

Terms

Welcome to FoodCircles. To use our Site, you must agree to our Terms of Use – please read the Terms of Use carefully - we value your trust and loyalty and need a consistent set of rules to fairly and respectfully ensure that the Site is used properly. If you have any questions about these Terms of Use email us at support@foodcircles.net.

These Terms of Use were last updated on May 4, 2012.

ACCEPTANCE OF TERMS OF USE

FoodCircles, LLC. (“**FoodCircles**” or “**us**” or “**our**”) operates this website, www.foodcircles.net, the mobile versions and any individual sites or restaurant-specific, city-specific, or other area-specific sites we have now or in the future. The website and links contained within or otherwise available through external hyperlinks within our Site (“**microsites**”) will be collectively referred to as the “**Site**” in these Terms of Use. By using our Site and FoodCircles’ services through the Site, you (“**you**” or, “**End User**”) agree to these Terms of Use, our Privacy Statement, and any additional terms applicable to certain programs in which you may elect to participate or with respect to any microsite, as any of the same may exist from time to time (collectively, the “**Terms of Use**” or “**Agreement**”). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, IMMEDIATELY STOP ACCESSING THE SITE AND DO NOT USE ANY SERVICE OFFERED THROUGH THE SITE.

1. Permitted Uses

The Site provides an interactive online service operated by FoodCircles, consisting primarily of promotion and marketing services on behalf of certain restaurants (“**Restaurants**”), making vouchers for Restaurant goods and services (“**vouchers**”) available to its users. Vouchers may be created by FoodCircles account holders and exchanged for goods and services from the issuing Restaurants or other parties identified in the terms of the offer and subject to the Terms of Sale set forth below. As a condition of your use of this Site, you agree that:

- You are an individual person at least 18 years of age;
- You possess the authority to create a binding legal obligation;
- Your use of this Site will at all times comply with the terms of this Agreement;
- If you elect to create an account:
 - You may create only one account for your personal use;
 - You may only make legitimate claims at Restaurants that comply with the letter and spirit of the terms of the respective offers;
 - You must safeguard your password and supervise the use of your account, and understand and agree that you are responsible for your own use and the use of your account by anyone you allow to access it.
- You have the right to provide any and all information you submit to the Site, the information is only about yourself, and all such information is accurate, true, current and complete.

2. Availability of the Site

You acknowledge that there may be interruptions in service or events that are beyond our control. While we use reasonable efforts to keep the Site accessible, the Site may be unavailable from time to time for any reason including, without limitation, routine maintenance. You understand and acknowledge that due to circumstances both within and outside of our control Site access may be interrupted, suspended or

terminated. FoodCircles retains the right at our sole discretion to deny service, or access to the Site to anyone or an account, at any time and for any reason.

3. Ownership of the Site

The content and information on this Site as well as the infrastructure used to provide both, is proprietary to us or our Restaurants and other partners. You agree not to modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell or re-sell any information, software, products or services obtained from or through the Site.

4. Transmission of Information

Because we do not control the security of the Internet or other networks you use to access the Site or communicate with us, we can't be, and are not responsible for, the security of information that you choose to communicate with FoodCircles and the Site while it is being transmitted. In addition, FoodCircles is not responsible for any data lost during transmission.

5. Your Conduct on our Site

Our Site is private property. All interactions on this Site must be lawful and must comply with these Terms of Use. To the extent your conduct (as judged by us in our sole discretion), restricts or inhibits any other user from using or enjoying any part of this Site, we may limit your privileges on the Site and seek other remedies. PLEASE DO NOT ENGAGE IN ANY OF THE FOLLOWING ACTIVITIES, they are prohibited on the Site and constitute express violations of this Agreement:

