY, CLAIMS OR DAMAGES ARISING FROM OR IN ANY WAY RELATED TO DELIVERY PERSONS. BERKELEY BOWL PRODUCE DOES NOT INDEPENDENTLY VERIFY OR ASSESS THE CHARACTER, SKILL, QUALITY, OR SAFETY OF DELIVERY PERSONS NOR DOES BERKELEY BOWL PRODUCE INDEPENDENTLY VERIFY OR ASSESS THE LEGALITY OF THE CONSUMER PRODUCTS PROVIDED BY STORES. BERKELEY BOWL PRODUCE IS NOT RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF DELIVERY PERSONS. BERKELEY BOWL PRODUCE WILL NOT BE A PARTY TO DISPUTES OR NEGOTIATIONS OF DISPUTES, BETWEEN CUSTOMERS, DELIVERY PERSONS, OR THIRD PARTIES. EACH PARTY ASSUMES RESPONSIBILITY FOR THEIR OWN CONDUCT, AND FULLY ASSUMES THE RISK OF THEIR OWN DECISIONS. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS:
 - 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.
- **Electronic Commercial Service.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding Berkeley Bowl Produce.
- **Legal Compliance.** It is each party's responsibility to use the Services solely for lawful purposes. In this respect a party may not, without limitation (a) intercept or monitor any equipment that is not their own; (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, damage, unreasonably delete or disassemble Content, the Platform or the Services ; (c) cause or intend to cause unfair embarrassment or distress to, or to unfairly threaten, harass, or harm anyone. Berkeley Bowl Produce operates this

Platform from California and makes no representation that the Content is available for use outside the United States of America. If a party accesses this Platform from another location, it is by their own initiative and it is their own responsibility to comply with the laws of their jurisdiction, as well as any applicable import/export laws.

- **Indemnification.** You ('Responsible Party') shall defend and indemnify Berkeley Bowl Produce and its agents (at Berkeley Bowl Produce's option) against any allegation, claim, lawsuit ("Claim") made or brought against Berkeley Bowl Produce by another party or a third party arising out of the Responsible Party's use of the Platform or Services, including, without limitation, arising out of violation of this Agreement, violation of an intellectual property right, breach of contract, negligence, willful misconduct, or crime. Such indemnity shall cover any damages awarded against Berkeley Bowl Produce, and for reasonable attorney's fees incurred by Berkeley Bowl Produce, in connection with any such Claim; provided, that Berkeley Bowl Produce promptly gives Responsible Party written notice of the Claim. Where Responsible Party provides defense, Responsible Party shall have reasonable control of the defense and any settlement of the Claim (provided that Responsible Party may not settle any Claim without Berkeley Bowl Produce's advance written consent). Berkeley Bowl Produce reserves the right, at Berkeley Bowl Produce's expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification under this section (without limiting indemnification obligations hereunder) and the Responsible Party agrees to reasonably cooperate with Berkeley Bowl Produce's defense of that claim.
- **Updates and Amendments.** Berkeley Bowl Produce may make improvements and/or changes to the Services, and changes to the Content, at any time and without notice. Berkeley Bowl Produce may amend this Agreement upon 10-days advance written notice, which amendments shall be binding on all parties. If you do not agree with a change, your sole remedy is to cease using the Platform and the Services.
- **Complete Agreement.** This Agreement, together with any applicable written agreement between parties (i.e., Delivery Person Agreement between Berkeley Bowl Produce and a Delivery Person), and the Berkeley Bowl Produce [Privacy Notice](#), represent the entire agreement and general understanding relating to the use of the Services and supersede prior, contemporaneous, or additional communications. Berkeley Bowl Produce's current statement of fees may be amended from time to time in Berkeley Bowl Produce's discretion.
- **Legal Contact Information**

If you have any questions about this Agreement, or if you would like to request permission to use any Content, please contact us:

Berkeley Bowl Produce
920 Heinz Avenue
Berkeley, CA 94710
terms@berkeleybowl.com
- **Term.**
 - This Agreement shall take effect when you first use the Platform or when it is electronically accepted by a party, whichever is first.

- A party may terminate this Agreement at any time for any reason or for no reason upon 3-days advance notice, or immediately if the other party breaches the terms of this Agreement. Upon the giving of a termination notice, an account may be immediately suspended. Both parties agree that the opportunities presented by this Agreement constitute adequate consideration for such a termination right. Except as otherwise stated herein, neither party shall be responsible to the other for any costs or damages resulting from the termination of this Agreement.
- The provisions of this Agreement that by their nature extend beyond the applicable expiration date or other termination of this Agreement will survive and remain in effect until all obligations are satisfied.
- **Waiver.** Failure of Berkeley Bowl Produce to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the situation involved.
- **Validity of Provisions.** If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the invalidity or enforceability of this Agreement.
- **Force Majeure.** No party shall be liable to any other party for any failure or delay in performance of its obligations under this Agreement due to any force majeure, labor strike, adverse weather conditions, shortage of materials, pandemic, epidemic, quarantine, war, invasion, acts of a public enemy, governmental preemption in connection with a national emergency, riot, laws, rules, regulations or order of governmental or military authorities, or failure of the Internet.
- **Arbitration And Class Action Waiver.**

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

You and Berkeley Bowl Produce agree that this Agreement affects interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions.

