

# Terms of Service - Desert Romance Picnics

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The following Terms of Service (**Terms**) govern the terms on which Desert Romance Picnics ABN 73 432 403 592 (the **Service Provider**) agrees to provide the Services (as defined below) to you (the **Client**). If you are agreeing to these Terms on behalf of someone or entity, you represent and warrant that that you have the irrevocable authority and agreement of that person or entity to be bound by these Terms.

By using this website [desertromancepicnics.com.au](http://desertromancepicnics.com.au) (**Website**), or by placing a booking request or by giving your acceptance to these Terms, you agree to be bound by these Terms. If you don't agree to be bound by these Terms, you must not use the Website or Services.

These Terms may be updated by the Service Provider from time to time. Each booking request placed on the Website will be a separate contract and the Terms that apply to a booking will be the version of the Terms that is on the Website at the time you place your booking request. Each time you use the Website you should revisit these Terms.

These Terms and each accepted booking request, together with any other terms we provide to you, set out the terms of our offer to provide Services to you and constitutes our agreement.

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## 1. DEFINITIONS

1.1 In these Terms unless inconsistent with the context or subject matter:

- (a) **ACL:** means the Australian Consumer Law (as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth)).
- (b) **Address for Service:** a party's email address or such other address for service advised by the party to the other party in writing from time to time.
- (c) **Applicable Laws:** any laws governing or affecting the arrangements contemplated by these Terms.
- (d) **Corporations Act:** the Corporations Act 2001 (Cth).
- (e) **Fees:** any fees payable by the Client to the Service Provider under these Terms.
- (f) **Force Majeure Event:** events, circumstances or causes beyond a party's reasonable control including (but not limited to):
  - i) strikes, lock-outs or other industrial action;
  - ii) civil commotion, riot, invasion, cyber-attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
  - iii) fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic, health emergencies, disease, or other natural disaster;
  - iv) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
  - v) interruption or failure of utility services (including the inability to use public or private telecommunications networks); and
  - vi) the acts, decrees, legislation, regulations or restrictions of any government agency, however, does not include a lack of funds.
- (g) **Government Agency:** any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
- (h) **GST:** has the meaning given to it in the GST Law.
- (i) **GST Law:** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (j) **Insolvency Event:**
  - i) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;

- ii) a liquidator or provisional liquidator is appointed in respect of a person;
  - iii) any application (that is not withdrawn or dismissed within seven days is made to a court for an order, or an order is made, or a meeting is convened or a resolution is passed, for the purpose of (i) appointing a person referred to in paragraph (i) or (ii) of this definition; (ii) winding up or deregistering a person; or (iii) proposing or implementing a scheme of arrangement of a person, other than with the prior approval of the Agent under a scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
  - iv) any action, proceedings, procedure or step is taken for the purpose of implementing or agreeing (i) a moratorium of any indebtedness of a person; (ii) any other composition, compromise, assignment or arrangement with any creditor or creditors of a person; or (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of its creditors or a trustee;
  - v) any event occurs in relation to a person in any jurisdiction that is analogous, or has a substantially similar effect, to those set out in paragraphs (i) to (iv) of this definition (inclusive); or
  - vi) a person is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.
- (k) **Intellectual Property Rights:** all intellectual property (IP) rights of any kind, in any jurisdiction, subsisting now or in the future (including business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.
  - (l) **Loss:** any loss, liability, cost, charge, expense, tax, duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).
  - (m) **Personnel:** the directors, officers, employees, contractors, suppliers, advisers or agents of a party.
  - (n) **Services:** has the meaning given to it under clause 2.1.
  - (o) **State:** Northern Territory, Australia.

1.2 In these Terms the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:

- (a) Headings and subheadings are for convenience only and do not affect the interpretation of these Terms.
- (b) References to clauses, schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the schedules, annexures, appendices, attachments and exhibits to, these Terms.
- (c) References to parties are references to the parties to these Terms.
- (d) References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.
- (e) Words denoting the singular include the plural and words denoting the plural include the singular.
- (f) Words denoting any gender include all genders.
- (g) The word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any government agency.