- Submitting any purposely inaccurate information, committing fraud or falsifying information in connection with your FoodCircles account or in order to create multiple FoodCircles accounts;
- Attempting to, or actually accessing data not intended for you, such as logging into a server or an account which you are not authorized to access;
- Attempting to scan, or test the security or configuration of the Site or to breach security or authentication measures without proper authorization;
- Tampering or interfering with the proper functioning of any part, page or area of the Site and any and all functions and services provided by FoodCircles;
- Attempting to interfere with service to any user in any manner, including, without limitation, by means of submitting a virus to our Site, or attempts at overloading, "flooding", "spamming", "mail bombing" or "crashing" the Site;
- Using the Site or any of its contents to advertise or solicit, for any other commercial, political or religious purpose, or to compete, directly or indirectly with FoodCircles;
- Reselling or repurposing your access to the Site or any obtains made through the Site;
- Using the Site or any of its resources to solicit Site End Users, Restaurants or other business partners of FoodCircles to become users or partners of other online or offline services directly or indirectly competitive or potentially competitive with FoodCircles, including without limitation, aggregating current or previously offered deals;
- Using any End User or Restaurant information from the Site for any commercial purpose, including, but not limited to, marketing;
- Exceeding or attempting to exceed quantity limits when creating or downloading vouchers or otherwise using any FoodCircles account to obtain vouchers for resale, or for speculative, false, fraudulent or any other purpose not expressly permitted by this Agreement and the terms of a specific offer on the Site;
- Accessing, monitoring or copying any content or information from this Site using any robot, spider, scraper or other automated means or any manual process for any purpose without our express written permission;

- Violating the restrictions in any robot exclusion headers on this Site or bypassing or circumventing other measures employed to prevent or limit access to this Site;
- Taking any action that places excessive demand on our services, or imposes, or may impose an unreasonable or disproportionately large load on our servers or other portion of our infrastructure (as determined in our sole discretion);
- Aggregating any live or post-feature content or other information from the Site (whether using links or other technical means or physical records associated with vouchers obtainable through this Site) with material from other sites or on a secondary site without our express written permission.
- Deep-linking to any portion of this Site (including, without limitation, the voucher path for any voucher) without our express written permission;
- Acting illegally or maliciously against the business interests or reputation of FoodCircles, our Restaurants or our services; or
- Hyperlinking to the Site from any other website without our initial and ongoing consent.

6. Creating an Account on our Site

If you create an account on our Site, you may only create and hold one account that you are solely responsible for managing. Your account is non-transferrable and may not be sold, combined or otherwise shared with any other person. If you violate any of these limitations we may terminate your account and, without limitation, you may forfeit any pending, current or future promotional account credits and any unredeemed vouchers in your account. If we terminate your account, you may not re-enroll or join under a new account unless we formally invite you. If you commit fraud or falsify information in connection with your use of the Site or in connection with your FoodCircles account, your account will be terminated immediately and we reserve the right to hold you liable for any and all damages that we suffer, to pursue legal action through relevant local and national law enforcement authorities and to notify your Internet Service Provider of any fraudulent activity we associate with you or your use of the Site.

7. Terms of Sale

Vouchers you create through our Site as a FoodCircles account holder are special promotional offers that you use at participating Restaurants through our service. The vouchers are redeemable for certain goods, services or experiences offered by, or facilitated through, the Restaurant identified on the voucher. The Restaurant is solely responsible for redeeming the voucher. The Restaurant is the issuer of the voucher and is fully responsible for all goods and services it provides to you and for any and all injuries, illnesses, damages, claims, liabilities and costs (“**Liabilities**”) it may cause you to suffer, directly or indirectly, in full or in part, whether related to the use or redemption of a voucher or not. You waive and release FoodCircles and its subsidiaries, affiliates, partners, officers, directors, employees and agents from any Liabilities arising from or related to any act or omission of a Restaurant in connection with your use of a voucher or the services/goods it provides in connection with it.

By obtaining any voucher you agree to the terms of this Agreement and these Terms of Sale. By purchasing, viewing a mobile version, printing, accepting, using or attempting to use any voucher, you agree to these Terms of Sale specifically (“**rules**”) the terms on the voucher itself and any additional, deal specific terms advertising the voucher at the time of obtain (collectively, the “***fine print***” regardless of how labeled). These rules apply to all promotional vouchers that we make available, unless a particular voucher’s fine print states otherwise, and except as otherwise required by law. In the event of a conflict between these rules and a voucher’s fine print, the voucher’s fine print will control.

FoodCircles is a service provider for the Restaurant identified on the voucher and the Restaurant is the sole issuer of the voucher. Vouchers have their own terms of use, which may be obtained from the respective Restaurant. Unauthorized or unlawful reproduction, resale, modification or trade of vouchers is prohibited.

