



Terms of Use

Effective Date: September 19, 2016.

[Download and/or print this Terms of Use \("Terms"\)](#)

Introduction

Please read these Terms carefully before using our websites and any online services, software or apps provided by Tijuana Flats Burrito Co., and/or its affiliates (collectively, "**Tijuana Flats**", "**we**", or "**us**" or "**our**") that post a link to these Terms (the "**Service**"). By visiting or otherwise using the Service in any manner, you agree to the then posted Terms and any applicable Additional Terms, to be bound by them, and that you have read and understood them. You also acknowledge, agree and consent to our data practices as described in our [Privacy Policy](#).

These Terms affect your legal rights, responsibilities and obligations and govern your use of the Service, are legally binding, limit Tijuana Flats' liability to you and require you to indemnify us and to settle certain disputes through arbitration. **If you do not wish to be bound by these Terms and any Additional Terms, do not use the Service and uninstall Service downloads and applications.**

Additional Terms

In some instances, additional or different terms, posted on the Service, apply to your use of certain parts of the Service (individually and collectively "**Additional Terms**"). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise. Further, we may link to third party licensees to operate Third-Party Services (defined below) that may be operated using our name and brand, whose own terms and privacy policies apply to those services. These include: [NuOrder](#); [VC Delivery](#); eQuantum.

Updates to these Terms and Additional Terms

We may prospectively change these Terms and Additional Terms by posting new or changed terms on the Service as more fully explained *in Section 12*.

Quick Links

We have summarized some (but not all) of the main topics of these Terms below. The complete provisions, and not the headings or summaries govern.

- **Grants and Limitations of Rights**
 - We only grant you a limited revocable license to use the Service subject to rules and limitations. *More in Section 1*
 - You grant us a broad license to the content you submit. *More in Section 2*

- Your use of our Service is subject to various restrictions designed to protect the Service and users. *More in Section 3*
- **Limitations on Your Remedies**
 - As permitted by applicable law,
 - We disclaim most warranties and provide the Service “As Is”. *More in Section 10*
 - Our liability is greatly limited. *More in Section 11*
 - Your equitable or injunctive relief rights are limited. *More in Section 9. D*
- **Dispute Resolution**
 - As permitted by law, you agree to arbitrate disputes and waive jury trial and class actions. *More in Section 9*
- **Availability of Service**
 - We may change or discontinue our Service, or your right to access it, in whole or in part. *More in Section 3. C. Our Service is intended for access from and use in the U.S.A. More in Section 13. D.*

1. OWNERSHIP AND YOUR RIGHTS TO USE THE SERVICE AND CONTENT.

- A. **Ownership.** The Service and all of its content (“**Content**”), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein (“**Intellectual Property**”), are owned or controlled by Tijuana Flats, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of Tijuana Flats, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. Tijuana Flats owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

The following are some of the service marks owned by Tijuana Flats: TIJUANA FLATS, GIVE HEAT A CHANCE, HOT IS THE NEW COOL, WELCOME TO OUR WORLD, LITTLE LIZARDS, MAKE IT A POWER LITE, OUTRAGEOUSLY FRESH, LET US ROLL YOU A FAT ONE, WHO SAYS SIZE DOESN'T MATTER, MAKE IT WET, JUST IN QUESO, TIJUANA BANGIN' CHICKEN BURRITO, FLAT HEADS, TIJUANA FLATS MORNIN' MUNCHIES, TIJUANA FLATS BURRITO CO., SHARE THE LOVE. FEEL THE BURN, 1 HOT CINCO, IT'S ALWAYS BETTER WET, HOT BAR TIJUANA FLATS BURRITO CO., SMACK MY ASS & CALL ME SALLY, CHET'S GONE MAD, DEATH PACK, GOING POSTAL, TAKE ME TO YOUR EATER, HOT BAR, BURRITO THURSDITO, NORRITO BOWL, TIJUANA TRIO, KEEPIN' IT FRESH!, THAT'S HOW WE ROLL, ROCK OUT WITH YOUR GUAC OUT. All rights reserved.

B. Your Rights to Use the Service and Content.

- (i) Your right to use the Service and content is subject to your strict compliance with these Terms and the Additional Terms. Your right to access and use the Service and the Intellectual Property shall automatically terminate upon any violations. These rights are

harassing, or abusive, or that violate any right of any third party or are otherwise objectionable to Tijuana Flats. Tijuana Flats reserves the right to suspend or prohibit linking to the Service for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third party; and

- (7) Use any other functionality expressly provided by Tijuana Flats on or through the Service for use by users, subject to these Terms (including, without limitation, functionality to create and/or post User-Generated Content (as defined below)) and any applicable Additional Terms.