- (h) A reference to a body (other than a party to these Terms), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions.
- (i) A reference to any agreement or document (including these Terms) includes any amendments to or replacements of that document.
- (j) A reference to a law includes:
  - i) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
  - ii) any constitutional provision, treaty or decree;
  - iii) any judgment;
  - iv) any rule or principle of common law or equity,
 and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts.
- (k) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.
- (l) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.
- (m) No provision of these Terms will be construed adversely to a party because that party was responsible for the preparation of that provision or these Terms.
- (n) If a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (o) A reference to time is a reference to time in the capital city of the State.
- (p) A reference to a day is a reference to a day in the capital city of the State.
- (q) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (r) If any act is required to be performed under these Terms by a party on or by a specified day and the act is performed after 5.00 pm on that day, the act is deemed to be performed on the next day.
- (s) If any act is required to be performed under these Terms on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.
- (t) A reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.
- (u) Specifying anything in these Terms after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.
- (v) Where these Terms is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- (w) These Terms includes all schedules, annexures, appendices, attachments and exhibits to it.
- (x) A reference to writing or written includes email.
- (y) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

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## 2. SERVICES AND BOOKINGS

- 2.1 The Service Provider offers picnic booking services (referred to as the **Services**), which the Client is able to submit a booking request online through the Website. Booking requests may

be placed online via the Website or by other means approved by the Service Provider from time to time. Any references to Website in these Terms shall include references to such other locations in which the Services are made available to be booked.

- 2.2 The information and details of the Services, including any catering offered are as displayed on the Website at the time the Client places their booking request and as confirmed by the Service Provider.
- 2.3 The booking will run from the start time as specified in the request and will continue for the duration of the booking as set out on the Website.
- 2.4 Any booking request placed through the Website is an offer by the Client to engage the Service Provider to provide the Services. Booking requests will not be binding on the Service Provider until such time as the Service Provider has indicated its acceptance.
- 2.5 Any Fees stated on the Website are provided on the basis of the information current to the Service Provider at the date of the booking request. The Service Provider reserves the right to increase the Fees set out in a booking request where applicable in accordance with these Terms. Any accepted booking request will be governed by these Terms.
- 2.6 All bookings are subject to availability and any terms and conditions as stated on the Website or otherwise notified by the Service Provider to the Client. If, for any reason the Service Provider is unable to proceed with the supply, the Service Provider reserves the right to cancel the Services (and issue a refund for the cancelled Services if applicable).
- 2.7 In the event that the Client books the Services on behalf of a third party, the Client represents and warrants that it has made that third party aware of these Terms and acknowledges and agrees that actions of that third party shall also be attributed to the Client for the purposes of these Terms.
- 2.8 The Client must be at least 18 years of age and capable of entering legally binding contracts under Applicable Laws to book any Services.

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### **3. PRICES & PAYMENT TERMS**

#### **3.1 Fees**

- (a) The Fees payable and payment terms for the Services are as set out on the Website at the time the Client submits their booking request.
- (b) Unless otherwise specified on the Website, the Client must pay all Fees upfront at the time of booking.
- (c) Prices and payment terms are subject to change in accordance with the other provisions of these Terms.
- (d) The Client must make payment via a method accepted by the Service Provider as set out on the Website, including credit card, bank transfer or cash (as applicable).
- (e) The Service Provider reserves the right to vary the fees payable, even after the Client has received a booking confirmation, in the event of variations to the Services requested by the Client.

#### **3.2 Default in payment**

In the event the Client fails to pay the Fees or other charges when due in full in cleared funds in accordance with these Terms, the Service Provider may at its discretion:

- (a) require the Client to pay the Service Provider interest on all outstanding monies from the due date until the date of payment at the rate of 12% per annum accruing daily;
- (b) refuse to supply any further part of the Services to the Client until all outstanding monies, including any accrued interest, is paid in full; or
- (c) terminate these Terms whereupon the full price for the Services then supplied, whether or not the time for payment under these Terms has arrived, will be immediately due and payable.

