

# A CUTER CUPCAKE COMPANY TERMS OF USE

Last Updated: August 9th, 2020

Thanks for visiting A Cuter Cupcake Company and our Terms of Use (the "**Agreement**"). This Agreement is important and contains terms and conditions that affect your legal rights, so please read it carefully.

By accessing or using the website, mobile applications or blogs (collectively, the "Site") provided by A Cuter Cupcake Company, LLC ("**A Cuter Cupcake Company,**" or "**A Cuter Cupcake,**" or "**we**" or "**us**"), including, without limitation, [www.acutercupcake.com](http://www.acutercupcake.com) (the "Site") and your purchase of A Cuter Cupcake Company cupcakes and other baked goods to be delivered (collectively, our "**Services**") provided by A Cuter Cupcake Company, LLC, you agree to be bound by the terms and conditions contained in this Agreement and all other terms incorporated herein by reference. Some of the Services may be subject to additional terms and conditions we specify from time to time; your use of such Services is subject to those additional terms and conditions. which are incorporated into this Agreement by reference. This Agreement applies to all users of the Site.

We reserve the right, at our sole discretion, to change or modify portions of this Agreement at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date this Agreement was last revised. You may read a current, effective copy of this Agreement at any time by selecting the "Terms and Conditions" link on the Site. We will also notify you of any material changes either through a pop-up notice, e-mail or through other reasonable means. Your continued use of the Site after any such changes constitutes your acceptance of the new Agreement. You should periodically visit this page to review the current Agreement so you are aware of any revision to which you are bound. If you do not agree to abide by this or any future Agreement, do not use or access (or continue to use or access) the Site.

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW OR WHERE PROHIBITED BY APPLICABLE LAW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

## 1. Privacy Policy

Please refer to our Privacy Policy for information about how we collect, use and disclose and otherwise process information about you.

## 2. Eligibility

You must be at least 13 years of age to access or use our Service. If you are between 13 to 18 years of age (or age of legal majority where you live), you may only access or use our Services under the supervision of a parent or legal guardian who agrees to be bound by these Terms. If you are accessing or using our Services on behalf of another person or entity, you represent that you are authorized to access these Terms on that person or entity's behalf and that the person or entity agrees to be responsible to us if you or the other person or entity violate these Terms. We may, in sole discretion, refuse to offer the services to any person or entity and change our eligibility criteria at any time.

## 3. User account and Account Security

You may have the ability to create an online account. If you register for an account, you must provide accurate account information and promptly update this information if it changes. You must also maintain the security of your account credentials, not share your account credentials with others and promptly notify A Cuter Cupcake Company if you discover or suspect that someone has accessed your account without your permission.

## 4. Use of Site

### 4.1

The Site contains material, including but not limited to software, text, graphics and images (collectively referred to as the "**Content**"). We may own the Content, or portions of the Content may be made available to us through arrangements that we have with third parties. We do not guarantee that any Content you access on or through the Site is or will continue to be accurate. The Content is protected by United States and foreign intellectual property laws. Unauthorized use of the Content may result in violation of copyright, trademark, and other laws. You have no rights in or to

the Content, and you will not use, copy or display the Content, including but not limited to use of framing or mirrors, except as permitted under this Agreement. No other use is permitted without our prior written consent. You must retain all copyright and other proprietary notices contained in the original Content on any copy you make of the Content. You may not sell, transfer, assign, license, sublicense, or modify the Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use or posting of any of the Content on any other website or in a networked computer environment for any purpose is expressly prohibited. If you violate any part of this Agreement, your right to access and/or use the Content and Site shall automatically terminate and you shall immediately destroy any copies you have made of the Content.

