

Terms of Use

(Last updated on March 13, 2013)

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Portions of the Services may be governed by additional posted guidelines, conditions, policies, rules, or other terms and conditions ("Additional Rules"). All Additional Rules are hereby incorporated by reference into these terms of use. In the event of a conflict between any Additional Rules and these terms of use, these terms of use shall govern. However, the Privacy section below supersedes any conflicting language in these terms of use and/or any Additional Rules with respect to the subject matter covered by the Internet Privacy Policy.

By accessing the Site or using any of the Services, you agree, without limitation or qualification, to be bound by these terms of use and the Additional Rules, as all of the same may be modified by Summer Fresh from time to time by posting such updated terms of use or Additional Rules on the Services (collectively the "Terms of Use"). Please check the Terms of Use for updates by checking the date of "Last Update" at the top of this document. If you do not accept these Terms of Use in their entirety, you may not access or use the Services. Your continued use of this Site after any such changes are posted will constitute acceptance of these changes.

BECAUSE THE TERMS OF USE CONTAIN LEGAL OBLIGATIONS, PLEASE READ THEM CAREFULLY.

2. **PRIVACY AND PERSONAL INFORMATION.** You may be required to set up an account to use all or part of the Services and you may have to provide information about yourself in order to use the Services. For information on how this and other user information is collected, used and disclosed during your use of the Services please consult the Internet Privacy Policy.

3. **REGISTRATION, ACCOUNTS AND PASSWORDS.** Certain of the Services and related features, such as personalization, made available over the Services may require registration. You agree to provide accurate and current information about yourself as required by the relevant registration process, and to promptly update such information as necessary to ensure that it is kept accurate and complete. You agree to be responsible for: (a) maintaining the confidentiality of any passwords or other account identifiers which you choose or are assigned as a result of any registration over the Services, and (b) all activities that occur under such password or account. Further, you agree to notify Summer Fresh of any unauthorized use of your password or account. Summer Fresh shall not be responsible or liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with, your failure to comply with this Section 3.

4. **NO COMMERCIAL USE OF THE SERVICES.** The Services are only for your personal use. You will not use the Services for commercial purposes and you agree not to resell, distribute, transfer, share or otherwise use the Services or any portion of the Services, including any coupons or credits related to same for any commercial purposes whatsoever.

You agree only to Use the Site for lawful purposes, and to only send Content and receive Content that is proper and related to the particular Service, and Summer Fresh (subject to the Terms of Use) grants you a Canadian, non-exclusive, non-transferable, non-subliceasable, revocable, limited right, to so Use the Site solely for your own personal or internal company use. You may download or make any single copy of all or any part of the Content for your own personal use, provided you display the Summer Fresh copyright and/or trade-mark notices on your copy (the line at the bottom of this page, and the symbols next to the Summer Fresh designs).

5. **RULES AND CONDUCT.** In addition to any Additional Rules and in consideration of the availability and your use of the Services, you agree not to:

- post, transmit, link to, or otherwise distribute any information constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability, or otherwise use the Site or any of the Services in a manner which is contrary to law or which would serve to restrict or inhibit any other user from using or enjoying the Site, the Services or the Internet;
- defame, abuse, stalk, harass, threaten or otherwise violate the legal rights of others, including without limitation, rights relating to privacy and publicity;
- upload, post, link to, or otherwise distribute any content containing personal information including, but not limited to, images, video, and sound files, without the consent of the individual to whom the personal information pertains;
- post, transmit, link to, or otherwise distribute any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful material or information;
- post, transmit, link to, or otherwise distribute any information or software which contains a virus, cancelbot, trojan horse, worm or other harmful or disruptive component;

- upload, post, publish, transmit, reproduce, link to or otherwise distribute in any way, information, software or other material obtained through the Site or the Services, or any derivative work thereof, which is protected by copyright, or any other intellectual property right, without obtaining permission of the copyright owner or rightholder; and
- impersonate or falsely represent your association with any person, including a representative or forum moderator.

6. RESPONSIBILITY FOR MINORS. In cases where you have authorized a minor to use any of the Services, you recognize that you are fully responsible for: (i) the online conduct of such minor; (ii) controlling the minor's access to and use of any such Services; and (iii) the consequences of any misuse by the minor. You acknowledge that some of the areas of the Services may contain material that is inappropriate for minors. If you are a minor, please obtain your parent's permission to utilize the Services and please ensure that your parents review these Terms of Use.