C. **Rights of Others.** In using the Service, you must respect the intellectual property and rights of others and Tijuana Flats. Your unauthorized use of content may violate the rights of others and applicable laws, and may result in your civil and criminal liability. If you believe that your work has been infringed via the Service, see [Section 5](#) below.

D. **Reservation of all Rights Not Granted as to Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to use and access the Service and content. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED BY US AND OUR LICENSORS AND OTHER THIRD PARTIES. *Any unauthorized use of any content or the Service for any purpose is prohibited.*

2. CONTENT YOU SUBMIT

A. User-Generated Content.

- (i) **General.** Tijuana Flats may now, or in the future, offer users of the Service the opportunity to create, build, post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Service, or on or in response to our pages or posts on any third party platforms or in connection with any of our promotions by any media or manner, or otherwise submit to us (e.g., on our Facebook or other social media pages, in response to our tweets, through a sweepstakes or contest, or by otherwise sending it to us) (collectively, “**submit**”) messages, text, illustrations, files, images, graphics, photos, comments, responses, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, but excluding Tijuana Flats Licensed Elements included therein, “**User-Generated Content**” or “**UGC**”). Except to the extent of the rights and license you grant in these Terms and, subject to any applicable Additional Terms, you retain whatever legally cognizable right, title, and interest that you have in your UGC.

- (ii) **Non-Confidentiality of Your User-Generated Content.** Except as otherwise described in the Service’s posted [Privacy Policy](#), or any applicable Additional Terms, you agree that (a) your UGC will be treated as non-confidential and non-proprietary by us – regardless of whether you mark them “confidential,” “proprietary,” or the like – and will not be returned, and (b) to the maximum extent not prohibited by applicable law, Tijuana Flats does not assume any obligation of any kind to you or any third party with respect to your UGC. Upon request, you will provide documentation necessary to

will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section 2.A(iii).

- (iv) **Tijuana Flats 's Exclusive Right to Manage Our Service.** Tijuana Flats may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your UGC, and Tijuana Flats may, in its sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of UGC without notice or any liability to you or any third party in connection with our operation of UGC venues in an appropriate manner. Without limitation, we may do so to address content that comes to our attention that we believe is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable Additional Terms. Such UGC submitted by you or others need not be maintained on the Service by us for any period of time, and you will not have the right, once submitted, to access, archive, maintain, change, remove, or otherwise use such UGC on the Service or elsewhere, except that California minors have certain rights to have certain content about them that they have themselves posted on the Service prospectively removed from public display as provided for in the [Privacy Policy](#).
- (v) **Representations and Warranties Related to Your UGC.** Each time you submit any UGC, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside and are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any UGC you submit, and that, as to that UGC, (a) you are the sole author and owner of the intellectual property and other rights to the UGC, or you have a lawful right to submit the UGC and grant Tijuana Flats the rights to it that you are granting by these Terms and any applicable Additional Terms, all without any Tijuana Flats obligation to obtain consent of any third party and without creating any obligation or liability of Tijuana Flats; (b) the UGC is accurate; (c) the UGC does not and, as to Tijuana Flats' permitted uses and exploitation set forth in these Terms, will not infringe any intellectual property or other right of any third party; and (d) the UGC will not violate these Terms or any applicable Additional Terms, or cause injury or harm to any person.
- (vi) **Enforcement.** Tijuana Flats has no obligation to monitor or enforce your intellectual property rights to your UGC, but you grant us the right to protect and enforce our rights to your UGC, including initiating actions in your name and on your behalf (at Tijuana Flats' cost and expense, to which you hereby consent and irrevocably appoint Tijuana Flats as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).

B. Appropriate content and Alerting Us of Violations. We expect UGC to be appropriate for a general audience, but do not undertake to monitor it, and you consent to potentially encountering content you find offensive or inappropriate. We may include venue and content rules as Additional Terms. If you discover any content that violates these Terms or any applicable Additional Terms, then you may [report it here](#). For alleged infringements of intellectual property rights, see [Section 5](#).