#### **3.3 General**

- (a) The Service Provider's payment provider may charge the Client a fee depending on the payment method used by the Client (for example, payments made by credit card may attract a small surcharge). The Client agrees to pay such fees at the same time as payment is made to the Service Provider, even if such fees are not explicitly disclosed on the Website.
- (b) The Client acknowledges and agrees that they are solely responsible for ensuring that it has read and understood any applicable third party terms and conditions when using the Website. The Service Provider will not be liable for any loss or damage suffered by the Client in connection with such third party terms, regardless of whether the Service Provider has brought them to the Client's attention or not. The Client is solely responsible for obtaining a copy of and reviewing such third party terms.
- (c) The Service Provider is not a party to any transaction between the Client and a third party. For example, if the Client incurs a debt to a third party payment provider in connection with a booking through the Website, the Client is solely liable for that debt.
- (d) The Client must make all payments without set-off or counterclaim. Payment of any fees is not dependent on receipt of a tax invoice.
- (e) Prices shown on the Website are in Australian Dollars (AUD) and include GST, unless otherwise stated.
- (f) The Client will also pay to the Service Provider, on demand, on a full indemnity basis, all amounts that the Service Provider may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis) as a result of the Client defaulting on any of these Terms.
- (g) It is the Client's responsibility to obtain at its own cost an Uluru Kata Tjuta National Park entry ticket for each person participating in the Services for the date of booking and prior to the commencement of the Services. In the event that you are unable or unwilling to purchase National Park entry tickets then you will be unable to enter the park and obtain the benefit of the Services. You are not entitled to any refund of the fees paid to us in this case.

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#### **4. CANCELLATION AND CHANGES TO BOOKINGS**

- 4.1 Once a booking for a Service has been placed or confirmed, the following cancellation terms apply:
  - (a) If the cancellation request is received by us in writing more than 30 days prior to the booking date, you will receive a full refund less a \$100 administrative fee which we will retain from the amount paid; and
  - (b) If the cancellation request is received by us 30 days or less prior to the booking date, no refund of any fees paid will be given.
- 4.2 If you arrive after the scheduled start time of your booking, the Services will continue until the allocated end time of your booking and the end time will not be extended.
- 4.3 There are no refunds (in part or whole) if you are unable to attend the Services or if you arrive late and are unable to experience the benefit of your booking in whole (for example if any food spoils). There are no refunds in the event that you do not enjoy the experience or it does not go to plan (e.g. a proposal is not accepted).
- 4.4 The Service Provider reserves the right to make changes to the Services which are necessary to comply with Applicable Laws, government agency requests or safety requirements.
- 4.5 The Service Provider reserves the right, at any time prior to the start date/time of the booking to cancel the booking where the Service Provider believes that there is an error in any booking placed, such as an error in the price, or if the Services are not available. Where the Service Provider cancels the booking under this clause, then a full refund will be provided to the Client for the fees paid for that booking. This is the sole remedy for the Client, and the Service Provider will not be liable for any Loss in this respect.

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## **5. CLIENT DUTIES AND RESPONSIBILITIES**

### **5.1 General**

- (a) The Client must promptly provide all information and assistance reasonably required by the Service Provider in order for the Service Provider to provide the Services as soon as possible on being requested to do so. This includes, without limitation, being available to answer questions the Service Provider may have during the booking.
- (b) The Client must:
  - i) arrive at the schedule booking start time;
  - ii) ensure that any participants are suitably informed on the risks involved and are aware of their obligations under these Terms;
  - iii) return any equipment hired out to the Client on the completion of the booking in good working order; and
  - iv) return the picnic grounds where the Services have taken place in good condition as at the start time of the booking.
- (c) All baggage and personal belongings are solely at the Client's risk. The Client is solely responsible for the safe keeping and security of its personal belongings. The Service Provider will not be liable to the Client for any Loss or damage to any of its personal belongings.
- (d) The Client assumed responsibility for the acts and omissions of any participants that they invite to the Services.

### **5.2 Costs**

The Client will be responsible for any costs incurred by the Service Provider in cleaning any picnic grounds, or for any fines, penalties, levies or charges payable as a result of any act or omission of the Client (including the Client's use).

### **5.3 Obligations during the picnic**

- (a) The Client must (and must ensure that the other participants of the Services):
  - i) dispose of waste property;
  - ii) respect wildlife, and not interfere with any flora or fauna;
  - iii) be considerate to other visitors;
  - iv) not damage any third party property;
  - v) not behave in any manner which is unsafe or dangerous; and
  - vi) comply with any rules of the park at which the Services are to take place.