This Section is intended to be interpreted broadly and governs any and all disputes between us, including but not limited to claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; claims that arose before this Agreement or any prior agreement (including, but not limited to, claims related to advertising); and claims that may arise after the termination of this Agreement. The only disputes excluded from this broad prohibition are the litigation of certain intellectual property and small court claims, as provided below.

By agreeing to this Agreement, you agree to resolve any and all disputes with Berkeley Bowl Produce as follows:

Initial Dispute Resolution: Most disputes can be resolved without resort to litigation. You can reach Berkeley Bowl Produce's support department at Legal@Berkeleybowl.com. Except for intellectual property and small claims court claims, the parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with the Berkeley Bowl Produce support

department, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration.

Binding Arbitration: If the parties do not reach an agreed-upon solution within a period of thirty (30) days from the time informal dispute resolution is initiated under the Initial Dispute Resolution provision above, then either party may initiate binding arbitration as the sole means to resolve claims, subject to the terms set forth below. Specifically, all claims arising out of or relating to this Agreement (including the Privacy Notice's formation, performance, and breach), the parties' relationship with each other, and/or your use of the Platform or the Services shall be finally settled by binding arbitration administered by JAMS in accordance with the JAMS Streamlined Arbitration Procedure Rules for claims that do not exceed \$250,000 and the JAMS Comprehensive Arbitration Rules and Procedures for claims exceeding \$250,000 in effect at the time the arbitration is initiated, excluding any rules or procedures governing or permitting class actions. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of this Agreement or the Privacy Notice, including but not limited to any claim that all or any part of this Agreement or Privacy Notice is void or voidable, whether a claim is subject to arbitration, or the question of waiver by litigation conduct. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written and shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. To start an arbitration, you must do the following: (a) write a Demand for Arbitration that includes a description of the claim and the amount of damages you seek to recover (you may find a copy of a Demand for Arbitration at www.jamsadr.com); (b) send three copies of the Demand for Arbitration, plus the appropriate filing fee, to JAMS; and (c) send one copy of the Demand for Arbitration to Berkeley Bowl Produce at Attn: Legal; Legal@Berkeleybowl.com.

To the extent the filing fee for the arbitration exceeds the cost of filing a lawsuit, Berkeley Bowl Produce will pay the additional cost. If the arbitrator finds the arbitration to be non-frivolous, Berkeley Bowl Produce will pay the fees invoiced by JAMS, including filing fees and arbitrator and hearing expenses. You are responsible for your own attorneys' fees unless the arbitration rules and/or applicable law provide otherwise.

The parties understand that, absent this mandatory arbitration provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

If you are a resident of the United States, arbitration may take place in the county where you reside at the time of filing. For individuals residing outside the United States, arbitration shall be initiated in the State of California, United States of America, and you and Berkeley Bowl Produce agree to submit to the personal jurisdiction of any federal or state court in Alameda County, California in order to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

Class Action Waiver: The parties further agree that the arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. YOU AND Berkeley Bowl Produce AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS USER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. If any

court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

Exception: Litigation of Intellectual Property and Small Claims Court Claims: Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring enforcement actions, validity determinations or claims arising from or relating to theft, piracy or unauthorized use of intellectual property in state or federal court or in the U.S. Patent and Trademark Office to protect its intellectual property rights ("intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

30-Day Right To Opt Out: You have the right to opt out and not be bound by the arbitration and class action waiver provisions set forth above by sending (from the email address you use on Berkeley Bowl Produce) written notice of your decision to opt out to Berkeley Bowl Produce ---Attn: Legal; Legal@Berkeleybowl.com with the subject line, "ARBITRATION AND CLASS ACTION WAIVER OPT-OUT." The notice must be sent within thirty (30) days of your first use of the Services; otherwise, you shall be bound to arbitrate disputes in accordance with the terms of those paragraphs. If you opt out of these arbitration provisions, Berkeley Bowl Produce will not be bound by them.

Changes To This Section: Berkeley Bowl Produce will provide thirty (30) days' notice of any changes to this section by posting on the Platform, sending you a message, or otherwise notifying you when you are logged into your account. Amendments will become effective thirty (30) days after they are posted on the Platform or sent to you.

Changes to this section will otherwise apply prospectively only to claims arising after the thirtieth (30th) day. If a court or arbitrator decides that this subsection on "Changes to This Section" is not enforceable or valid, then this subsection shall be severed from the section entitled "Arbitration and Class Action Waiver," and the court or arbitrator shall apply the first Arbitration and Class Action Waiver section in existence after you began using the Services.

Survival: This Arbitration and Class Action Waiver section shall survive any termination of your account or cessation of use of the Platform or the Services.

- **California Residents.**

If you are a California resident, you may have this Agreement mailed to you electronically by sending a letter to Legal@Berkeleybowl.com with your email address and a request for the Agreement. In addition, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at 1-800-952-5210 in order to resolve a complaint regarding the Platform or to receive further information regarding use of the Platform.