7. MONITORING. You acknowledge that Summer Fresh has no obligation to monitor the Services or any Content, accessible through the Site or any of the Services. However, you agree that Summer Fresh has the right to monitor the Services electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other governmental request, to operate the Site or any of the Services properly, ensure compliance with the Terms of Use or to protect themselves or their users in accordance with the Internet Privacy Policy. Summer Fresh reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of the Terms of Use. You understand that by using the Services, you may have access to Content which may be offensive or objectionable to you. Under no circumstances shall Summer Fresh be responsible or liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with, any use of, or access to, any such Content.

8. DEALINGS WITH THIRD PARTIES. You acknowledge and agree that your correspondence or business dealings with any third parties, including any merchants or advertisers, found on, or through, the Site or any of the Services, including payment for and delivery of related goods and services, and all other terms, conditions, representations and warranties related to such dealings, are solely as between you and such third parties. Summer Fresh assumes no responsibility whatsoever for any charges you or any user of your account incurs when making purchases or other transactions in this manner. Further, the responsibility for ensuring compliance with all applicable laws in connection with any such transactions shall be yours alone. You agree that Summer Fresh shall not be responsible or liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with, any of such dealings or transactions.

9. DISCLAIMER REGARDING THIRD PARTY CONTENT. The Services may offer access to third party web pages and content available over the Internet. In such instances, including, but not limited to, third party content contained on or accessible through the Services, Sites and web pages or sites displayed as search results or contained within a directory of links on the Services, Summer Fresh generally exercises no control over such third party content, web pages, or sites. You agree that it is your responsibility to review and evaluate any such content, and that any and all risk associated with the use of, or reliance on, such content rests with you. You are responsible for viewing and abiding by the terms of use and privacy policies posted at these third party web pages, including but not limited to web casting or any other transmission. Inclusion of a link to third party content does not imply endorsement by Summer Fresh of such content. You further agree that Summer Fresh shall not be responsible or liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with your use of, or reliance on, any such content.

10. PROFESSIONAL INFORMATION DISCLAIMER. The Services may make available certain information provided by third parties related to various professional fields including, without limitation, medicine and other health and fitness related matters (the "Professional Information"). The Professional Information is provided for educational and entertainment purposes only and should not be interpreted as a recommendation for a specific treatment plan, product or course of action. Use of the Services does not replace consultations with a qualified medical or other relevant professional. In addition, while the Professional Information is frequently updated, this information changes rapidly and therefore, some of the Professional Information may be out of date. You agree that all risk associated with the use of, or reliance on, any of the Professional Information rests with you. You further agree that Summer Fresh, including their respective suppliers, shall not be responsible or liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with your use of, or reliance on, any such Professional Information.

11. USER CONTENT. In respect of any and all content you elect to post on the Services which is accessible by the general public, such as on public forums operated on the Site, you grant Summer Fresh a world-wide, royalty-free, nonexclusive, and unrestricted license to use, copy, adapt, transmit, publicly display and perform, distribute and create compilations and derivative works from such content in connection with the Service. Such license shall apply with respect to any form, media, or technology now known or later developed and shall terminate at the time you delete such content from the Service.

With respect to any and all content you elect to post or transmit using the Services, you agree that Summer Fresh may preserve and disclose any content associated with your account where required to do so by law or where such preservation or disclosure is reasonably believed by Summer Fresh to be necessary to ensure compliance with the law, enforce the Terms of Use or protect the rights and interests of Summer Fresh or any other person.

12. SERVICE MODIFICATIONS. You acknowledge and agree that Summer Fresh reserves the right at any time to modify or discontinue (with respect to an individual user or all users) any of the Services with or without notice to you, and that Summer Fresh will not be responsible or liable, directly or indirectly, to you or any other person in any way for any loss or damage of any kind incurred as a result of, or in connection with, any such modifications or discontinuance.

13. TERMINATION. You acknowledge and agree that Summer Fresh, in its sole and absolute discretion, may, without notice to you, suspend or terminate your account or your use of, or access to, any of the Services, and remove and discard any information or content related to such Service (and your use thereof), for any reason, including where Summer Fresh believes that you have violated any of

the Terms of Use, or where your account has been inactive for any period of time. You further agree that Summer Fresh shall not be liable to you or to any other person as a result of any such suspension or termination. Upon termination your right to use the Services immediately ceases. If you are dissatisfied with the Site, any of the Services or with any terms, conditions, rules, policies, guidelines, or practices of Summer Fresh in operating the Site and the Services, your sole and exclusive remedy is to discontinue using the Site and the Services.