### **5.4 Picnic equipment**

- (a) The Service Provider will hire out the picnic equipment to the Client as required for the booking for the duration of the booking period.
- (b) The Client must take care of any picnic equipment and not cause any loss or damage to such equipment. The Client will be responsible for the replacement costs of any damage to any picnic equipment.

### **5.5 Compliance with Laws**

The Client acknowledges and agrees that it will not by receiving or requesting the Services:

- (a) breach any Applicable Laws, rules and regulations (including any applicable privacy laws); or
- (b) infringe the rights of any third party or breach any duty of confidentiality.

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## **6. RELATIONSHIP**

6.1 The parties acknowledge that:

- (a) the Service Provider is engaged by the Client as an independent contractor and nothing in these Terms creates or constitutes a relationship of employer and employee, trustee and beneficiary or of partnership or joint venture between the parties; and
- (b) the Service Provider is free to provide its services to third parties during the term of these Terms.

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## **7. INSURANCE**

- 7.1 The Client acknowledges that neither it nor any of its Personnel are entitled to the benefit of any accident, third party, public liability or indemnity policies of insurance or any workers compensation policies which may be in force for the benefit or protection of the Service Provider's employees.

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## **8. REPRESENTATIONS AND WARRANTIES**

- 8.1 Each party represents and warrants to the other that:
- (a) it has full authority to enter into these Terms and is not bound by any agreement with any third party that adversely affects these Terms; and
  - (b) it has and will maintain throughout the term of these Terms, all necessary powers, authority and consents to enter into and fully perform its obligations under these Terms.
- 8.2 Each party will immediately notify the other party if any of the foregoing representations and warranties cease to be true during the term of these Terms.

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## **9. DELEGATION AND SUBCONTRACTING**

- 9.1 The Service Provider may subcontract, delegate and/or perform the Services through any other party competent to perform that Service.
- 9.2 The Service Provider will use reasonable endeavours to ensure that such persons comply with the provisions of these Terms, however a breach by such persons of these Terms will not be deemed a breach by the Service Provider.

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## **10. DISCLAIMER**

### **10.1 General**

- (a) The Service Provider provides the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. The Client relies on the Services and any information or guidance provided by the Service Provider to the Client throughout the provision of the Services (**Information**) at its own risk.
- (b) Without limiting clause 10.1 the Client acknowledges and agrees that:
  - i) although reasonable care has been taken to provide accurate Information, the Service Provider is unable to guarantee that any Information or content provided by the Service Provider is accurate, complete, reliable, current and/or error free. The Client should verify the accuracy of any information provided before relying on it;
  - ii) all pictures and images of ingredients or menu items displayed on the Website are for illustrative purposes only (portion sizing may differ); and/or
  - iii) the Service Provider does not provide any guarantee of results or any particular outcome and does not guarantee that the result of the Services will be performed to the Client's satisfaction and/or taste preferences.

### **10.2 Allergies & Ingredients**

- (a) It is the Client's sole responsibility to inform the Service Provider of any allergens it has. No allergen or nutritional information provided by the Service Provider or stated on the Website should ever be considered a guarantee, but simply a good faith effort to serve the Service Provider's customers. The Service Provider will not be liable for adverse reactions to food consumed or other items an individual may come into contact with whilst eating any of the items prepared by the Service Provider.
- (b) With respect to menu items and ingredients, the Client acknowledges and agrees that:
  - i) ingredients are supplied and manufactured by third parties unrelated to the Service Provider, the Service Provider does not manage or control those third party suppliers or their ingredients and are not responsible for their marketing, labels, packaging or otherwise;

