

InstaDrink-US LLC

User Guidelines – Terms of Service

1. Contractual Relationship

These Terms of Use ("Terms") govern your access or use, from within the United States and its territories and possessions, of the applications, websites, content, products, and services (the "Services," as more fully defined below in Section 3) made available in the United States and its territories and possessions by InstaDrink-US LLC and its parents, subsidiaries, representatives, affiliates, officers and directors (collectively, "InstaDrink").

Please read these terms carefully, as they constitute a legal agreement between you and InstaDrink.

In these Terms, the words "including" and "include" mean "including, but not limited to."

By accessing or using the Services, you confirm your agreement to be bound by these Terms. If you do not agree to these Terms, you may not access or use the Services. These Terms expressly supersede prior agreements or arrangements with you. InstaDrink may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

Important: Please review the Arbitration Agreement set forth below carefully, as it will require you to resolve disputes with InstaDrink on an individual basis through final and binding arbitration. By entering this Agreement, you expressly acknowledge that you have read and understand all of the terms of this Agreement and have taken time to consider the consequences of this important decision.

Supplemental terms may apply to certain Services, such as policies for a particular event, program, activity or promotion, and such supplemental terms will be disclosed to you in separate disclosures in connection with the applicable Service(s). Supplemental terms are in addition to, and shall be deemed a part of, the Terms for the purposes of the applicable Service(s). Supplemental terms shall prevail over these Terms in the event of a conflict with respect to the applicable Services.

InstaDrink may amend the Terms from time to time. Amendments will be effective upon InstaDrink's posting of such updated Terms at this location or in

the amended policies or supplemental terms on the applicable Service(s). Your continued access or use of the Services after such posting confirms your consent to be bound by the Terms, as amended. If InstaDrink changes these Terms after the date you first agreed to the Terms (or to any subsequent changes to these Terms), you may reject any such change by providing InstaDrink written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to our registered agent for service of process, c/o InstaDrink-US, LLC (the name and current contact information for the registered agent in each state are available online at www.InstainDrink.com), or (b) by email from the email address associated with your Account to: Contact@InstainDrink.app. In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to these Terms. By rejecting changes, you are agreeing that you will continue to be bound by the provisions of these Terms as of the date you first agreed to the Terms (or to any subsequent changes to these Terms). InstaDrink's collection and use of personal information in connection with the Services is described in InstaDrink's Privacy Policy and made available on the InstaDrink Website or within the InstaDrink App.

2. Arbitration Agreement

Any dispute, whether contractual or otherwise, arising out of or in connection with this Agreement or these dispute resolution procedures, including any question regarding its existence, performance, validity, or termination, will be referred to and finally resolved by arbitration administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures (the "*JAMS Rules*"), which are deemed to be incorporated by reference into this clause. The parties agree that the arbitrator ("*Arbitrator*"), and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Agreement, including any claim that all or any part of this Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether this Agreement is unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel. In the event of a dispute, controversy or claim arising out of or relating in any way to this Agreement, the complaining party shall notify the other party in writing thereof. Within thirty (30) days of such notice, representatives of both parties shall attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining party shall seek remedies exclusively through arbitration. Furthermore, the parties agree:

- i) A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the JAMS Rules.
- ii) The seat, or legal place, of arbitration will be New York, New York (Manhattan), USA or the JAMS location closest to the complaining party's place of business.
- iii) The language to be used in the arbitral proceedings will be English.
- iv) The arbitral tribunal will be composed of a sole arbitrator, which shall be nominated and appointed by JAMS in accordance with the JAMS Rules.
- v) To the extent permitted by applicable law, the parties agree to keep all materials related to the dispute, including the existence of the dispute itself, content of the arbitration, and all the submissions by the parties in the arbitration and awards rendered by the arbitral tribunal, confidential.
- vi) This agreement to arbitrate will not preclude the parties from seeking provisional remedies from a court of competent jurisdiction. The parties each retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.
- vii) Neither party may bring any class, collective, or representative action against the other party, and will preclude a party from participating in or recovering relief under any current or future class, collective, consolidated, or representative action brought against the other party by someone else.
- viii) Each party shall pay its own proportionate share of Arbitrator fees and expenses plus and expenses of JAMS. The Arbitrator shall be entitled to award the foregoing arbitration and administrative fees and expenses as damages in his/her discretion.
- ix) Notwithstanding any choice of law or other provision in this Agreement, the parties agree and acknowledge that this Agreement evidences a transaction which may involve interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("*FAA*"), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties that the *FAA* and JAMS Rules shall preempt all state laws to the fullest extent permitted by law. If the *FAA* and JAMS Rules are found to not apply to any issue that arises under this Agreement or the enforcement thereof, then that issue shall be resolved under the laws of the state of New York.
- x) The Arbitrator's award will be final and binding and judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction

thereof, provided that any award may be confirmed in a court of competent jurisdiction.

