

Merchant Terms and Conditions

1. THE SERVICE.

1.1. **General.** Rewards Catering LLC d/b/a Time to Cater offers a service (the "Service") whereby it, among other things, acts as an intermediary between third parties (each a "User") and Merchant to facilitate the purchase and sale of catering and other food related goods and services. Certain Services may be available through the website located at www.timetocater.com (the "Site").

1.2. **Catering Orders and Self-Service Orders.** Users may place (a) orders for catering goods and/or services (each a "Catering Order") and/or (b) orders for the delivery of food or a "carry out" food order to be picked up by Users (each a "Self-Service Order"). Rewards Catering may, in its sole discretion, accept Catering Orders and/or Self-Service Orders from Users and convey such Catering Orders and/or Self-Service Orders to Merchant, either (y) via the Site, or (z) at the phone number, email address or mailing address indicated on the Registration Form.

1.3. **Acceptance of Self-Service Orders.** Merchant shall be deemed to have accepted a Self-Service Order unless it declines such order within thirty (30) minutes of receiving such order from Rewards Catering.

1.4. **Acceptance of Catering Orders.** If Merchant would like the opportunity to fulfill a Catering Order, it shall submit to Rewards Catering, within the time period specified by Rewards Catering, (a) a proposed menu detailing entrees and other food and/or beverage items, (b) other information requested by the User, and (c) any applicable terms and conditions of Merchant (collectively, the "Proposed Menu"). Rewards Catering will use reasonable efforts to deliver Proposed Menus received within the applicable time period to the User. If the User selects Merchant's Proposed Menu, Rewards Catering will then notify Merchant of such selection, and Merchant shall fulfill the Catering Order in accordance with the agreed-upon terms. If User and/or Merchant requests any changes to the Proposed Menu, Rewards Catering will use reasonable efforts to communicate such changes between User and Merchant. Unless Rewards Catering expressly agrees otherwise in writing, Merchant agrees to negotiate exclusively through Rewards Catering or its Service regarding any Catering Order.

1.5. **Refusal of Orders.** Merchant acknowledges and agrees that Rewards Catering has the right to refuse any order submitted by a User.

1.6. **Merchant Accounts.** Merchant may be required to create one or more accounts (each a "Merchant Account") through the Site and to use such Merchant Account(s) to participate in or receive certain Services. Any breach of this Agreement by any user of a Merchant Account shall be considered a breach by Merchant.

2. **COMPANY INFORMATION.** Merchant will be asked to submit information related to its particular business (collectively, "Service Information") as necessary for Rewards Catering to provide the Service to Users. In submitting Service Information to Rewards Catering (via the Site or otherwise), Merchant (a) grants Rewards Catering a royalty-free, non-exclusive, worldwide, irrevocable and sublicensable (through multiple tiers) perpetual license to use, modify, create derivative works from, store, transmit, distribute, publish, copy, publicly display and publicly perform, any Service Information in connection with the Service; and (b) represents and warrants to Rewards Catering that it has the right to submit such Service Information to Rewards Catering and to grant Rewards Catering the licenses granted in this section.

3. PAYMENTS AND TAXES.

3.1. **Payments.** Rewards Catering shall pay Merchant, in accordance with the Payment Schedule indicated on the Registration Form, for all amounts collected by Rewards Catering for any Catering Order and/or Self-Service Order fulfilled by Merchant less (a) the applicable Service Fee(s) (as indicated on the Registration Form) and (b) all credit card processing fees associated with any Catering Order and/or Self-Service Order fulfilled by Merchant.

3.2. **Taxes.** All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Merchant shall promptly pay, and indemnify Rewards Catering against, all taxes and duties assessed in connection with (a) any such amounts, (b) this Agreement and (c) Merchant's performance hereunder, by any authority within or outside of the U.S., except for taxes payable on Rewards Catering's net income.

4. INSURANCE.

4.1. **General.** Merchant shall maintain, at its own expense, the following insurance coverages, insuring Merchant, its employees, agents and designees, which insurance will be placed with insurance companies with general policyholder's ratings acceptable to Rewards Catering or of at least A and a financial rating of at least X in the latest edition of the Best's Key Rating Guide and will incorporate a provision requiring the giving of written notice to Rewards Catering at least thirty (30) days prior to the cancellation or non-renewal of any such policies as evidenced by return receipt of US Certified Mail:

(a) Commercial General Liability Insurance (including broad-form contractual liability) in the amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, covering personal injury, bodily injury and property damage.

(b) Umbrella Liability Insurance, in the amount of not less than Two Million Dollars (\$2,000,000.00). Coverage is following form of underlying general liability, automobile liability, employers' liability and liquor liability coverage including per project aggregate, primary, additional insured/non-contributory, and waiver of subrogation.

(c) Comprehensive Automobile Liability Insurance, including owned, hired/non-owned, leased, rented and/or borrowed vehicles, if any, in the amount of not less than One Million Dollars (\$1,000,000.00) combined single limit, covering personal injury, bodily injury and property damage.

(d) Worker's Compensation Insurance with statutory coverage, and employers liability insurance with coverage of at least One Million Dollars (\$1,000,000) bodily injury by accident, One Million Dollars (\$1,000,000) bodily injury by disease each employee, One Million Dollars (\$1,000,000) bodily injury by disease policy limit.

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(e) Liquor Legal Liability Insurance in the amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, covering personal injury, bodily injury and property damage.

4.2. **No Limitation on Indemnities.** Rewards Catering does not represent or warrant that coverage and limits of the insurance specified above will be adequate to protect Merchant, and such coverage and limits shall not be deemed as a limitation on Merchant's liability under the indemnities provided to Rewards Catering in this Agreement.

4.3. **Additional Insured.** Merchant shall insure specifically the indemnity contained in Section 11 of this Agreement. The insurance coverage afforded under the insurance policies described above in Subsections 4.1(a), (b) and (c) and (e) above will name Rewards Catering as an additional insured and will be primary and noncontributory to any insurance carried by Rewards Catering. The amendatory riders or endorsements will indicate that as to Rewards Catering, there will be severability of interests under the insurance policies for all coverages provided under the insurance policies.

4.4. **Certificates.** Merchant shall submit valid certificates satisfactory to Rewards Catering evidencing the effectiveness of the foregoing insurance policies along with certified copies of the amendatory riders to any such policies to Rewards Catering for Rewards Catering's approval before Merchant commences the rendition of any services.

4.5. **Maintenance of Insurance.** Merchant shall maintain the insurance described in Section 4.1 above during the term of this Agreement and shall ensure that its vendors, agents and contractors are required to carry insurance equal or greater to the insurance requirements herein. If Merchant fails to furnish and maintain such insurance, Rewards Catering shall have the right (but not the obligation) to purchase such insurance on behalf of Merchant, and Merchant shall pay the cost thereof to Rewards Catering upon demand and shall furnish to Rewards Catering any information needed to obtain such insurance.

5. **MERCHANT CONDUCT.** Merchant shall not, and shall not authorize or encourage any third party (i) to directly or indirectly take any action for the purpose of artificially inflating the price of a Catering Order or Self-Service Order or otherwise contact Users for the purpose of subverting the purpose of the Service; or (ii) engage in any action or practice that reflects poorly on Rewards Catering or otherwise disparages or devalues Rewards Catering's reputation or goodwill.

6. REPRESENTATIONS OF MERCHANT.

6.1. **Authority.** Merchant represents and warrants that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against Merchant in accordance with its terms, (b) no authorization or approval from any third party is required in connection with Merchant's execution, delivery or performance of this Agreement, (c) any and all information it has provided, or may now or hereafter provide, to Rewards Catering in connection with this Agreement, the establishment or maintenance of a Merchant Account, or otherwise, was, is, and will be true, accurate, current and complete information, and (d) the execution, delivery and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound. The individual signing this Agreement on behalf of Merchant represents and warrants that he or she is duly authorized to execute this Agreement to bind Merchant as a party to this Agreement.

6.2. **Licensing and Accreditation.** Merchant represents and warrants, throughout the term of this Agreement, that Merchant (a) has fulfilled all licensing and bonding requirements for any applicable jurisdiction, and (b) has an accreditation rating of at least an "A" with its local health department. Rewards Catering does not assume any obligation to monitor Merchant's compliance in this regard. However, upon request by Rewards Catering, Merchant must furnish, within a commercially reasonable period, paperwork demonstrating its then current level of accreditation.

7. **TERMINATION.** Either party may terminate this Agreement for any reason upon notice to the other party. Such termination shall not affect any party's liability for a breach of this Agreement prior to such termination. Sections 9, 10, 11, 12 and 13 of this Agreement shall survive the termination of this Agreement.

8. **SITE TERMS OF USE AND PRIVACY POLICY.** Merchant acknowledges that each time it uses the Site, it agrees to be bound by the Terms of Use then available on the Site (the "**Terms of Use**") and the Privacy Policy then available on the Site (the "**Privacy Policy**"). For the avoidance of doubt, (a) this Agreement does not supersede or merge Merchant's agreement to the Terms of Use or the Privacy Policy available on the Site, and (b) such Terms of Use and Privacy Policy do not supersede or merge this Agreement. To the extent there is any conflict between the Terms of Use or the Privacy Policy and this Agreement, this Agreement shall control.

