

# TERMS OF SERVICE

Last revised January, 2012

FOODPAIRING is a registered trade mark of the company SENSE for TASTE.

SENSE for TASTE is a limited liability company established in accordance with the laws of Belgium, having its registered offices at **8310 Brugge (Belgium), Nijverheidsstraat 7**. It is registered with the Belgian trade register under nr. 0818.030.890.

The following Terms of Use governs use of the Services as defined hereinafter, as provided by SENSE FOR TASTE (“SFT”, “we” or “our”), by all those who access the Services, including without limitation persons and representatives of entities, whether such representatives are persons or digital engines of any kind that crawl, index, scrape, copy, store or transmit digital content (collectively, “you”, “User” or “your”).

Please read the rules contained in this Agreement carefully. **By downloading, using or registering on any aspect of the Services, you agree to comply with these terms.** If you cannot agree with these terms of service, please do not download, register for or use the Services.

SENSE for TASTE is committed to respecting the intellectual property rights of others. If you hold the view that any information or content on the websites to which these Terms of Service apply, please inform us thereof in accordance with Section 4.5 of these Terms of Service.

For information regarding use of information about you that may be collected via your use of the Services, please refer to our Privacy Policy.

The Agreement may be modified from time to time; the date of the most recent revisions will be communicated on or through the Services, so check back often. Continued access of the services by you will constitute your acceptance of any changes or revisions to the Terms Of Service.

## SERVICES

The Services consist of SFT’s making available of, and granting access to, a website, foodpairing.com and all included pages, containing information in regard to a large selection of food ingredients and beverages, graphically visualized in Foodpairing Trees. A Foodpairing Tree is a visualization in which possible combinations of foods are visualized based on scientific analyses. The Foodpairing trees are dynamic as they can be used to navigate through all the Foodpairing trees, to select products as an inspiration for making new recipes. The tool also allows to store and develop your own recipes, and add images to those recipes. The Services do not include access to the database with flavor components per product, or specific knowledge on how a certain combinations work.

The Services can be classified in different account types, LITE and PRO account, which have different features as defined hereinafter. The Terms of Use governs use of all account types. A LITE account is

free of charge. This account type has restricted access to the content, actions, and features of the Services. Details of the features of a LITE account can be learned from the FOODPAIRING website. A PRO account can be obtained when a fee is paid in accordance with the provisions in Section 3. Details on which features, functions, actions and content are included in the PRO account can be learned from the FOODPAIRING website.

Upon making use of the Services, you acknowledge and agree that SFT may establish general practices and policies concerning use of the Services, including, without limitation, the maximum number of recipes, pictures, the maximum size of the pictures that a user may submit.

SFT reserves the right to change or discontinue any of the Services at any time, without notice for any or no reason. Subject to the agreement to these terms and conditions, SFT shall supply the Services to User and grant the User a personal, non-transferable, terminable license to use the Services from the Effective Date (the date when you download, use a service, and pay and/or register for the services) for the Subscription Period (The period from the Effective Date until this Agreement is terminated in accordance with the provisions herein) provided that the User fully complies with the provisions of these Terms of Service.

## **REGISTRATION AND ACCOUNT CREATION**

### **REGISTRATION INFORMATION**

You are required to register and/or set up an account to gain access to any Services. In order to do so, you are required to choose a password, provide your name, e-mail address, address and occupation; and, depending on the account type, payment details (referred to as “Registration Information”).

You agree and represent that all Registration Information provided by you is accurate, current and complete. You may not impersonate, imitate or pretend to be somebody else when registering and/or setting up an account. If any of your Registration Information changes, you must update it by using the appropriate update mechanism provided in the services.

If the Registration information is provided that is untrue, inaccurate, inappropriate, or outdated; or, if SFT has reasonable grounds to suspect that such is the case, SFT has the right to disable or terminate the User’s account and refuse any and all current or future use of the Services.

### **USE OF ACCOUNT AND PASSWORD**

If you register an account, you will be solely responsible for maintaining the confidentiality of your Registration Information. The User is solely liable for the choice of a sufficiently secure password as well as for keeping it from others. SFT cannot be held liable for loss of the password chosen to access the User’s account. An e-mail requesting the retrieval of a lost password can be demanded on the Services by you. SFT is not responsible for any proceedings of such a sent mail.

You may not authorize others to use your Registration Information. You may not sub-license, transfer, sell or assign your Registration Information and/or this Agreement to any third party without our written approval. Any attempt to do so will be null and void and shall be considered a

material breach of this Agreement. If SFT has reasonable grounds to suspect such a sharing of Registration information of any kind, SFT has the right to terminate the account and refuse any refund.