3. The Services

The Services comprise mobile applications and related services (each, an "Application"), which enable users to purchase certain food and beverage items, including with third party providers of such services and goods under agreement with InstaDrink or certain of InstaDrink's affiliates ("Third Party Providers"). In certain instances the Services may also include an option to receive said food and beverage items for an upfront price, subject to acceptance by the respective Third Party Providers. Unless otherwise agreed by InstaDrink in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use. You acknowledge that your ability to obtain, order and pick-up said food and beverage items through the use of InstaDrink Services does not establish InstaDrink as a provider of these food or beverage items.

License.

Subject to your compliance with these Terms, InstaDrink grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to: (i) access and use the Applications on your personal device solely in connection with your use of the Services; and (ii) access and use any content, information and related materials that may be made available through the Services, in each case solely for your personal, noncommercial use. Any rights not expressly granted herein are reserved by InstaDrink and InstaDrink's licensors.

Restrictions.

You may not: (i) remove any copyright, trademark or other proprietary notices from any portion of the Services; (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by InstaDrink; (iii) decompile, reverse engineer or disassemble the Services except as may be permitted by applicable law; (iv) link to, mirror or frame any portion of the Services; (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Services or unduly burdening or hindering the operation and/or functionality of any aspect of the Services; or (vi) attempt to gain unauthorized access to or impair any aspect of the Services or its related systems or networks.

Provision of the Services.

You acknowledge that portions of the Services may be made available under InstaDrink's various brands or request options associated with food and beverage ordering and pick-up services, including the food and beverage ordering and pick-up brands currently referred to as "InstaDrink-US LLC," and "InstaDrink". You also acknowledge that the Services may be made available under such brands or request options by or in connection with: (i) certain of InstaDrink's subsidiaries and affiliates; or (ii) independent Third Party Providers.

Third Party Services and Content.

The Services may be made available or accessed in connection with third party services and content (including advertising) that InstaDrink does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third party services and content. InstaDrink does not endorse such third party services and content and in no event shall InstaDrink be responsible or liable for any products or services of such third party providers. Additionally, Apple Inc., Google, Inc., Microsoft Corporation or BlackBerry Limited will be a third-party beneficiary to this contract if you access the Services using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these devices is subject to terms set forth in the applicable third party beneficiary's terms of service.

Ownership.

The Services and all rights therein are and shall remain InstaDrink's property or the property of InstaDrink's licensors. Neither these Terms nor your use of the Services convey or grant to you any rights: (i) in or related to the Services except for the limited license granted above; or (ii) to use or reference in any manner InstaDrink's company names, logos, product and service names, trademarks or services marks or those of InstaDrink's licensors.

4. Access and Use of the Services

User Accounts.

In order to use most aspects of the Services, you must register for and maintain an active personal user Services account ("Account"). You must be at least 21 years of age, or the age of legal majority in your jurisdiction (if different than 21), to obtain an Account, unless a specific Service permits otherwise. Account registration requires you to submit to InstaDrink certain personal information,

such as your name, address, mobile phone number and age, as well as at least one valid payment method supported by InstaDrink. You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired payment method on file, may result in your inability to access or use the Services. You are responsible for all activity that occurs under your Account, and you agree to maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by InstaDrink in writing, you may only possess one Account.

User Requirements and Conduct.

The Service is not available for use by persons under the age of 21. You may not authorize third parties to use your Account, and you may not allow persons under the age of 21 to receive alcoholic beverages from Third Party Providers unless they are accompanied by you. You may not assign or otherwise transfer your Account to any other person or entity. You agree to comply with all applicable laws when accessing or using the Services, and you may only access or use the Services for lawful purposes (e.g., no transport of unlawful or hazardous materials). You may not in your access or use of the Services cause nuisance, annoyance, inconvenience, or property damage, whether to the Third Party Provider or any other party. In certain instances you may be asked to provide proof of identity or other method of identity verification to access or use the Services, and you agree that you may be denied access to or use of the Services if you refuse to provide proof of identity or other method of identity verification.