3. SERVICE AND CONTENT USE RESTRICTIONS

- A. **Service Use Restrictions.** You agree that you will not: (i) use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Intellectual Property; (iii) engage in any activities through or in connection with the Service that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to Tijuana Flats ; (iv) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Service by any means whatsoever or modify any Service source or object code or any Software or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user’s access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, Tijuana Flats, or other users of the Service; (vi) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other content protection or access control measure) of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the content, or the UGC; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms or any applicable Additional Terms.
- B. **Content Use Restrictions.** You also agree that, in using the Service, you: (i) will not monitor, gather, copy, or distribute the content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, “bot”, spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other Intellectual Property and other notices contained in such content; (iv) will not use such content in a manner that suggests an unauthorized association with any of our or our licensors’ products, services, or brands; (v) will not make any modifications to such content (other than to the extent of your specifically permitted use of the Tijuana Flats Licensed Elements, if applicable); (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third party or on any third-party application or website, or otherwise use or exploit such content in any way for any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with the prior written consent of an officer of Tijuana Flats or, in the case of content from a licensor, the owner of the content; and (vii) will not insert any code or product to manipulate such content in any way that adversely affects any user experience or the service.
- C. **Availability of Service and Content.** Tijuana Flats, in its sole discretion without advance notice or liability, may immediately suspend or terminate the availability of the Service and/or

content (and any elements and features of them), in whole or in part, for any reason, in Tijuana Flats' sole discretion, and without advance notice or liability.

4. CREATING AN ACCOUNT AND ORDERS

- A. If you register with us or create an account, you are solely responsible and liable for the security and confidentiality of your access credentials and for restricting access to your Device and for all activity under your account. Passwords must be personal, unique username (or email address) that does not violate the rights of any person or entity, and is not offensive. We may reject the use of any password, username, or email address for any reason in our sole discretion. You are solely responsible for your registration information and for updating and maintaining it. You will immediately [notify us](#) of any unauthorized use of your account, password, or username, or any other breach of security, but will remain responsible for any unauthorized use thereafter. You will not sell, transfer, or assign your account or any account rights. Accounts may only be set up by the individual that is the subject of the account, and who is of the age of majority. We do not review accounts for authenticity, and are not responsible for any unauthorized accounts that may appear on the Service. For any dispute as to account creation or authenticity, we shall have the sole right, but are not obligated, to resolve such dispute as we determine appropriate, without notice. Additional accounts with Third-Party Services may be required to use Third-Party Services associated with our Service and changes to your account on our Service do not change your accounts on those services.
- B. If you order food, good or service via the Service, or otherwise use the Service to transact, you are responsible for those orders and transactions, which may be subject to any Additional Terms applicable thereto. Orders and transaction related to us, but made via Third-Party Services, may be subject also to the Third-Party Services' own terms and privacy policies.

5. PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT

If you are a copyright owner who would like to send us a notice pursuant to the Digital Millennium Copyright Act (“**DMCA**”) to identify content or material posted on the Service that is infringing that you would like removed from our Service, or if you are a user whose work has been removed in response to such a notice of infringement and would like to file a DMCA counter-notice, you may submit such notice to us by following the instructions in the Copyright Infringement Notice Process.

Copyright Infringement Notice Process

- A. **DMCA Notice.** Tijuana Flats asks our users to respect the intellectual property rights of others. It is our policy to respond appropriately to clear notices of alleged copyright infringement, as set forth more fully below. In our sole discretion, we may remove content that may be infringing on another person's intellectual property rights with or without notice to the potential infringer. In accordance with the U.S. Digital Millennium Copyright Act (“DMCA”) and other applicable law, Tijuana Flats has adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers.
- B. If we remove or disable access in response to a DMCA Copyright Infringement Notice, we will make a good faith attempt to contact the owner or administrator of the affected content

<http://www.apple.com/legal/itunes/us/terms.html>) and any third party terms of agreement applicable to the Service.

- (iii) (You acknowledge that [COMPANY], and not Apple, is responsible for providing the Service and Content thereof.
- (iv) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or any support services to you with respect to the Service.
- (v) To the maximum extent not prohibited by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Service.
- (vi) Notwithstanding anything to the contrary herein, and subject to the terms and conditions of the Terms, you acknowledge that, solely as between Apple and [COMPANY], [COMPANY], and not Apple is responsible for addressing any claims you may have relating to the Service, or your possession and/or use thereof, including, but not limited, to: (i) product liability claims; (ii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- (vii) Further, you agree that if the Service, or your possession and use of the Service, infringes on a third party's intellectual property rights, you will not hold Apple responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claims.
- (viii) You acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third-party beneficiary thereof.
- (ix) When using the Service, you agree to comply with any and all third-party terms that are applicable to any platform, website, technology or service that interacts with the Service.
- (x) Your use of real time route guidance on the Service (if any) is at your sole risk. Location data may not be accurate.