You are solely responsible for all usage or activity on your account including, but not limited to, use of the account by any person who uses your Registration Information, with or without authorization, or who has access to any mobile or other device on which your account resides or is accessible.

If you have reason to believe that your account is no longer secure (for example, in the event of a loss, theft or unauthorized disclosure or use of your Registration Information), you must promptly change the affected Registration Information by using the appropriate update mechanism on the Services, and/or notify our Service Manager by sending an email to [support@foodpairing.com](mailto:support@foodpairing.com).

## HARDWARE AND SOFTWARE

To have the ability to access the Services, the User must obtain internet access and pay any service fees associated with such access, if any. In addition, it is the User's sole responsibility to find the hardware in proper working order (i.e. computer, modem, and/or other devices) necessary to make such a connection to the Internet. Furthermore, in order to have the ability to access the Services, the hardware must be equipped with a recent version of any internet explorer and flash player.

## FEES

In consideration for the provision of the Services, the User shall pay SFT the non-refundable Subscription Fee when the user has registered for a paying account type. The Subscription Fee is exclusive of VAT or other sales tax which, if applicable to you, shall be payable by you at the then prevailing rate.

SFT or third parties may charge you fees for products or services offered for sale, including but not limited to Atos Visa/Mastercard, which shall issue payments in respect of the Subscription Fee for a PRO account and shall collect the Subscription Fee from your Visa/Mastercard account on a reoccurring basis, depending on the chosen Subscription Period. A monthly or yearly Subscription Period can be chosen when registering for a PRO account. After every Subscription Period, the reoccurring fee shall be collected correspondingly to your Subscription Period. The chosen Subscription Period has no effect on the features of the provided Services, visit the FOODPAIRING website for more details.

Any fee-based subscription automatically renews unless this renewal is turned off at least 24 hours before the end of the subscription period. Your Visa/Mastercard or other account where applicable will be charged for renewal of your subscription within 24-hours prior to the end of the subscription period. When the automatic renewal of a fee-based subscription is turned off, the respective services will remain available until the end of the subscription period, then the services will revert back to a free LITE version. A fee-based subscription cannot be cancelled.

Users reserve the right to turn off renewal of their subscription or terminate their account with ongoing paying Services at any time. This right expires 24 hours before the ending of the Subscription period. When an account is terminated by the user, the services will be available until the end of the

Subscription Period. No refunds will be given. A user can manage and terminate their account with ongoing paying Services utilizing the appropriate mechanism provided in the Services.

Both parties agree that except in accordance with section 14 is below no refunds shall be due in any circumstances.

When the Subscription Fee is accepted by SFT, the User will receive an e-mail acknowledging that payment has been received, this e-mail allows the activation of the registered Services. In the event that the Subscription Fee, as appropriate, is not collected in accordance with the provisions herein, SFT may deny you access to the Services without notice.

If payment cannot be charged to your credit card or your payment is returned to SFT for any reason, including charge back, SFT reserves the right to either suspend or terminate your account and all its obligations under this Agreement.

SFT reserves the right to change the amount of, or basis for determining, any Fees, and to institute new Fees, effective upon prior notice to you.

The user is also able to purchase mobile applications, if available from a third party vendor, including but not limited to Apple Agents or commissionaires. Payment for offered services from Apple agents or commissionaires will be charged to your iTunes account at confirmation of purchase. Subscription for the mobile application automatically renews unless this renewal is turned off at least 24 hours before the end of the subscription period. Your iTunes account will be charged for renewal of your subscription for the mobile application a fee of 15€ within 24-hours prior to the end of the subscription period. When the automatic renewal of the subscription for the mobile application is turned off, the mobile application will remain available until the end of the subscription period, then your mobile application will revert back to a free LITE version. The subscription for a mobile application cannot be cancelled.

## USE OF SERVICES

The Services are not intended for use by children, especially those under age 13. No one under age 13 is allowed to provide any personal information or use our public discussion areas, forums and chats, if available. Minors between the ages of 13 and 17 must get the permission of their parent(s) or legal guardian(s) before making purchases of any kind.

## GENERAL USE

Unless otherwise specified, the Services are intended for your personal use only. You may not authorize others to use the Services with your Registration Information, and you are responsible for all use of the Services by your account and by those you allow to use, or provide access to, the Services. You may not impersonate, imitate or pretend to be somebody else when using the Services.

SFT reserves the right to terminate accounts which are suspected to be shared with other people or for any or no reason, without notice.

You may not upload or transmit any data, text, graphics, content, or material that: is false or misleading; is defamatory; invades another's privacy; is obscene, pornographic, violent or offensive;

promotes bigotry, racism, hatred, or harm against any individual or group; infringes another's rights, including any intellectual property rights; violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; spreads messages of terror or depicts torture; harm minors in any way, this includes any form of child pornography; promotes illegal activity, including but not limited to, gambling and the offering for sale of illegal weapons. You may not upload or transmit any data text, photographs, images, video, audio or other material that is encrypted; that constitutes junk mail, spam, advertising, and/or commercial offers.

You are responsible for ensuring that any graphics, text, photographs, images, video, audio or other material your account provides to or posts on the Services does not violate the copyright, trademark, trade secret or any other personal or proprietary rights of any third party or is provided or posted with the permission of the owner(s) of such rights.

You agree to use the Services only for lawful and ethical purposes and you acknowledge that your failure to do so may subject you to civil and criminal liability.

You may not access, tamper with, or use any non-public areas of the Services or SFT's computer systems or the technical delivery systems of SFT's providers. You may not attempt to probe, scan, or test the vulnerability of the Services or any related system or network or breach any security or authentication measures; without limitation, by using administrator passwords or by masquerading as an administrator while using the Services or otherwise. You may not attempt to decipher, decompile, disassemble, extract or reverse engineer any of the software, databases and content thereof and/or any content used to provide the Services. You may not interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services; or abuse system resources including, but not limited to, employing content which consume excessive CPU time or storage space; utilizing excessive bandwidth; or resale of access to content hosted on SFT servers.

SFT shall have the right to investigate and prosecute violations of any of the above, including intellectual property rights infringement and security-related issues, to the fullest extent of the law. SFT may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms of Service.

You agree that SFT and its third party service providers are not responsible for, and shall have no liability to you, with respect to any maintenance and support services with respect to the Services. SFT reserves the right, but undertakes no duty, to provide any maintenance or support services. If you feel the need for support with respect to the services, you as a User hold the right to contact our Service Manager by sending an email to [support@foodpairing.com](mailto:support@foodpairing.com) .

## **PROPRIETARY RIGHTS**

All right, title, and interest in and to the Services are and will remain the exclusive property of SFT. The Services are protected by copyright, trademarks, and other laws of both Belgium and foreign countries. Except as expressly permitted in these Terms of Service, the User may not reproduce, modify, or prepare derivative works based upon, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Services or the contents of the websites. The User acknowledges that all materials provided through the Services, including but not limited to

information, documents, products, logos, graphics, sounds, GUI, software, and services, are provided either by SFT or by their respective third party authors, developers and vendors and the underlying intellectual property rights are owned by SFT and/or its Third Party Providers.

Except as expressly provided otherwise in this Agreement, you agree that by posting messages, uploading text, graphics, photographs, images, video or audio files, inputting data, or engaging in any other form of communication with or through the Services, you grant us a royalty-free, perpetual, non-exclusive, unrestricted, worldwide license to use, reproduce, modify, adapt, translate, enhance, transmit, distribute, publicly perform, display, or sublicense any such communication (including your identity and information about you) in any medium (now in existence or hereinafter developed) and for any purpose, including commercial purposes, and to authorize others to do so.

## **RESPONSIBILITY FOR DATA**

While SFT tries to ensure that the Services are error free, it cannot guarantee that recipes, pictures, combinations or any other content will not be deleted or lost. The User acknowledges and agrees that SFT will not be responsible or liable for any failure of the Services of the storage of those data. The User acknowledges and agrees that SFT will not be responsible for the deletion of a recipe, picture, combination or any other content stored or processed during the provision of the Services.

SFT reserves the right, but undertakes no duty, to review, edit, move or delete any material provided for display or placed on the Services in its sole discretion, without notice.

You agree that SFT and its third party service providers are not responsible, and shall have no liability to you, with respect to any information or materials posted by others, including defamatory, offensive or illicit material, even material that violates this Agreement.

## **LINKS TO THIRD PARTY WEBSITES**

The Services may make available links to third-party websites. The User acknowledges and accepts that SFT is not responsible or liable for: the availability or accuracy of such websites; or the content, products, or services on or available from such websites. Links to such websites do not imply any endorsement by SFT of such websites or their content, products, or services available from such websites. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites.

## **COPYRIGHT AND INTELLECTUAL PROPERTY**

SFT respects the copyright and/or intellectual property rights of others and expects our users to do the same. Unauthorized copying, modification, distribution, public display, or public performance of a copyrighted work is an infringement of the copyright holder's rights, and expressly prohibited under the Services.