Text Messaging and Telephone Calls.

You agree that InstaDrink may contact you by telephone or text messages (including by an automatic telephone dialing system) at any of the phone numbers provided by you or on your behalf in connection with an InstaDrink account, including for marketing purposes. You understand that you are not required to provide this consent as a condition of purchasing any property, goods or services. You also understand that you may opt out of receiving text messages from InstaDrink at any time, either by texting the word "STOP" to _____ using the mobile device that is receiving the messages, or by contacting InstaDrink Customer Service. If you do not choose to opt out, InstaDrink may contact you as outlined in its User Privacy Policy.

User Provided Content.

InstaDrink may, in InstaDrink's sole discretion, permit you from time to time to submit, upload, publish or otherwise make available to InstaDrink through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, initiation of support requests,

and submission of entries for competitions and promotions ("User Content"). Any User Content provided by you remains your property. However, by providing User Content to InstaDrink, you grant InstaDrink a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and InstaDrink's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.

You represent and warrant that: (i) you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant InstaDrink the license to the User Content as set forth above; and (ii) neither the User Content, nor your submission, uploading, publishing or otherwise making available of such User Content, nor InstaDrink's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by InstaDrink in its sole discretion, whether or not such material may be protected by law. InstaDrink may, but shall not be obligated to, review, monitor, or remove User Content, at InstaDrink's sole discretion and at any time and for any reason, without notice to you.

Network Access and Devices.

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply if you access or use the Services from your device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and Applications and any updates thereto. InstaDrink does not guarantee that the Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

5. Payment

You understand that use of the Services may result in charges to you for the services or goods you receive ("Charges"). InstaDrink will receive and/or enable your payment of the applicable Charges for services or goods obtained through your use of the Services. Charges will be inclusive of applicable taxes where

required by law. Charges may include other applicable fees, and/or surcharges including processing fees for split payments.

All Charges and payments will be enabled by InstaDrink using the preferred payment method designated in your Account, after which you will receive a receipt by email. If your primary Account payment method is determined to be expired, invalid or otherwise not able to be charged, you agree that InstaDrink may use a secondary payment method in your Account, if available. Charges paid by you are final and non-refundable, unless otherwise determined by InstaDrink.

As between you and InstaDrink, InstaDrink reserves the right to establish, remove and/or revise Charges for any or all services or goods obtained through the use of the Services at any time in InstaDrink's sole discretion. Further, you acknowledge and agree that Charges applicable in certain Restaurant and Bar Establishments may increase substantially during times of high demand. InstaDrink will use reasonable efforts to inform you of Charges that may apply, provided that you will be responsible for Charges incurred under your Account regardless of your awareness of such Charges or the amounts thereof. InstaDrink may from time to time provide certain users with promotional offers and discounts that may result in different amounts charged for the same or similar services or goods obtained through the use of the Services, and you agree that such promotional offers and discounts, unless also made available to you, shall have no bearing on your use of the Services or the Charges applied to you. You may elect to cancel your request for Services at any time prior to the commencement of such Services, in which case you may be charged a cancellation fee on a Third Party Provider's behalf. After you have received services or goods obtained through the Service, you will have the opportunity to rate your experience and leave additional feedback. InstaDrink may use the proceeds of any Charges for any purpose, subject to any payment obligations it has agreed to with any Third Party Providers or other third parties.

In certain cases, with respect to Third Party Providers, Charges you incur may be owed directly to Third Party Providers, and InstaDrink will collect payment of those charges from you, on the Third Party Provider's behalf as their limited payment collection agent, and payment of the Charges shall be considered the same as payment made directly by you to the Third Party Provider.

You understand and agree that, while you are free to provide additional payment as a gratuity to any Third Party Provider who provides you with services or goods obtained through the Service, you are under no obligation to do so. Gratuities are voluntary.

6. Disclaimers; Limitation of Liability; Indemnity.

Disclaimer.