14. DISCLAIMER OF WARRANTIES. YOU EXPRESSLY UNDERSTAND AND AGREE THAT: (A) THE SITE AND THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND THAT SUMMER FRESH, ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, RESELLERS, DISTRIBUTORS, CONTRIBUTORS, AGENTS AND/OR SUPPLIERS, OFFICERS, DIRECTORS NOR EMPLOYEES (THE "SERVICE PROVIDER PARTIES") MAKES NO WARRANTIES, REPRESENTATIONS OR CONDITIONS (AS USED IN THIS SECTION "WARRANTIES") OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND THAT ANY SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND (B) THE SERVICE PROVIDER PARTIES SPECIFICALLY MAKE NO WARRANTIES THAT THE SITE OR ANY OF THE SERVICES, INCLUDING ANY CONTENT, INFORMATION, PRODUCTS OR SERVICES OBTAINED FROM OR THROUGH THE USE OF THE SITE OR THE SERVICES, WILL BE PROVIDED ON AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE BASIS OR THAT SUCH SERVICES OR THE RESULTS DERIVED THEREFROM WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS.

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- (A) VIOLATION OF THE TERMS OF USE, OR
- (B) USE OF THE SITE OR ANY OF THE SERVICES, OR
- (C) PLACEMENT, POSTING OR TRANSMISSION OF ANY MESSAGE, INFORMATION, SOFTWARE OR OTHER CONTENT ON THE SITE OR THROUGH ANY OF THE SERVICES.

17. INTELLECTUAL PROPERTY. Except as expressly provided, nothing herein or within any of the Services shall be construed as conferring any license under Summer Fresh or any third party's intellectual property rights, whether by estoppel, implication, waiver, or otherwise. Without limiting the generality of the foregoing, you acknowledge and agree that certain Content available through and used to operate the Site and Services is protected by copyright, trademark, patent, or other proprietary rights of the Service Provider Parties. You agree not to adapt, translate, modify, decompile, disassemble, or reverse engineer any software, applications or programs used in connection with the Services or the Site. Further, you agree not to modify, alter, or deface any of the trademarks, service marks, or other intellectual property made available through the Services nor use any of the foregoing for any purpose other than the purpose for which such intellectual property is made available to users through the Services.

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20. **TERRITORY.** The Services is only intended for Use by users located within Canada.

21. **CHOICE OF LAW.** The Terms of Use shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein. By accessing this Site, you agree that all matters relating to the access to, or use of, this Site shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without reference to its conflict of laws principles, and that you will comply with all such applicable laws. You agree not to export any of the Content accessible through this Site in violation of applicable export laws and regulations. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Terms and Conditions. The parties have required that the Terms of Use and all documents relating thereto be drawn up in English. Les parties ont demandé que cette convention ainsi que tous les documents que s'y rattachent soient rédigés en anglais.

22. **ARBITRATION.** Any and all disputes arising out of the use of this Site will be referred to and finally settled by private and confidential binding arbitration before a single arbitrator held in Toronto, Ontario in English and governed by Ontario law pursuant to the Arbitration Act, 1991 (Ontario), as amended, replaced or re-enacted from time to time. The arbitrator shall be a person who is legally trained and who has experience in the information technology field in Canada and is independent of either party. Notwithstanding the foregoing, in respect of any matter relating to the enforcement of intellectual property rights and protection of confidential information, each party may pursue remedies, including injunctive or other equitable relief, through the courts, in which circumstances the parties hereby agree to submit to the jurisdiction of the courts of Ontario and to waive any objections based upon venue in any such action, suit or proceeding.

23. **MISCELLANEOUS.** The Terms of Use constitute the entire agreement between Summer Fresh and you pertaining to your Use of the Services and, except as specifically set forth herein, supersede any prior agreements between you and Summer Fresh relating to the Services. Summer Fresh may assign these Terms of Use, in whole or in part, at any time. Any failure by Summer Fresh to insist upon or enforce strict performance of any right or provision of the Terms of Use shall not constitute or be construed as a waiver of any right or provision. If any of the provisions (or parts thereof) contained in the Terms of Use are determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions (or parts thereof) contained herein.