- Additional terms applicable to FoodCircles vouchers. A **“FoodCircles voucher”** is any promotional voucher created through the FoodCircles service, redeemable immediately for various goods or services. The promotional value of a FoodCircles voucher will EXPIRE at the time specified on the voucher. There are no refunds of any kind given to expired vouchers. If a FoodCircles voucher is printed or viewed in mobile but not actually redeemed with the restaurant, the End User must wait for the availability to obtain a new voucher. The promotional value of a FoodCircles Now! voucher may not be combined with other offers and no portion of its value is intended to cover tax or gratuity.

8. Catering

FoodCircles’s Catering program (**“Catering”**) is a free service where you may register a future dining event, to be located at a restaurant or other space, where we will reach out to gather offers from restaurants desiring to serve your event. Nothing can be guaranteed using this service, and the End User uses it at their own risk.

FoodCircles reserves the right at any time to modify or discontinue the Catering Program either temporarily or permanently (or any part thereof) with or without notice. FoodCircles will not be liable to you in the event of any modification, suspension or discontinuance of the Catering Program.

9. Modification of this Agreement

We reserve the right at all times to discontinue or modify any part of this Agreement as we deem necessary or desirable. If we make changes that materially affect your use of the Site or our services we will notify you by sending you an e-mail to the e-mail address that is registered with your account and/or by posting notice of the change on the Site. Any changes to these Terms of Use will be effective upon the earlier of our dispatch of an e-mail notice to you or our posting of notice of the changes on our Site, provided that, these changes will not apply to vouchers obtained prior to the effective date of such changes. These changes will be effective immediately for new users of our Site and for all vouchers obtained after the effective date of the change. We suggest that you revisit our Terms of Use from time to time to ensure that you stay informed of any such notifications of changes to the Site. Your use of the Site after we update these Terms of Use will constitute acceptance of the modified Terms of Use.

We also reserve the right to change or discontinue any aspect or feature of our services or the Site including, but not limited to, requirements for access or use.

11. Copyright and Trademarks.

Everything located on or in this Site is the exclusive property of FoodCircles or is being used with permission. ANY COPYING, DISTRIBUTING, TRANSMITTING, POSTING, LINKING, DEEP LINKING, OR OTHERWISE MODIFYING OF THIS SITE OR ANY OF THE MICROSITES WITHOUT THE EXPRESS WRITTEN PERMISSION OF FOODCIRCLES IS PROHIBITED. Any violation of this requirement may result in a copyright, trademark or other intellectual property right infringement that may subject you to civil and/or criminal penalties.

This Site and any Microsite contains copyrighted material, trademarks and other proprietary information, including, but not limited to, text, software, photos, video, graphics, music and sound, and the entire contents of the Site are protected by copyright as a collective work under the United States copyright laws. FoodCircles owns a copyright in the selection, coordination, arrangement and enhancement of such content, as well as in the content original to it. You may not modify, publish, transmit, participate in the transfer or sale, create derivative works, or in any way exploit any of the content, in whole or in part. You may download, print, and/or save copyrighted material for your personal use only. Except as otherwise expressly stated under copyright law, no copying, redistribution, retransmission, publication or commercial

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12. Copyright Policy and Digital Millennium Copyright Act (DMCA) Procedures.

FoodCircles reserves the right to terminate its agreement with you or any other End User who infringes third-party copyrights.

If you believe that any material has been posted via the Site by an End User in a way that constitutes copyright infringement, you shall provide FoodCircles with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyrighted work; (b) an identification of the copyrighted work and the location on the Site of the allegedly infringing work; (c) a written statement that you have a good faith belief that the disputed use is not authorized by the owner, its agent, or the law; (d) your name and contact information, including telephone number and e-mail address; and (e) a statement by you that the above information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or authorized to act on the copyright owner's behalf.