- ii) information about menu items and ingredients is provided to the Service Provider by third party suppliers and the Service Provider cannot and does not, guarantee the completeness, accuracy, currency or reliability of such information;
- iii) no allergen or nutritional information provided by the Service Provider or a third party should ever be considered a guarantee, and the Service Provider will not be liable for any Loss arising in connection with adverse reactions to food or drink consumed or other items the Client may come into contact with in connection with the Services. For the avoidance of doubt, the Service Provider does not guarantee that the menu items will not cause adverse food reactions when consumed;
- iv) any nutrient information labelled on the items or otherwise displayed by the Service Provider on the Website are provided by a third party and the Service Provider is not liable for such;
- v) although the Service Provider takes reasonably commercial attempts to identify the ingredients that may cause allergic reactions or adverse effects:
  - A. allergen information provided is based entirely on information provided by third party suppliers and as such there is a risk that their information is incorrect or they change the formulation without notice;
  - B. some items may contain soy, milk, eggs, nuts and cereals containing gluten present in the manufacturing environment, and there may be cross contact with products because of shared cooking and food preparation equipment. Given that this information as well as the items are provided by third party suppliers the Service Provider does not and cannot guarantee that any of the menu items are safe to consume for people with soy, milk, egg, nut or gluten allergies. Clients with food allergies must be aware of this risk. Clients who have any form of medical condition, food intolerances or food allergies should consult with a medical professional before consuming any of the ingredients;
- vi) given the nature of the ingredients, being provided by third parties, the Service Provider does not and is unable to guarantee that any food or drink is safe to consume, and the Client consumes such at its own risk. The Service Provider accepts no responsibility in this respect.

### **10.3 Survival**

This disclaimer applies to the fullest extent permitted by law and shall survive any termination or expiration of these Terms.

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## **11. INDEMNITY**

- 11.1 Each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) against, and holds the Indemnified Party harmless from, any Losses (including any direct, indirect, special or consequential Losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Indemnified Party arising out of or in connection with:
- (a) the Indemnifying Party's breach or negligent performance or non-performance of these Terms;
  - (b) any illegal practices that the Indemnifying Party or the Indemnifying Party's Personnel performs or engages;
  - (c) the enforcement of these Terms against the Indemnifying Party; and
  - (d) any act, omission or wilful misconduct of the Indemnifying Party or the Indemnifying Party's Personnel (including any negligent act or omission).

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## **12. THIRD PARTY SERVICES**

- 12.1 Notwithstanding any other clause in these Terms, the Service Provider will only be responsible for defects in the Services that the Service Provider supplies. To the extent



permitted by law the Service Provider will not be liable for or required to provide any remedy for any services carried out by third parties.

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### **13. LIMITATION OF LIABILITY**

- 13.1 Subject to the other terms of this clause, each party's maximum aggregate liability to the other party for any Loss or damage or injury arising out of or in connection with these Terms, including any breach by that party of these Terms however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the total Fees and other charges paid or payable by the Client to the Service Provider under these Terms.
- 13.2 Nothing in these Terms are intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Service Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- 13.3 If the Service Provider is liable to the Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, the Service Provider's total liability to the Client for that failure is limited to, at the option of the Service Provider, the resupply of the Services or the payment of the cost of resupply.
- 13.4 Without limitation to the other terms of this clause, each party excludes any liability to the other, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Terms.
- 13.5 Notwithstanding anything else in this clause, each party's liability will be reduced to the extent the loss or damage is caused by or contributed to by the other party or their Personnel.

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### **14. TERMINATION**

#### **14.1 Termination with cause**

In addition to such rights set out under these Terms, either party (the non-defaulting party) may terminate these Terms with immediate effect by giving written notice to the other party if:

- (a) the other party suffers an Insolvency Event; or
- (b) the other party commits a breach of any term of these Terms and either:
  - i) the breach is irremediable; or
  - ii) the breach is remediable, and the other party fails to remedy that breach within a period of 30 days after the other party has, or is deemed to have, received written notice requesting it to do so.

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### **15. CONSEQUENCES OF TERMINATION**

- 15.1 On termination or expiry of these Terms:
- (a) each party must promptly deliver to the other all property belonging to the other that is in its possession or control, including any intellectual property;
  - (b) the Client must immediately pay to the Service Provider all amounts payable to the Service Provider (including amounts that are payable but not due), and the Service Provider may invoice the Client with respect to the Services performed up to the date of termination but not yet invoiced and such invoice shall be payable immediately on receipt; and
  - (c) no refunds of amounts paid in respect of the period post termination or expiry will be provided.
- 15.2 Termination or expiry of these Terms does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of these Terms which existed at or before the date of termination or expiry.