#### 4.2

The trademarks, service marks, and logos of A Cuter Cupcake Company (the "**A Cuter Cupcake Company Trademarks**") used and displayed in connection with the Services are registered and unregistered trademarks or service marks of A Cuter Cupcake Company. Other company, product, and service names located on the Site or otherwise used in connection with the Services may be trademarks or service marks owned by third parties (the "**Third Party Trademarks**", and, collectively with the A Cuter Cupcake Company Trademarks, the "**Trademarks**"). Nothing on the Site, in the Services or in this Agreement should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark displayed on the Site or otherwise used in connection with the Services without our prior written consent specific for each such use. The Trademarks may not be used to disparage us or any applicable third party, our or the applicable third party's products or services, or in any manner (using commercially reasonable judgment) that may damage any goodwill in the Trademarks. Use of any A Cuter Cupcake Company Trademarks as part of a link to or from any website is prohibited without our prior written consent. All goodwill generated from the use of any A Cuter Cupcake Company Trademark shall inure to our benefit.

#### 4.3

You agree not to: (a) take any action that imposes an unreasonable load on the Site's infrastructure; (b) use any device, software or routine to interfere or attempt to interfere with the proper working of the Site or any activity being conducted on the Site; (c) attempt to decipher, decompile, disassemble or reverse engineer any of the software comprising or making up the Site; (d) delete or alter any material we or any other person or entity posts on the Site; or (e) otherwise take any action in violation of our guidelines and policies.

## 5. User Content

Our Services may allow you to create, post, and store and share content, including messages, text, photo, videos and other materials (collectively, "**User Content**"). Except for the license you grant below, you retain all rights in and your User Content, as between you and A Cuter Cupcake Company.

You grant A Cuter Cupcake Company a perpetual, irrevocable, nonexclusive, royalty-free, worldwide, fully paid, and sub-licensable license to use, reproduce, adapt, publish, create derivative works from, copy, display, upload, publicly perform, distribute, store, modify and otherwise use your User Content and any name, username, likeness, voice or photograph provided in connection with your User Content, without compensation to you, in connection with the operation of the Site or the promotion, advertising or marketing of the Services, in any form, medium or technology now known or later developed, and including after your termination of your Account or the Services. For clarity, the foregoing license does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to your User Content, unless otherwise agreed in writing. You represent and warrant that you have all rights to grant such licenses to us without infringement or violation of any third party rights, including without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property or proprietary rights. When you post or otherwise share User Content and any associated information (such as your name, neighborhood and date of Product review) will be visible to the public. You may not create post, store or share any User Content that violates these Terms or for which you do not have all the rights necessary to grant us the license described above.

## 6. IP Infringement

### 6.1

We respect the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or that your intellectual property rights have been otherwise violated, you should notify us of your infringement claim in accordance with the procedure set forth below. We will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("**DMCA**") and other applicable intellectual property laws with respect to any alleged or actual infringement. A notification of claimed copyright infringement should be emailed to A

Cuter Cupcake's Copyright Agent at [support@acutercupcake.com](mailto:support@acutercupcake.com) (Subject line: **"Takedown Request"**).

## 6.2

To be effective, the notification must be in writing and contain the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the Site, with enough detail that we may find it on the Site;
- your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and
- a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

## 6.3

If you believe that your User Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to upload and use the content in your User Content, you may send a written counter-notice containing the following information to the Copyright Agent:

- your physical or electronic signature;
- identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- a statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court located within New

York, New York and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

#### **6.4**

If a counter-notice is received by the Copyright Agent, we will send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it within ten (10) business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in ten (10) to fourteen (14) business days or more after receipt of the counter-notice, at our sole discretion.

#### **6.5**

In accordance with the DMCA and other applicable law, we have adopted a policy of terminating, in appropriate circumstances and at our sole discretion, users who are deemed to be repeat infringers. We may also at our sole discretion limit access to the Site and/or terminate the Accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

## **7. Prohibited Conduct and Content**

**You** will not violate any applicable law, contract, intellectual property or other third-party right or commit a tort, and that you are solely responsible for your conduct while accessing or using our Services. You will not:

- Engage in any harassing, threatening, intimidating, predatory or stalking conduct;
- Use or attempt to use another user's account without authorization from that user and A Cuter Cupcake Company;
- Contains any private or personal information of a third party without such third party's consent;
- Contains any viruses, corrupted data or other harmful, disruptive or destructive files or content; or
- Is, in our sole judgement, objectionable or that restricts or inhibits any other person from using or enjoying our Services, or that may expose A Cuter Cupcake Company or others to any harm or liability of any type.