Contact information for FoodCircles's DMCA Agent for notice of claims of copyright infringement is:

FoodCircles, Inc. Attn: Copyright Agent 600 W Chicago Ave Chicago, IL 60610 dmca@FoodCircles.net

13. Unsolicited Ideas

We do not accept or consider, directly or through any FoodCircles employee or agent, unsolicited ideas of any kind, including without limitation, ideas or suggestions relating to new or improved products, enhancements, names or technologies, advertising and marketing campaigns, plans or other promotions. Do not send us (or any of our employees) any unsolicited ideas, suggestions, material, images or other work in

any form (“**unsolicited materials**”). If you send us unsolicited materials, you understand and agree that the following terms will apply, notwithstanding any cover letter or other terms that accompany them:

- FoodCircles has no obligation to review any unsolicited materials, nor to keep any unsolicited materials confidential; and
- FoodCircles will own, and may use and redistribute unsolicited materials for any purpose, without restriction and free of any obligation to acknowledge or compensate you.

14. Disclaimer of Warranty.

YOU EXPRESSLY AGREE THAT USE OF THIS SITE IS AT YOUR SOLE RISK. NEITHER FOODCIRCLES, ITS SUBSIDIARIES AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, RESTAURANTS, THIRD-PARTY CONTENT PROVIDERS OR LICENSORS, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, WARRANT THAT USE OF THE SITE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO (I) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THIS SITE, OR (II) THE ACCURACY, COMPLETENESS, RELIABILITY OR CONTENT OF ANY INFORMATION (INCLUDING, BUT NOT LIMITED TO, PRODUCT DESCRIPTIONS), SERVICE, PRODUCTS OR VOUCHERS PROVIDED THROUGH THIS SITE. THE SITE AND ALL CONTENT, STATEMENTS (AS DEFINED BELOW) AND OTHER INFORMATION CONTAINED ON THE SITE, AND PRODUCTS AND SERVICES ACCESSIBLE OR AVAILABLE THROUGH THE SITE ARE MADE ACCESSIBLE OR AVAILABLE ON AN “AS IS” AND “AS AVAILABLE” BASIS. FOODCIRCLES HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SITE OR THE CONTENT, STATEMENTS OR OTHER INFORMATION CONTAINED ON THE SITE, OR THE PRODUCTS OR SERVICES ACCESSIBLE OR AVAILABLE THROUGH THE SITE, INCLUDING, BUT NOT LIMITED TO, THOSE OF TITLE NONINFRINGEMENT, RESTAURANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

15. Limitation of Liability.

IN NO EVENT SHALL FOODCIRCLES, ITS SUBSIDIARIES, AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, RESTAURANTS, PARTNERS, THIRD-PARTY CONTENT PROVIDERS OR LICENSORS, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO YOUR USE OF THE SITE, THE CONTENT, STATEMENTS AND OTHER INFORMATION CONTAINED THEREIN, THE PRODUCTS OR SERVICES ACCESSIBLE OR AVAILABLE THROUGH THE SITE OR THESE TERMS OF USE. IN NO EVENT WILL FOODCIRCLES’S LIABILITY IN CONNECTION WITH A VOUCHER OR A PRODUCT OR SERVICE EXCEED THE AMOUNTS PAID FOR SUCH VOUCHER, PRODUCT OR SERVICE. TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY YOU DURING THE SIX MONTHS PRECEDING THE BRINGING OF ANY CLAIM, OR FIVE HUNDRED DOLLARS, WHICHEVER IS LESS.

16. Arbitration.

We will make every reasonable effort to resolve any disagreements that you have with FoodCircles. If those efforts fail, by using this Site you agree that any claim, dispute, or controversy you may have against FoodCircles arising out of, relating to, or connected in any way with this Agreement this Site or the obtain or sale of any voucher(s), shall be resolved exclusively by final and binding arbitration administered by the American Arbitration Association (“AAA”) and conducted before a single arbitrator pursuant to the applicable Rules and Procedures established by AAA (“Rules and Procedures”). You agree further that: (a)

the arbitration shall be held at a location determined by AAA pursuant to the Rules and Procedures (provided that such location is reasonably convenient for you), or at such other location as may be mutually agreed upon by you and FoodCircles; (b) the arbitrator shall apply Illinois law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized at law; (c) there shall be no authority for any claims to be arbitrated on a class or representative basis; arbitration can decide only your and/or FoodCircles's individual claims; and the arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated; (d) in the event that you are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, FoodCircles will pay as much of your filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive; and (e) with the exception of subpart (c) above, if any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the Rules and Procedures established by AAA, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. If, however, subpart (c) is found to be invalid, unenforceable or illegal, then the entirety of this Arbitration Provision shall be null and void, and neither you nor FoodCircles shall be entitled to arbitrate their dispute.