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## **16. INTELLECTUAL PROPERTY**

### **16.1 Materials**

- (a) The Client acknowledges that the Service Provider will retain all rights, title and interest (including all Intellectual Property Rights) which subsist in or which may be obtained from:
- i) the Website;
  - ii) the Services including any recipes, methods and other documentations or materials provided during the provision of the Services; and
  - iii) any additional or further intellectual property created, formulated or discovered by either party in connection with the Services (including any developments, improvements, revisions and updates to the Services) whether or not the Service Provider and/or Client contributed to them, and whether or not the addition was at the direction or suggestion of the Client (for example if the Client suggests adding an ingredient to a recipe),
- (collectively referred to as the **Materials**)
- (b) Subject to the payment of the fees and to the extent that the Service Provider owns the Materials, the Service Provider grants to the Client a limited, non-exclusive, revocable, non-transferable, non-sublicensable nor assignable licence to use the Intellectual Property Rights in such Materials solely to the extent required to benefit from the Services.

### **16.2 Survival**

This clause survives termination of these Terms.

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## **17. REVIEWS AND OTHER SUBMISSIONS**

- 17.1 If the Client submits a review or other material to the Service Provider, the Client grants the Service Provider a non-exclusive, royalty-free, perpetual, irrevocable and fully sub-licensable right to use, reproduce, modify, adapt, publish, translate and create derivative works from, distribute and display such content throughout the world in any media.
- 17.2 The Client represents and warrants that it owns or otherwise controls all the rights to that material and that at the date of submissions:
- (a) the material is accurate; and
  - (b) the material does not breach any Applicable Laws.

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## **18. FORCE MAJEURE**

- 18.1 The Service Provider will not be in breach of these Terms or liable to the Client for any Loss incurred by the Client as a direct result of the Service Provider failing or being prevented, hindered or delayed in the performance of its obligations under these Terms where such prevention, hindrance or delay results from a Force Majeure Event.
- 18.2 If a Force Majeure Event occurs, the Service Provider must notify the Client in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.
- 18.3 On providing the notice above, the Service Provider will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, the Service Provider must continue to use all reasonable endeavours to perform those obligations.
- 18.4 Subject to the other terms of this clause, the performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

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## **19. NON-DISPARAGEMENT**

- 19.1 Each party (and its Personnel) must not by any method including on social media anywhere in the world:

- (a) make any public or private statement, public or comment, whether oral or in writing, which in the reasonable opinion of the other party, is adverse to the interest, reputation or commercial standing of or is in any respect a disparaging remark or representation about the other party (and its Personnel); or
- (b) make any public or private statement that is false and does or has the tendency to damage the reputation of the other party (and its Personnel).

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## **20. NOTICES**

- 20.1 All notices authorised or required under these Terms to be given by a party to the other shall be in writing sent by email or delivered personally or sent by pre-paid registered post and in each case addressed to the other party at that party's Address for Service or as the case may be at such other address as a party may from time to time notify to the other.
- 20.2 The following shall constitute proof of receipt:
  - (a) proof by posting by registered post; or
  - (b) proof of dispatch by email.
- 20.3 Receipt of a notice given under these Terms will be deemed to occur:
  - (a) in the case of a communication sent by pre-paid registered post, on the third business day after posting;
  - (b) in the case of an email, on the business day immediately following the day of dispatch.
- 20.4 If a notice is sent via post, it must also be sent via email.

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## **21. GENERAL**

### **21.1 Assignment**

Any rights of a party that arise out of or under these Terms are not assignable or capable of novation by that party without the prior written consent of the other party, whose consent must not be unreasonably withheld.

### **21.2 No Waiver**

No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with these Terms unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

### **21.3 Severability**

If the whole or any part of a provision of these Terms are or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

### **21.4 No Merger**

On completion or termination of these Terms, the rights and obligations of the parties set out in these Terms will not merge and any provision that has not been fulfilled remains in force.

### **21.5 Survival**

Any clause which by its nature is intended to survive termination or expiry of these Terms will survive such termination or expiry.

### **21.6 Further Action**

Each party must do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to give full effect to these Terms and the transactions contemplated by these Terms.

### **21.7 Time of the Essence**

Time is of the essence in these Terms in respect of any date or time period and any obligation to pay money.

**21.8 Remedies Cumulative**

Except as provided in these Terms and permitted by law, the rights, powers and remedies provided in these Terms are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of these Terms.

**21.9 Entire agreement**

These Terms states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

**21.10 Governing Law and Jurisdiction**

- (a) These Terms is governed by the law in force in the State.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms.