

Last Updated: December30, 2020
Please Read Carefully.

Consumer Terms of Service for Retailer

This consumer terms of service (“Consumer TOS”) is between you (“you” and “your”) and PETE'S FRESH MARKET 4700 CORPORATION

and its subsidiaries and affiliates(collectively, “Retailer,” “we,” “our,” and “us”). This Consumer TOS governs your access to and/or use of the website, [petesfresh.com], any mobile versions and/or applications related thereto, products, services and any sites Retailer has now or acquires in the future (collectively, the “Services”), including without limitation as it relates to allowing you to view Retailer’s store information, specials, promotions and coupons. You also agree to Retailer’s Privacy Policy, located at https://petesfresh.s3.amazonaws.com/ClientImages/Petes_Privacy.htm and consent to any personal information we may obtain about you being collected, stored and/or otherwise processed in accordance with the Privacy Policy and this Consumer TOS.If you do not agree with this Consumer TOS and Privacy Policy, you must not use the Services.

By clicking the “Accept” button on the screen as it relates to this Consumer TOS and/or by accessing and/or using the Services, you acknowledge and agree that you have read, understand and agree to be bound by all of the terms and conditions of this Consumer TOS, as well as all other applicable rules or policies, terms and conditions or agreements that are or may be established by Retailer from time to time and the foregoing shall be incorporated herein by reference. The terms and conditions of this Consumer TOS will exclusively govern your access to and/or use of the Services. You may not access and/or use the Services if you are a competitor of ours or if we have previously banned you from the Services or otherwise closed your account.

ARBITRATION NOTICE: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION CLAUSE BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND RETAILER WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION AND YOU WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT AND/OR CLASS-WIDE ARBITRATION.

1. CHANGES TO TERMS

Retailer may, at any time, for any reason, make changes to the Services and/or modify this Consumer TOS in its sole and absolute discretion. If Retailer makes changes and/or modifications that affect your use of and/or access to the Services, we will post notice of the change and/or modification on this Consumer TOS page and change the ‘Last Updated’ date set forth above. You agree that your continued use of the Services following changes and/or modifications will constitute your acceptance of such changes and/or modifications. We may also provide you additional forms of notice as appropriate under the circumstances. If you do not agree to the changes, you shall not use the Services offered after the effective date of the changes and/or modifications. Please revisit this Consumer TOS regularly to ensure that you stay informed of any changes and/or modifications.

2. USE OF THE SERVICES

Access to Services. Retailer retains the right, in its sole discretion, to deny service and/or access to and/or use of the Services to anyone at any time and for any reason. While we use reasonable efforts to keep the Services accessible, the Services and/or your account may be unavailable from time to time. You understand and agree that there may be interruptions to the Services and/or access to your account due to circumstances within Retailer’s control and outside of Retailer’s control. You acknowledge and agree that the use of the Services is at your own risk, including without limitation the risk that you might be exposed to content that is offensive, indecent, inaccurate and/or objectionable. The Services may be modified, updated,

suspended and/or discontinued at any time as determined by Retailer in its sole and absolute discretion and without notice and/or liability.

Eligibility. The Children’s Online Privacy Protection Act (“COPPA”) requires that online service providers get parental consent before they knowingly collect personally identifiable information online from children under the age of thirteen (13). Retailer does not knowingly collect or solicit information from children under the age of thirteen (13). To access and/or use the Services, you must be eighteen (18) years or older or have the requisite power and authority or possess legal parental or guardian consent to enter into this Consumer TOS. If we learn we have collected personal information from a child under the age of thirteen (13), we will delete the information, so please contact us at customerservice@petesfresh.com if you think a child has provided us with personal information.