17. End User Communications

FoodCircles in some instances allows you and other End Users to use the Site to express opinions and communicate through forums, bulletin boards, discussion groups, chat rooms or other communication facilities that may be offered on or through the Site from time to time (collectively **"Communities"**). FoodCircles shall have the right, but not the obligation, to monitor the content within the Communities at any time, for any reason, including to determine compliance with this Agreement and any operating rules established by FoodCircles, as well as to satisfy any applicable law, regulation or authorized government request. Without limiting the foregoing, FoodCircles shall have the right, but not the obligation, to remove any material from the Communities that FoodCircles, in its sole discretion, finds to be in violation of this Agreement or otherwise objectionable. Any opinions, advice, ratings, discussions, comments, and/or other messages or postings of any kind made by you or any other End User to the Communities (collectively, **"Statements"**), are those of the respective author(s) or distributor(s) and not of FoodCircles.

18. Websites of Others

The Site contains links to websites maintained by other parties. These links are provided solely as a convenience to you and not because we endorse or have an opinion about the contents on such websites. We expressly disclaim any representations regarding the content or accuracy of materials on such websites or the privacy practices of those websites. If you decide to access websites maintained by other parties, you do so at your own risk

19. Public Nature of Your Statements.

You understand and agree that all Statements are public and not private. Any other person (whether or not a user of FoodCircles's services) may read your Statements without your knowledge. Please do not include any Personal Information (as defined in our Privacy Statement) in your Statements. FoodCircles does not control or endorse any Statement found in any part of the Communities, and we specifically disclaim any liability concerning the Statements and the Communities and any actions resulting from your participation in any part of the Communities, including any objectionable content. Any and all Statements you post to our Site are not confidential.

20. License Grant.

By posting Statements or other information on or through the Communities, you grant FoodCircles a royalty-free, perpetual, irrevocable, non-exclusive license to use, reproduce, modify, publish, edit, translate,

distribute, perform, and display the Statements alone or as part of other works in any form, media, or technology whether now known or hereafter developed without territorial or time limitations, and to sublicense such rights through multiple tiers of sublicensees. Your license of any Statements or information submitted above extends to use for promotions, advertising, market research or any other lawful purpose, without limitation.

21. Indemnification/Release.

You agree to defend, indemnify and hold harmless FoodCircles, its subsidiaries, affiliates and their respective directors, officers, employees and agents from and against all claims and expenses, including attorneys' fees, arising out of or related to any products or services obtained by you in connection with the Site or any use of the Site in violation of these Terms.

You are solely responsible for your interactions with Restaurants and other users of the Site. To the extent permitted under applicable laws, you hereby release FoodCircles from any and all claims or liability related to any product or service of a Restaurant, any action or inaction by Restaurant, including Restaurant's failure to comply with applicable law and/or failure to abide by the terms of a FoodCircles, and any conduct or speech, whether online or offline, of any other user.

22. Termination.

FoodCircles may terminate these Terms of Use at any time. Without limiting the foregoing, FoodCircles shall have the right to immediately terminate or suspend any of your passwords or accounts in the event FoodCircles considers, in its sole discretion, any of your conduct to be unacceptable, or in the event you breach this Agreement. Notwithstanding the above, these Terms of Use will survive termination of this Agreement.

23. Choice of Law.

Any disputes arising out of or related to these Terms of Use and/or any Use by you of the Site or FoodCircles's services shall be governed by the internal laws of the State of Illinois, without regard to its choice of law rules and without regard to conflicts of laws principles except that the Arbitration provision shall be governed by the Federal Arbitration Act.

24. Additional Disclosures.

No waiver by either you or FoodCircles of any breach or default or failure to exercise any right allowed under this Agreement is a waiver of any preceding or subsequent breach or default or a waiver or forfeiture of any similar or future rights under our Agreement. The section headings used herein are for convenience only and shall be of no legal force or effect. If a court of competent jurisdiction holds any provision of our Agreement invalid, such invalidity shall not affect the enforceability of any other provisions contained in this Agreement, and the remaining portions of our Agreement shall continue in full force and effect.