SFT will not be liable for any damages claimed as a result of SFT's services, information, or products.

SFT may, at its discretion, remove or disable access to content of which SFT has reason to believe it may be infringing copyright and/or the intellectual property rights of others or SFT, or otherwise

potentially expose SFT to civil or criminal liability. Should Users breach these conditions, SFT reserves the right to terminate that user's account immediately, without recourse to refunding any monies paid. However, such rights shall in no way create an obligation for SFT to edit or review the Website(s) or Content of the Services.

If you believe that your work has been copied and is accessible on the Services in a way that constitutes copyright or intellectual right infringement, or that the Services contain links or other references to another location that contains material or activity that infringes your copyright rights, please notify SFT by e-mail to [legal@Foodpairing.com](mailto:legal@Foodpairing.com). In order to allow SFT to examine your claim, please include the following information in your notice:

Your name, address and contact details.

The title upon which your claim is based, including, where applicable, a copy of the registration of that title.

The content of the website of which you claim it infringes your intellectual property rights, including a link to the specific page on which the content is displayed or otherwise made available.

Where applicable and to the extent possible, the identity of the User of whom you suspect he has made the content available on the Services

If for any reason, the e-mail address [legal@foodpairing.com](mailto:legal@foodpairing.com) is unavailable and you receive a delivery failure notice, please attempt to resend the notice one day after your first attempt. If the problem persists, please address your notice by letter to the following address:

**SENSE for TASTE CVBA**  
**FOODPAIRING INTELLECTUAL PROPERTY NOTICES**  
**Nijverheidsstraat 7**  
**B-8310 Brugge**  
**Belgium**

Upon receipt of your notice, SFT undertakes to examine your claim and will take appropriate action. Such action may include the removal of the content from the website concerned and the discontinuation of the Services to the User whom has posted the content or has made it otherwise available. SFT expressly reserves the right to contact the individual concerned to allow him or her to defend the claim. The removal of content by SFT pursuant to a notice sent in accordance with this Section shall in no way imply any acknowledgment of negligence or wrongdoing.

Third party service providers will never be responsible for the investigation, defense, settlement and discharge of any intellectual property infringement claims.

## TRADEMARKS

Foodpairing, the Foodpairing logo, and all other Foodpairing trademarks, service marks, product names, and trade names of Foodpairing appearing on the Services are owned by SFT. The User may not use or display any trademark, service mark, product name, trade name, or logo appearing on the Services without the owner's prior written consent

## MONITORING

We strive to provide an enjoyable experience for our users, so we may monitor activity on the services to foster compliance with this Terms Of Service or to comply with applicable law or the order or requirement of a court, administrative agency, or other governmental body . All users of the services hereby specifically agree to and accept such monitoring. Nevertheless, we do not make any warranties or guarantees that: the Services, or any portion thereof, will be monitored for accuracy or unacceptable use, apparent statements of fact will be authenticated, or we will take any specific action (or any action at all) in the event of a dispute regarding compliance or non-compliance with this Terms of Service.

## CONFIDENTIALITY

You represent and warrant to SFT that you are not a competitor of SFT, publicly unannounced information and materials pertaining to SFT, pre-release software, testing or testing procedures shall be kept strictly confidential and none of the information gained from access to the Foodpairing Web site or use of the Services shall be used to compete with SFT's business. If SFT has reasonable grounds to suspect that such is the case, SFT has the right to disable or terminate the User's account and refuse any and all current or future use of the Services.

## DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

YOU ACKNOWLEDGE THAT YOU ARE USING THE SERVICES AT YOUR OWN RISK. THE SERVICES ARE PROVIDED "AS IS", AND THE SFT, ITS AFFILIATES AND ITS THIRD PARTY SERVICE PROVIDERS HEREBY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF ACCURACY, RELIABILITY, TITLE, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, CONDITION, GUARANTEE OR REPRESENTATION, WHETHER ORAL, IN WRITING OR IN ELECTRONIC FORM, INCLUDING BUT NOT LIMITED TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED THEREIN OR PROVIDED BY THE SERVICES. SFT, ITS AFFILIATES, AND ITS THIRD PARTY SERVICE PROVIDERS DO NOT REPRESENT OR WARRANT THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED OR THAT THERE WILL BE NO FAILURES, ERRORS OR OMISSIONS OR LOSS OF TRANSMITTED INFORMATION, OR THAT NO VIRUSES WILL BE TRANSMITTED ON THE SERVICES.