Creating an Account. You may be required to create an account on the Services in order to view Retailer’s store information, specials, promotions and coupons. If you establish an account, you shall (i) indicate agreement to this Consumer TOS, (ii) provide contact information and other relevant information necessary for Retailer to provide the Services and (iii) submit any other form of authentication required, as determined by Retailer in its sole and absolute discretion. You agree to provide true, accurate, and current information in connection with your account. You are responsible for updating and correcting information you have submitted to create and/or maintain your account. You are solely responsible for maintaining the security and confidentiality of the password you use to access your account. You acknowledge and agree that Retailer shall have no responsibility for any incident arising out of, or related to, your account settings. Retailer will assume that anyone using the Services and/or transacting through your account is you. Therefore, you further agree to immediately notify Retailer of any unauthorized use of your password and/or account and/or any other breach of security. You are prohibited from using other disguised identities when using the Services. We may refuse to grant you an account with a name that impersonates someone else, if it may be illegal, vulgar, offensive, and/or if it may be protected by trademark or other proprietary rights, as determined by Retailer in its sole and absolute discretion. Your account is non-transferrable and may not be sold, combined and/or otherwise shared with any other person. If you violate this Consumer TOS, we may terminate your account immediately without liability. Upon termination, the terms and conditions of this Consumer TOS are by their nature intended to survive termination (including without limitation any disclaimers, limitations of liability and indemnities) shall survive such termination.

If we terminate your account, you may not subscribe under a new account unless we formally invite you. If you commit fraud and/or falsify information in connection with your use of the Services, your account will be terminated immediately and we reserve the right to hold you liable for any and all damages that we suffer, and we may pursue legal action through relevant local and national law enforcement authorities and may notify your ‘Internet Service Provider’ of any fraudulent activity we associate with you and/or your access to and/or use of the Services.

Communications from Retailer. By creating an account, you agree to receive certain communications in connection with the Services. When you access and/or use the Services, you are communicating with us and/or the consumers electronically, and you consent to receive communications from us and/or the consumers electronically. We will communicate with you by e-mail and/or by posting notices on the Services. You acknowledge and agree that all agreements, notices, disclosures and/or other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

Mobile Messaging. You may agree to receive text messages from Retailer to your mobile phone/device regarding the Services. Your mobile number will be used to communicate with you by text message regarding the Services. You understand and agree that text messages sent to your mobile phone/device

may be generated using automated technology. Your consent to receive text messages is not required to use the Services. Retailer does not charge you for sending or receiving text messages. Your mobile carrier's rates apply and all charges are billed by and payable to your mobile provider. Retailer will not be liable for any delays in the receipt of any 'SMS' messages as delivery is subject to effective transmission from your mobile and/or network operator.

Your Conduct and Responsibilities. Subject to your compliance with the terms and conditions set forth herein, Retailer grants you the following rights:

- (a) You hereby represent and warrant to Retailer that all information provided to Retailer by you is true, complete and accurate in all respects, and you are authorized to submit information to Retailer;
- (b) Retailer is authorized by you to rely upon the truthfulness, completeness and accuracy of Consumer Information in order to serve its other users;
- (c) You shall not modify, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services;
- (d) You may not access all or any part of the Services in order to build a product or service which competes with the Services;
- (e) You shall not copy or imitate part or all of the design, layout, or look-and-feel of the Services or individual sections of it, in any form or media;
- (f) You are only authorized to view, use, copy for your records and download small portions of the content on the Services for your informational, non-commercial use; provided that you leave all copyright and other proprietary notices intact;
- (g) You are responsible for the accuracy and quality of the data and content that you submit and will not violate the intellectual property rights of anyone;
- (h) You agree to act in accordance with all applicable laws, rules and regulations;
- (i) You agree not to intentionally hold Retailer and/or their employees and/or directors up to public scorn, ridicule or defamation;
- (j) You will use commercially reasonable efforts to prevent unauthorized access to and/or use of the Services, and notify Retailer promptly of any such unauthorized access and/or use;
- (k) You will not attempt to access data not intended for you, monitor the Services for data gathering purposes and/or interfere with the Services in relation to any user in any manner; and/or
- (l) You shall not use the Services for any unlawful purpose and/or to violate any federal, state, international law, code of conduct and/or other guidelines which may be applicable to the Services provided.

Retailer shall not be subject to any obligations of confidentiality regarding any information and/or materials submitted through the Services except as otherwise specified in this Consumer TOS and/or the Privacy Policy and/or as set forth in any additional terms and conditions relating to specific products and/or services utilized by Retailer in conjunction with the Services, and/or as otherwise required by law. The commercial use, reproduction, transmission or distribution of any information, software or other material available through the Services is strictly prohibited.

3. ERRORS, INACCURACIES AND OMISSIONS

Occasionally there may be information on the Services that contain typographical errors, inaccuracies, and/or omissions that may relate to services and/or products descriptions, pricing, promotions, offers, and availability. We reserve the right to: (i) revoke any stated offer; (ii) correct any errors, inaccuracies, and/or omissions; and/or (iii) make changes to prices, content, offers, services and/or product descriptions, specifications, and/or other information without obligation to issue any notice of such changes. We also reserve the right to limit quantities (including after an order has been submitted and/or acknowledged) and to revise, suspend, and/or terminate an event, and/or promotion at any time without

notice (including after an order has been submitted and/or acknowledged).

4. PROPRIETARY RIGHTS AND LICENSES

Reservation of Rights. The information, headers, illustrations, photographs, graphics, icons, trade dress and/or other content provided by Retailer on the Services (“**Content**”), as well as the organization and/or layout of the Services, are copyrighted and are protected by United States and international copyright laws and treaty provisions and Retailer and/or its third party provider retains all rights, title and interest related thereto or has the rights necessary use and/or display the foregoing. Retailer owns, controls, lawfully uses and/or licenses the Content on the Services. Retailer’s name and logo may not be copied, imitated and/or used, without Retailer’s prior written consent. Subject to the limited rights expressly granted hereunder, Retailer and/or its third party providers reserve all right, title and interest in and to the Services and Content, including without limitation all related worldwide intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

Ownership. The Services, Content and the infrastructure used to provide the Services are proprietary to Retailer and other third parties. By using the Services, accepting this Consumer TOS and acting in accordance with the terms and conditions set forth herein: (a) Retailer grants you a limited, personal, nontransferable, nonexclusive, revocable right to access and/or use the Services pursuant to this Consumer TOS and to any additional terms and policies set forth by Retailer; and (b) you agree not to reproduce, distribute, create derivative works from, publicly display, publicly perform, license, sell and/or re-sell any content, goods, products and/or services obtained from and/or through the Services.

Consumer Information. During the course of your access to and/or use of the Services and through communication facilities that may be offered on, though, and/or in connection with the Services, you may provide information such as your name, address and delivery information (collectively, “**Consumer Information**”). You hereby grant Retailer a worldwide, perpetual, non-exclusive, royalty-free, irrevocable, assignable, sub-licensable, transferable license to use the Consumer Information for any purpose. You alone are responsible for Consumer Information, and once published, it cannot always be withdrawn or deleted. You assume all risks associated with Consumer Information, including anyone’s reliance on its quality, accuracy, and/or reliability. You also represent that you own, and/or have the necessary permissions to use and authorize use of Consumer Information as described in this Consumer TOS.

Consumer Information Restrictions. Consumer Information shall not include any unauthorized content which includes but is not limited to:

- (a) content determined by Retailer, in its sole discretion, to be illegal, or to violate any federal, state, or local law or regulation or the rights of any other person or entity;
- (b) a virus, worm, Trojan horse and/or any other harmful component;
- (c) harmful, offensive, inaccurate, abusive or otherwise inappropriate language including without limitation, bigotry, racism, discrimination, hatred, or profanity;
- (d) information about illegal activities, sexual harassment or physical harm or injury to any group, individual, institution and/or property; and/or
- (e) language intended to impersonate other users (including names of other individuals) or to be offensive or inappropriate user names or signatures.

5. PROHIBITED USE

You may not use the Services in any manner that could damage, disable, overburden, and/or impair the Services and/or interfere with any other party's use and/or enjoyment of the Services. You may not obtain and/or attempt to obtain any materials and/or information through any means not intentionally made available and/or provided for through the Services. We also prohibit crawling, scraping, caching and/or otherwise accessing any content on the Services via automated means (except as may be the result of

standard search engine protocols and/or technologies used with Retailer's express written consent). Retailer reserves the right, in its sole and absolute discretion, to terminate your access to the Services or any portion thereof at any time, without liability, without cause and/or without notice. Without limiting any other remedies, Retailer, without notice, may suspend or terminate your account, without liability, if Retailer suspects, in its sole discretion, that you (by information, investigation, conviction, settlement, insurance or otherwise) have violated this Consumer TOS and/or any of Retailer's policies, or you have engaged in an improper or fraudulent activity. In such event, Retailer retains the right to seek civil and/or criminal redress, the entire cost of which shall be borne solely by you.

6. INDEMNIFICATION AND WAIVER

You shall indemnify, defend and hold harmless Retailer, its officers, agents, employees, contractors, subcontractors, suppliers and representatives from and against any and all claims, demands, proceedings, losses, costs, damages, awards, fees, expenses, or liabilities of any nature ("**Claim**") arising out of and/or in relation to (i) Consumer Information submitted and/or posted by you, in connection with the Services; (ii) any use of the Services in violation of this Consumer TOS; (iii) your violation of any law and/or the rights of a third party; (iv) your use of the Services and/or any breach of this Consumer TOS by you, your officers, agents, employees, contractors and/or (v) fraud you commit and/or your intentional misconduct and/or negligence. You shall give prompt notice to Retailer in writing upon your receipt of notice of any Claim against you that might give rise to a Claim against Retailer. To the extent permitted under applicable laws, you hereby release Retailer and its third party providers from any and all claims and/or liability of any other third-party related to any product and/or good, any action or inaction by a user.

7. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THE SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS, EXCEPT AS EXPRESSLY SET FORTH IN THIS CONSUMER TOS. RETAILER AND ITS THIRD PARTY PROVIDERS DO NOT MAKE ANY WARRANTY OF ANY KIND WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND FROM COURSE OF DEALING, USAGE AND/OR TRADE PRACTICE, ALL OF WHICH RETAILER EXPRESSLY DISCLAIMS. WITHOUT LIMITING THE FOREGOING, RETAILER AND/OR ITS LICENSORS MAKE NO WARRANTY THAT (A) THE SERVICES WILL MEET YOUR REQUIREMENTS AND/OR WILL BE CONSTANTLY AVAILABLE, UNINTERRUPTED, TIMELY, SECURE AND/OR ERROR-FREE; (B) THE RESULTS THAT MAY BE OBTAINED FROM THE ACCESS TO AND/OR USE OF THE SERVICES WILL BE EFFECTIVE, ACCURATE AND/OR RELIABLE; AND/OR (C) RETAILER WILL NOT BE LIABLE AND/OR OTHERWISE RESPONSIBLE FOR ANY FAILURE OR DELAY IN UPDATING THE SERVICES AND/OR ANY CONTENT. NO ADVICE AND/OR INFORMATION, WHETHER ORAL AND/OR WRITTEN, OBTAINED BY YOU FROM RETAILER OR THROUGH YOUR ACCESS TO AND/OR USE OF THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS CONSUMER TOS.

8. LIMITATION OF LIABILITY

YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. IN NO EVENT SHALL RETAILER, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, LICENSORS AND/OR SUPPLIERS BE LIABLE TO YOU AND/OR ANYONE ELSE FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING THOSE RESULTING FROM LOSS OF USE, DATA AND/OR PROFITS, WHETHER OR NOT FORESEEABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, AND/OR ANY OTHER LEGAL

OR EQUITABLE THEORY, EVEN IF RETAILER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THE FOREGOING SHALL APPLY DESPITE ANY NEGLIGENCE, MISCONDUCT, ERRORS AND/OR OMISSIONS BY RETAILER, ITS EMPLOYEES, REPRESENTATIVES, AGENTS AND/OR LICENSORS. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES, IN SUCH STATES, RETAILER'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, IN THE EVENT YOU ARE DISSATISFIED WITH THE SERVICES AND/OR HAVE ANY OTHER GRIEVANCE, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE THE RIGHT TO DISCONTINUE ACCESS TO AND/OR USE OF THE SERVICES.

9. MISCELLANEOUS

If any provision and/or term of this Consumer TOS shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term and/or provision shall be divisible from the other terms and conditions and shall be deemed to be deleted from them. This Consumer TOS shall be governed in all respects by the laws of the State of **[IL]**, without reference to its choice of law rules. If an applicable law is in conflict with any part of this Consumer TOS, this Consumer TOS will be deemed modified to conform to the law and the other provisions will not be affected by any such modification. No waiver by either you and/or Retailer of any breach and/or default and/or failure to exercise any right allowed under this Consumer TOS is a waiver of any preceding and/or subsequent breach and/or default and/or a waiver and/or forfeiture of any similar and/or future rights under this Consumer TOS.

10. CONTACT

If you would like to request additional information regarding this Consumer TOS or for any questions, please contact us at **[customerservice@petesfresh.com]**.