

TERMS OF USE

Please read these terms carefully. This is a binding agreement between Chowly, Inc. DBA Direct Order and its affiliates, including Koala Labs, Inc. (referred to as “Company,” “we,” “us” or “our”) and any person who accesses or establishes a connection to the Services (“you” or “User”). By using or otherwise accessing the Services, or indicating your assent hereto by clicking “I agree” or similarly expressing acceptance where other options exist, you will be deemed to have accepted the terms of this agreement. The Company retains any rights not specifically granted to you in this agreement.

ACCESS TO SERVICES

You agree to comply with all the terms of this agreement, if you use Chowly’s plug-in for ordering food and beverages (the “Plug-in”) via Google’s Food Ordering Program or if you order from Merchants (collectively, the “Services”).

You agree that the Company may, without prior notice for any reason or no reason, immediately terminate your access to the Services. You agree that all terminations for cause shall be made in the Company’s discretion and that the Company shall not be liable to you or any third-party for any termination of your use.

SERVICES, MERCHANTS AND DELIVERY PARTNERS

The Services facilitate the placement and delivery of your orders by connecting you with restaurants and other food and beverage providers that utilize the Company’s first party online ordering services (“Merchants”) and independent third-party contractors that provide delivery and other services (“Contractors”). By placing your order, you consent to Chowly providing your order and delivery information to Merchants and Contractors. You understand and agree that Chowly does not prepare food or offer delivery services, and has no responsibility or liability for the acts or omissions of any Merchant or any Contractor. Chowly does not hold title to or acquire any ownership interest in any menu item that you order through the Services.

Chowly is not responsible for whether the photographs or images displayed through the Services accurately reflect the food and beverages prepared by the Merchants or delivered by the Contractor, or for whether the name or description of the food and beverages is accurate. Chowly does not assess or guarantee the suitability, legality, or ability of any Merchant or Contractor. You agree not to make a claim against Chowly relating to your purchases from or interactions with a Merchant or Contractor.

RESTRICTIONS ON USE

You may access the Services only for non-commercial use by you or your organization for personal or internal business purposes or as specifically permitted in this agreement. You may not use the Services for any other purpose. You may not, for example:

- copy, modify, publish, distribute, transmit, systematically download, participate in the transfer or sale or rental of, translate, create derivative works from, frame, co-brand, or in any way exploit any part of the Services;

- access the Services with any robot, spider, web crawler, extraction software, automated process or device to scrape, conduct any systematic retrieval of data or other content from, frame, or monitor any part of the Services; or
- use the Services in any harmful or illegal manner or interfere with any party's use or enjoyment of the Services.

The Company may monitor use of the Services to determine compliance with this agreement. You agree to cooperate with the Company in causing any of your unauthorized use of the Services to immediately cease.

OWNERSHIP

The Company owns all right, title and interest in and to the Services, including all intellectual property rights therein.

The Company's name, logos, and other product and service identifiers are the Company's trademarks. All other trademarks appearing with the Services are the property of their respective owners. No rights are granted to you in these trademarks.

You agree to report any errors, bugs, unauthorized access methodologies or any breach of our intellectual property rights that you uncover in your use of the Services.

USER SUBMISSIONS

You may comment, post, or upload information, ratings, or reviews (a "Submission") about your order. Chowly does not review or endorse any Submission. No Submission represents the view of Chowly. You are solely responsible for any violation under any theory of law that may be alleged relating to your Submissions, and any damages resulting therefrom.

COMMUNICATIONS WITH CHOWLY

By using the Services you electronically agree to accept and receive communications from Chowly, Contractors, or third parties providing services to Chowly including via email, text message, and push notifications to the cellular telephone number you provided to Chowly. Message and data rates may apply. You understand that you may receive promotional communications from Merchants following your order, and that communications with updates on order or delivery status are transactional, not promotional. If you do not wish to receive promotional communications, please contact the applicable Merchant.