The Services are provided "As Is" and "As Available." InstaDrink disclaims all representations and warranties, express or implied, or statutory, not expressly set out in these terms, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. In addition, InstaDrink makes no representation, warranty or guarantee regarding the reliability, timeliness, quality, suitability, or availability of the Services or any Services or Goods requested through the use of the Services, or that the Services will be uninterrupted or error-free. InstaDrink does not guarantee the quality, suitability, safety or ability of Third Party Providers or their eating/drinking establishments. You agree that the entire risk arising out of your use of the Services, and any Service or Goods requested in connection therewith, remains solely with you, to the maximum extent permitted under applicable law.

Limitation of Liability.

InstaDrink shall not be liable for indirect, incidental, special, exemplary, punitive or consequential damages, including lost profits, lost data, personal injury or property damage related to, in connection with, or otherwise resulting from any use of the Services, regardless of the negligence (either active, affirmative, sole or concurrent), of InstaDrink, even if InstaDrink has been advised of the possibility of such damages.

InstaDrink shall not be liable for any damages, liability or losses arising out of: (i) your use of or reliance on the Services or your inability to access or use the Services; or (ii) any transaction or relationship between you and any third party provider, even if InstaDrink has been advised of the possibility of such damages. InstaDrink shall not be liable for delay or failure in performance resulting from causes beyond InstaDrink's reasonable control.

The Services may be used by you to request and schedule food and beverage for pick-up or restaurant consumption with Third Party Providers, but you agree that InstaDrink has no responsibility or liability to you related to any goods or pick-up services provided to you by Third Party Providers other than as expressly set forth in these terms.

The limitations and disclaimer in this section do not purport to limit liability or alter your rights as a consumer that cannot be excluded under applicable law. Because some states or jurisdictions do not allow the exclusion of or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, InstaDrink's liability shall be limited to the extent permitted by law.

This provision shall have no effect on InstaDrink's choice of law provision set forth below.

Indemnity.

You agree to indemnify and hold InstaDrink and its affiliates and their officers, directors, employees, and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with: (i) your use of the Services or services or goods obtained through your use of the Services; (ii) your breach or violation of any of these Terms; (iii) InstaDrink's use of your User Content; or (iv) your violation of the rights of any third party, including Third Party Providers.

7. Other Provisions

Choice of Law.

These Terms are governed by and construed in accordance with the laws of the State of New York, U.S.A., without giving effect to any conflict of law principles, except as may be otherwise provided in the Arbitration Agreement above or in supplemental terms applicable to your region. However, the choice of law provision regarding the interpretation of these Terms is not intended to create any other substantive right to non-New Yorkers to assert claims under New York law whether that be by statute, common law, or otherwise. These provisions, and except as otherwise provided in Section 2 of these Terms, are only intended to specify the use of New York law to interpret these Terms and the forum for disputes asserting a breach of these Terms, and these provisions shall not be interpreted as generally extending New York law to you if you do not otherwise reside in New York. The foregoing choice of law and forum selection provisions do not apply to the arbitration clause in Section 2 or to any arbitrable disputes as defined therein. Instead, as described in Section 2, the Federal Arbitration Act shall apply to any such disputes.

Claims of Copyright Infringement.

Claims of copyright infringement should be sent to InstaDrink's designated agent. See InstaDrink's website for additional information.

Notice.

InstaDrink may give notice by means of a general notice on the Services, electronic mail to your email address in your Account, telephone or text message to any phone number provided in connection with your account, or by written communication sent by first class mail or pre-paid post to any address connected with your Account. Such notice shall be deemed to have been given

upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email or telephone). You may give notice to InstaDrink, with such notice deemed given when received by InstaDrink, at any time by first class mail or pre-paid post to our registered agent for service of process, c/o InstaDrink-US LLC. The name and current contact information for the registered agent in each state are available online at InstaDrink's website.

General.

You may not assign these Terms without InstaDrink's prior written approval. InstaDrink may assign these Terms without your consent to: (i) a subsidiary or affiliate; (ii) an acquirer of InstaDrink's equity, business or assets; or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. No joint venture, partnership, employment, or agency relationship exists between you, InstaDrink or any Third Party Provider as a result of this Agreement or use of the Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law. InstaDrink's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by InstaDrink in writing. This provision shall not affect the Severability and Survivability section of the Arbitration Agreement of these Terms.

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