C. **Dealings with Third Parties.** Any interactions, correspondence, transactions, or dealings you have with any third parties found on or through the Service (including on or via Third-Party Services) are solely between you and the third party (including issues related to the content of third-party advertisements, payments, delivery of goods, warranties (including product warranties), privacy and data security, and the like). As permitted by applicable law, Tijuana Flats disclaims all liability in connection therewith.

9. INFRINGEMENT AND DISPUTE TERMS

A. **Forum Selection/Jurisdiction.** Jurisdiction and venue for any controversy, allegation, or claim arising out of or relating to the Service, the content, your UGC, these Terms, or any applicable Additional Terms, whether before the Effective Date of these Terms or after

arising (collectively, “**Dispute**”) shall be in Orange County, Florida]. Each party submits to personal jurisdiction and venue in [Orange County, Florida] for any and all purposes.

- B. Pre-Arbitration Notification.** Tijuana Flats and you agree that it would be advantageous to discuss and hopefully resolve any Disputes before formal proceedings are initiated; provided, however, that Tijuana Flats need not do so in circumstances where its claims of intellectual property rights are concerned (“**IP Disputes**,” with all other disputes referred to as “**General Disputes**”). The party making a claim – whether you or Tijuana Flats – shall send a letter to the other side briefly summarizing the claim and the request for relief. If **Tijuana Flats** is making a claim, the letter shall be sent, via email, to the email address listed in your Tijuana Flats account, if applicable. If no such information exists or if such information is not current, then we have no notification or delay obligations under this Section 9.B. If you are making a claim, the letter shall be sent by fax to 407-539-0811 (Attn: Legal Dept.). If the Dispute is not resolved within sixty (60) days after notification, the claimant may proceed to initiate proceedings as set forth in this Section 9. Either you or Tijuana Flats, however, may seek provisional remedies (such as preliminary injunctive relief, subject to Section 9.D) before the expiration of this sixty (60)-day period.
- C. Arbitration of Claims.** All actions or proceedings arising in connection with, touching upon or relating to the service or this Agreement, the breach thereof and/or the scope of the provisions of this Section shall be submitted to JAMS for final and binding arbitration under its Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less, to be held in [Orange County, Florida before a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by JAMS. The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates’ lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator’s award is based. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the arbitrator’s award; provided, however, that prior to the appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek pendente lite relief (subject to the provisions of the Agreement waiving or limiting that relief) in a court of competent jurisdiction in Orange, Florida or, if sought by Tijuana Flats, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section; provided further, however, that the losing party shall have fifteen (15) business days after the issuance of the arbitrator’s decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the Orange County, Florida Superior Court or, in the case of you, such other court having jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award.

- D. **Limitation on Injunctive Relief.** AS PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS (WITHOUT LIMITATION) THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, UGC, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED, OR CONTROLLED BY ANY TIJUANA FLATS PARTY (INCLUDING YOUR LICENSED UGC) OR A LICENSOR OF ANY TIJUANA FLATS PARTY.
- E. **Governing Law.** These Terms and any applicable Additional Terms, General Disputes and IP Disputes, and any other claim brought by you against Tijuana Flats, or by Tijuana Flats against you, pursuant to this Section 9, or otherwise related to the Service, content, Tijuana Flats Licensed Elements, UGC or other Tijuana Flats products or services, will be governed by, construed, and resolved in accordance with, the laws of the State of Florida, U.S.A., without regard to its conflicts of law provisions that might apply the laws of another jurisdiction. This Section 9 shall be governed solely by the Federal Arbitration Act, 9 U.S.C. §1, et seq., and not by the law of any state, and is enforceable pursuant to its terms on a self-executing basis. You and Tijuana Flats agree that we intend that this Section 9 satisfies the “writing” requirement of the Federal Arbitration Act. This Section 9 can only be amended by mutual agreement. Either party may seek enforcement of this Section 9 in any court of competent jurisdiction. The arbitrator shall determine any and all challenges to the arbitrability of a claim.
- F. **Class Action Waiver.** As permitted by applicable law, both you and Tijuana Flats waive the right to bring any Dispute as a class, consolidated, representative, collective, or private attorney general action, or to participate in a class, consolidated, representative, collective, or private attorney general action regarding any Dispute brought by anyone else. Notwithstanding any provision in the JAMS Comprehensive Arbitration Rules and Procedures to the contrary, the arbitrator shall not have the authority or any jurisdiction to hear the arbitration as a class, consolidated, representative, or private attorney general action or to consolidate, join, or otherwise combine the Disputes of different persons into one proceeding. Notwithstanding the arbitration provision set forth above, if the provision regarding waiver of class, collective, representative, and private attorney general claims of this Section 9 is found to be void or otherwise unenforceable, any such class, collective, representative, or private attorney general claims must be heard and determined through an appropriate court proceeding, and not in arbitration.
- G. **Jury Waiver.** THE PARTIES HEREBY WAIVE THEIR RIGHT TO JURY TRIAL WITH RESPECT TO ALL CLAIMS AND ISSUES ARISING UNDER, IN CONNECTION WITH, TOUCHING UPON OR RELATING TO THIS AGREEMENT, THE BREACH THEREOF AND/OR THE SCOPE OF THE PROVISIONS OF THIS SECTION, WHETHER SOUNDING IN CONTRACT OR TORT, AND INCLUDING ANY CLAIM FOR FRAUDULENT INDUCEMENT THEREOF.