PRICING

You understand that Merchants provide Chowly with the prices for menu or other items displayed through the Services, and that they may differ from the prices offered by Merchants for the same menu or other items in-store or on other third-party websites. You are liable for all transaction taxes on the Services (other than taxes based on Chowly's income).

The subtotals shown at checkout are estimates that may be higher or lower than the total amount (which includes subtotal, Merchant and Contractor fees, and gratuity) – in those situations, Chowly reserves the right to charge your payment method the final price after checkout. If the charge to your

credit or debit card incorrectly differs from the total amount displayed to you at checkout or after gratuity is selected, Chowly may make an additional charge to your card after the initial charge so that the total amount charged matches the total amount displayed to you at checkout or after gratuity is selected.

All payments will be processed by Chowly's payment processor, using the preferred payment method you designate. If your payment details change, your card provider may provide us with updated card details. We may use these new details or details from your other cards on file to help prevent any interruption to your use of the Services. Please update your billing information if you would like to use a different payment method or if there is a change in payment method.

Charges for completed and delivered orders are final and non-refundable. Any refunds or credits must be obtained from Merchant.

ALCOHOL

You may have the option to order alcohol products from some Merchants. You agree that you will only order alcohol products if you are 21 years of age or older. You also agree that, upon delivery of alcohol products, you will provide valid government-issued identification proving your age to the Contractor delivering the alcohol products and that you will not be intoxicated when receiving delivery of such products. The Contractor may refuse delivery if you are not 21 years old, if you cannot provide a valid government issued ID, if the name on your ID does not match the name on your order, or you are visibly intoxicated. If the Contractor cannot complete the delivery of alcohol products for one or more of these reasons, you may be subject to a non-refundable re-stocking fee as determined by the Merchant in its sole discretion.

HYPERLINKS

The Google Food Ordering page or a Merchant page may include hyperlinks to other websites that are not owned or operated by the Company. These links are provided for your convenience. Hyperlinks are to be accessed at your own risk. The Company may not have reviewed, and does not necessarily endorse, the content of other websites. The Company has no control over other websites and is not liable for any content, advertising, products, services or other materials on or available from those websites.

SECURITY AND SECURITY VIOLATIONS

You represent that the information you provide to us in using the Services is accurate. You will keep secure and confidential any login credentials required to access to the Services.

You may not attempt to violate the security of the Services, or use the Services to violate the security of other persons or websites or to violate the law, including by: (a) accessing data not owned by or intended for you or logging into an account that you are not authorized to access; (b) attempting to probe, scan or test the vulnerability of the Services or to breach security or authentication measures; (c) attempting to interfere with service to any User, host or network, including without limitation, by submitting a virus to the Services; (d) sending unsolicited e-mail; (e) forging any TCP/IP packet header or any part of the header information in any e-mail; or (f) attempting to alter, make derivative works of, copy, disassemble or reverse engineer any of the software making up any part of the Services.

The Company will take all reasonably necessary steps to investigate suspected violations of this agreement. The Company reserves the right to involve and fully cooperate with any law enforcement authorities and comply with court orders requesting or directing the Company to disclose the identity of anyone engaging in conduct that is believed to violate the law. The Company further reserves the right, in its discretion, to release your details to system administrators at other sites in order to assist them in resolving security incidents.

You release the Company from and against any action taken by the Company during or as a result of its investigations and from any actions taken as a consequence of investigations by either the Company or law enforcement authorities.

PRIVACY

The Company's Privacy Policy, located [here](#), describes the Company's collection and use of your personal and other information.

IMPORTANT DISCLAIMERS

Your use of the Services is at your own risk. The Services are provided on an "as is" and "as available" basis. The Company disclaims any warranties, express or implied, including any implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement, and any warranties arising out of course of dealing or usage of trade.

By way of illustration, and without limiting the generality of the disclaimer in the paragraph above, the Company disclaims any warranty that:

- The Services will be uninterrupted or error-free, or that defects will be corrected;
- The Plug-in or the servers that makes the Services available are free of viruses or other harmful components; or
- The information on each menu item is accurate, complete, or free of typographical errors.