9. **DISCLAIMER.** The Service is provided to Merchant on an "**AS IS**", "**WITH ALL FAULTS**", and "**AS AVAILABLE**" basis. Rewards Catering makes no representations or warranties relating to the Service including, without limitation, representations or warranties that (a) the Service shall meet Merchant's requirements, (b) the operation of the Service will be uninterrupted or error free, or (c) any defects in the Service will be corrected. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REWARDS CATERING AND ITS AFFILIATES, RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS AND/OR SUPPLIERS (EACH, A "REWARDS CATERING PARTY," AND COLLECTIVELY, THE "REWARDS CATERING PARTIES") HEREBY DISCLAIM ANY AND ALL WARRANTIES AND/OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, REASONABLE CARE, COMPATIBILITY, SECURITY, QUALITY, TIMELINESS, AVAILABILITY, COMPLETENESS, RELIABILITY, ACCURACY, AND/OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT REWARDS CATERING PARTIES KNOW, HAVE REASON TO KNOW, HAVE BEEN ADVISED, OR ARE OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), IN EACH INSTANCE WITH RESPECT TO THE SERVICE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REWARDS CATERING FURTHER DISCLAIMS ANY AND ALL WARRANTIES, AND/OR REPRESENTATIONS OF QUIET ENJOYMENT, TITLE AND NONINFRINGEMENT WITH RESPECT TO THE SERVICE.** Some jurisdictions do

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not allow the exclusion of implied warranties or limitations on applicable statutory rights of a consumer, so the above exclusion and limitations may not apply to you.

10. **LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL REWARDS CATERING BE LIABLE FOR ANY (A) PERSONAL INJURY OR PROPERTY DAMAGE, OR (B) INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES OR ANY OTHER DAMAGES OR LOSSES, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT AND/OR SERVICE, WHETHER FOR BREACH OF CONTRACT, IN TORT OR OTHERWISE, EVEN IF REWARDS CATERING IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE A REASONABLY FORESEEABLE CONSEQUENCE OF A BREACH OF THIS AGREEMENT OR A TORT THAT FALLS WITHIN THE SCOPE OF THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall Rewards Catering's total liability to Merchant for any damages arising out of or in any way connected with this Agreement or Service, whether for breach of contract, in tort or otherwise, exceed the greater of (y) ten dollars, or (z) the aggregate of all fees owed by Merchant to Rewards Catering within the one (1) month period during before the applicable claim arose.

11. **INDEMNIFICATION AND RELEASE.**

11.1. **Indemnification.** Merchant agrees to indemnify, defend and hold harmless Rewards Catering and its affiliates, and their respective officers, directors, employees, agents, and suppliers (collectively, "**Indemnified Parties**") from and against any and all damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by any of the Indemnified Parties in connection with any claim arising out of (a) Merchant's breach of this Agreement, and/or any allegation which, if true, would constitute a breach of this Agreement by Merchant, (b) Merchant's use and/or misuse of the Service, (c) Merchant's negligence in the provision of any goods or services to Users, and (d) any claim brought by any User relating to Merchant. Rewards Catering reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Merchant, in which event Merchant shall cooperate with Rewards Catering in asserting any available defense.

11.2. **Release.** In the event that Merchant has a dispute with one or more Users (including, without limitation, any dispute arising in connection with any Catering Order and/or Self-Service Order) or any other person or entity arising from Merchant's use of the Service, Merchant hereby releases Rewards Catering (and its affiliates, officers, directors, employees, members, shareholders, independent contractors, agents and suppliers) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such dispute.

12. **CHOICE OF LAW AND FORUM SELECTION.** This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by and construed in accordance with the laws of the State of Missouri, without giving effect to the conflict of law provisions thereof. Merchant consents to exclusive jurisdiction and venue in the federal courts sitting in St. Louis, Missouri, unless no federal subject matter jurisdiction exists, in which case Merchant consents to exclusive jurisdiction and venue in the state courts sitting in St. Louis County, Missouri. Merchant hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Merchant agrees that any cause of action that it may desire to bring arising out of or related to this Agreement must commence within one (1) year after the cause of action arises; otherwise, such cause of action shall be permanently barred.

13. **MISCELLANEOUS.** If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then the invalid or unenforceable portion shall be modified in accordance with the applicable law as nearly as possible to reflect the original intention of the applicable provision, and the remaining sections of this Agreement shall remain in full force and effect. No right or remedy conferred by this Agreement is exclusive of any other right or remedy conferred herein or by law or in equity; rather, all of such rights and remedies are cumulative of every other such right or remedy and may be exercised concurrently or separately from time-to-time. Rewards Catering may provide notice to Merchant relating to this Agreement by sending an e-mail to its last known e-mail address, if any, or its last known postal address, if any, and any such notice shall be deemed given and received on the day it is sent to Merchant. Any notices given to Merchant in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The failure of Rewards Catering to insist upon or enforce strict performance by Merchant of any provision of this Agreement shall not be construed as a waiver of any provision or right. If Rewards Catering brings any suit against Merchant to enforce this Agreement or otherwise in connection with its use of the Service, Merchant agrees that if Rewards Catering prevails in such suit Rewards Catering shall be entitled to recover all costs and expenses incurred in such suit including reasonable attorneys' fees. Rewards Catering may assign this contract, in whole or in part, at any time with or without notice to Merchant. Merchant may not assign this contract, or any part of it, to any other party. Any attempt by Merchant to do so is void. The section titles in this Agreement are for convenience only and have no legal or contractual effect.