- H. **Small Claims Matters.** Notwithstanding the foregoing, either of us may bring qualifying claim of General Dispute (but not IP Disputes) in small claims court, subject to Section 9.F.
- I. The provisions of this Section shall supersede any inconsistent provisions of any prior agreement between the parties. This Section 9 shall remain in full force and effect notwithstanding any termination of your use of the Service or these Terms.

10. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- A. AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK AND THE SERVICE IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS. To the fullest extent permissible by applicable law, Tijuana Flats and their direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, “**Tijuana Flats Parties**”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, content, Tijuana Flats Licensed Elements, UGC or other Tijuana Flats products or services.
- B. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN, OR IN APPLICABLE ADDITIONAL TERMS, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, TIJUANA FLATS PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.

11. LIMITATIONS OF OUR LIABILITY

- A. AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY TIJUANA FLATS PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, content, Tijuana Flats Licensed Elements, UGC or other Tijuana Flats products or services.
- B. The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if Tijuana Flats Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).
- C. AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL TIJUANA FLATS PARTIES’ TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE

AMOUNT YOU HAVE PAID TIJUANA FLATS IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S).

12. UPDATES TO TERMS

- A. It is your responsibility to review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Any new Terms or Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised or additional terms by discontinuing use of the Service.

13. GENERAL PROVISIONS

- A. **Tijuana Flats's Consent or Approval.** As to any provision in these Terms or any applicable Additional Terms that grants Tijuana Flats a right of consent or approval, or permits Tijuana Flats to exercise a right in its "sole discretion," Tijuana Flats may exercise that right in its sole and absolute discretion. No Tijuana Flats consent or approval may be deemed to have been granted by Tijuana Flats without being in writing and signed by an officer of Tijuana Flats.
- B. **Indemnity.** As permitted by applicable law, you agree to, and you hereby, defend (if requested by Tijuana Flats), indemnify, and hold Tijuana Flats Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Tijuana Flats Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your UGC; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms or any applicable Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) Tijuana Flats Parties' use of the information that you submit to us (including your UGC) subject to our [Privacy Policy](#) (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by Tijuana Flats Parties, in the defense of any Claim and Losses. Notwithstanding the foregoing, Tijuana Flats Parties retain the exclusive right to settle, compromise, and pay any and all Claims and

Losses. Tijuana Flats Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a Tijuana Flats Party. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.

C. Operation of Service; Availability of Products and Services; International Issues.

Tijuana Flats controls and operates the Service from the U.S.A., and makes no representation that the Service is appropriate or available for use beyond the U.S.A. If you use the Service from other locations, you are doing so on your own initiative and responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.

D. Export Controls. You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S. law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

E. Severability; Interpretation. If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the applicable Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.

F. Investigations; Cooperation with Law Enforcement; Termination; Survival. As permitted by applicable law, Tijuana Flats reserves the right, without limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any applicable Additional Terms, (iii) use any information obtained by Tijuana Flats in accordance with its [Privacy Policy](#) in connection with reviewing law enforcement databases or complying with criminal laws, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Service, in whole or in part, or, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third party. Any suspension or termination will not affect your obligations to Tijuana Flats under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from Tijuana Flats, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Tijuana Flats in these Terms, as well as the indemnities, releases, disclaimers, and

limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

- G. **Assignment.** Tijuana Flats may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Tijuana Flats.
- H. **Complete Agreement; No Waiver.** These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Tijuana Flats in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

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