SFT, ITS AFFILIATES AND ITS THIRD PARTY SERVICE PROVIDERS SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTIES FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ALLEGEDLY SUSTAINED ARISING OUT OF THIS AGREEMENT, THE PROVIDING OF THE SERVICES HEREUNDER, THE SALE OR PURCHASE OF ANY GOODS OR MERCHANDISE, YOUR ACCESS TO OR INABILITY TO ACCESS THE SERVICES, INCLUDING FOR VIRUSES ALLEGED TO HAVE BEEN OBTAINED FROM THE SERVICES, YOUR USE OF, INABILITY TO USE OR RELIANCE ON THE SERVICES OR ANY OF

THE MERCHANDISE, INFORMATION OR MATERIALS AVAILABLE ON THE SERVICES, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

YOU HEREBY AGREE TO RELEASE SFT, ITS AFFILIATES AND THIRD-PARTY SERVICE PROVIDERS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS 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 YOUR USE OF THE SERVICES.

SFT can be contacted at [info@foodpairing.com](mailto:info@foodpairing.com) in case of dissatisfaction with any aspect of the Services or the Terms of Service.

## ADDITIONAL RULES

SFT reserves the right to communicate through the Services or otherwise, from time to time, additional terms of usage that apply to specific parts of the Services, including but not limited to the mobile application. Your continued use of the Services constitutes your agreement to comply with these additional rules.

## NOTICE

SFT reserves the right to provide you with notices, including those regarding changes to the Services by communicating through the Services or otherwise.

## SEVERABILITY

In the event that any provision of these Terms of Service is held to be invalid or unenforceable, the remaining provisions of these Terms of Service will remain in full force and affect. Headings in the Terms of Service are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

## INDEMNIFICATION

You agree to indemnify, defend and hold harmless SFT, its parent, subsidiary and affiliated entities, and third party service providers, and each of their respective officers, directors, members, employees, independent and sub-contractors, agents, representatives, successors and assigns from and against any and all claims and liabilities, including attorneys fees which may arise from your submissions, from your unauthorized use of material obtained through the Services, or from your breach of this Agreement, or from any such acts through your use of the Services.

## RELATIONSHIP

The User and SFT are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

## ASSIGNMENT

Customer may not assign any of its rights, or delegate any of its duties, under this Agreement, and any attempted assignment will be null and void.

## FORCE MAJEURE

Operation of the Services may be interfered with by numerous factors outside of our control and SFT shall not be liable to the User for any delay or failure in performance under this Agreement resulting directly or indirectly from causes beyond SFT's control.

## WAIVER

The failure of SFT to enforce any right or provision of these Terms of Service will not be deemed a waiver of such right or provision.

## ENTIRE AGREEMENT

These Terms of Service are the entire agreement between SFT and the User regarding the Services, this agreement is concluded between SFT and the User solely. The User also may be subject to additional terms and conditions that may apply when you use or purchase certain SFT services, affiliate services or third-party content software or services. These Terms of Service supersede and replace any prior agreements between SFT and the User regarding the Services. Please be aware that SFT reserves the right to cancel any transmission they find in violation of any of the above policies.

If you have any questions about these Terms of Service, please contact SFT at [legal@Foodpairing.com](mailto:legal@Foodpairing.com).

Complaints about violators of the Terms of Service Policy should be sent via e-mail to [abuse@Foodpairing.com](mailto:abuse@Foodpairing.com). Each complaint will be investigated and may result to immediate cancellation of Services without prior notice.

If Apple or any Apple's subsidiary is the third party service provider, then Apple is a third party beneficiary of this agreement. Upon the User's acceptance of these terms and conditions, Apple will have the right, and will be deemed to have accepted the right to enforce this agreement against the User as a third party beneficiary thereof.

If Apple or any Apple's subsidiary is the third party service provider, and in the event of any failure of the paid Services to conform to any applicable warranty, the User may notify Apple, and Apple will

refund the purchase price for the paid Services to that User; and that, to the maximum extent permitted by applicable law.

## GOVERNING LAW AND JURISDICTION

These Terms of Service and any action related thereto will be governed by the laws of Belgium without regard to its conflict of law provisions. The Belgian courts shall (subject to the paragraph below) have exclusive jurisdiction to settle any dispute which may arise out of, under, or in connection with these Terms of Service, and for those purposes irrevocably submit all disputes to the jurisdiction of the those courts.

For the exclusive benefit of SFT and to the extent possible in the applicable jurisdiction, SFT shall retain the right to bring proceedings as to the substance of the matter in the courts of the country of your residence or, where these Terms of Service are entered into in the course of your trade or profession, the country of the place of business in which you agreed to these Terms of Service or (if different) the country of your principal place of business.