Chowly is not responsible for any delays, delivery failures, or damage, loss or injury resulting from limitations, delays, and other problems inherent in the use of the Internet and electronic communications.

LIMITATION ON LIABILITY

The Company, its subsidiaries, affiliates, licensors, service providers, content providers, employees, agents, officers, and directors shall not be liable for any incidental, direct, indirect, punitive, actual, consequential, special, exemplary, or other damages, including loss of revenue or income, pain and suffering, emotional distress, or similar damages, even if the Company has been advised of the possibility of such damages. If you are a California resident, you waive California Civil Code Section 1542, which states, in part: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

In no event will the collective liability of the Company and its affiliates, licensors, service providers, employees, agents, officers, and directors to any party (regardless of the form of action, whether in contract, tort, or otherwise) exceed \$100.

INDEMNIFICATION

To the maximum extent permitted by law, you shall indemnify the Company, its subsidiaries, affiliates, licensors, service providers, content providers, employees, agents, officers, and directors from and against all third-party claims, liabilities and expenses, including legal fees and costs, relating to your use of the Services or your breach of any representation or obligation contained in this agreement. The Company reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any claim for which you are obligated to provide indemnification under this section. You shall fully cooperate as reasonably required in the defense of any claim.

AMENDMENT

This agreement constitutes the entire agreement between the parties relating to the subject matter contained herein. The Company may modify this agreement at any time by posting the revised terms on the Good Food Ordering Program page and providing you with the opportunity to accept or reject the modifications before placing your order using the Services. If you do not agree to the revised terms, you may be required to cease your access to the Services. Continued use or access of the Service after modification will constitute your acceptance of this agreement as modified.

DISPUTE RESOLUTION; JURY WAIVER

All disputes relating to the interpretation of this agreement or the rights of the parties hereunder will be exclusively settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules. Disputes involving \$75,000 or less shall use the AAA's Expedited Rules. The parties shall mutually agree upon a single commercial arbitrator, and in the absence of agreement, the AAA shall select the arbitrator. The place of arbitration shall be Chicago, Illinois. The parties will share equally in the costs of arbitration payable to the AAA, including the arbitrator. The award of the arbitrator will be accompanied by a reasoned opinion. Judgment on an arbitration award may be entered in accordance with the Federal Arbitration Act in any federal court having jurisdiction.

You acknowledge and agree that you and the Company are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Further, unless both you and the Company otherwise agree in writing, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of any class or representative proceeding.

The parties to this agreement may, notwithstanding the above, seek equitable relief in any proper court to enjoin a breach or threatened breach of any obligations under this agreement that might cause irreparable harm (without any requirement to post bond).

MISCELLANEOUS

This agreement shall be governed and interpreted pursuant to the laws of the State of Illinois without regard to its choice of law rules. If any part of this agreement is unlawful, void, or unenforceable, that part will be deemed severable and will not affect the validity and enforceability of any remaining

provisions. Any notices or other communications permitted or required hereunder will be in writing and given by the Company via e-mail, to the address that you provided when registering for the Services, and will be effective upon transmission.

CONTACT AND FEEDBACK

We welcome and encourage feedback, comments and suggestions for improvements to the Services ("Feedback"). You may submit Feedback through the "Support" section of <https://www.chowly.com>. You agree that all Feedback will become the sole and exclusive property of the Company and you hereby irrevocably assign to the Company all of your right in and to all Feedback.

If you are a resident of California, you may request additional information or submit claims or complaints regarding the Services by calling the Complaint Assistance Unit of the Division of Consumer Services of California Department of Consumer Affairs at (800) 952-5210, or in writing at:

Complaint Assistance Unit

Division of Consumer Services

California Department of Consumer Affairs

1625 N. Market Blvd., Suite N 112

Sacramento, California 95834.

Last updated: May 16, 2023