In addition, although we have no obligation to screen, edit or monitor User Content, we may delete or remove User Content at any time or any reason.

## 8. Payment; Ordering and Availability; Billing

### 8.1

You agree to provide accurate and up-to-date payment information at the time you order any Product. We have contracted with a third-party payment processor to facilitate purchases made on the Site. When you make a purchase through the Site, you will provide your payment details and any additional information required to complete your order directly to our third-party payment processor. You should be aware that online payment transactions are subject to validation checks by our payment processor and your card issuer and we are not responsible if your card issuer declines to authorize payment for any reason. For your protection, our payment processor uses various fraud prevention protocols and industry standard verification systems to reduce fraud and you authorize it to verify and authenticate your payment information. Please note, it is possible that your card issuer may charge you an online handling fee or processing fee. We are not responsible for this. In some jurisdictions, our payment processor may use third parties under strict confidentiality and data protection requirements for the purposes of payment processing services.

### 8.2

You agree to have sufficient funds or credit available upon placement of any such order to ensure that the purchase price will be collectible by us. After you place your order, we will send you a confirmation email (the "**Order Confirmation**"). We strive to provide accurate pricing information regarding the Products available on the Site. We cannot, however, insure against pricing errors. We reserve the right, at our sole discretion, to not process or to cancel any orders placed for a Product whose price was incorrectly posted on the Site as a result of an error. If this occurs, we will notify you by email. The Site may contain information regarding the availability of Products. In rare cases, a Product may be in stock when you place the order, and sold out by the time we attempt to process the order. Should this happen, we will notify you by email and cancel the item from your order. We also may offer some Products for sale for select delivery dates and times before we open the majority of delivery dates and times. When you preorder these Products, we will deliver them on the date and time you selected. In rare cases, these items may no longer be available for delivery. Should this happen, we will notify you by email and cancel the item from your order.

### **8.3**

Unless otherwise specified, prices quoted are exclusive of: (a) the costs of shipping or carriage to the agreed place of delivery; and (b) value added tax and any other tax or duty which (where applicable) must be added to the price payable. You agree to pay for taxes, shipping or carriage of the Products as such costs are specified by us when you submit your order.

### **8.4**

All orders of Products must be for your personal enjoyment and use only. By purchasing Products, you hereby agree not to resell or distribute such Products for any commercial purposes. All orders are subject to our acceptance or rejection based on Product availability, noncompliance with this Agreement or any other reason as determined in our sole discretion. For instance, if we have reason to believe that your order is not for personal enjoyment and use, we reserve the right to reject or cancel any order that you place. We also reserve the right, in our sole discretion, to take steps to verify your identity to process your order. We reserve the right to charge you and not refund the charges for orders that we cancel or do not process under these circumstances.

### **8.5**

We attempt to provide accurate descriptions of Products. We do not warrant, however, that the descriptions are accurate, complete, reliable, current or error-free. If a Product is not as described, your sole remedy is to reach out to us at [support@acutercupcake.com](mailto:support@acutercupcake.com).

### **8.6**

Our cancellation policy is as follows: Cancellations made with 24-48 hours of the delivery date will be subject to a fee of 50% of the order value. Cancellations made within 24 hours of the delivery date cannot be refunded. Custom orders cancelled within 72 hours of the delivery date cannot be refunded. This is a strict cancellation policy. In the even of unforeseen circumstances, it is your responsibility to reach out to a team member ([support@acutercupcake.com](mailto:support@acutercupcake.com)) and inform them of the reason for your



cancellation. Please note that contacting a team member is not a guarantee of a full or partial refund. All requests will be handled on a case-by-case basis.

## 9. Delivery

### 9.1

A Cuter Cupcake Company online accepts orders with delivery addresses that are within the scope of the zip codes listed for Manhattan, New York City. For a [complete list of zip codes we currently deliver to, see here.](#) We also reserve the right to change, add, and/or remove any neighborhoods and/or zip codes at any time. So please check ahead of time to make sure your delivery address is under the zip codes we offer delivery to. We reserve the right to cancel any order(s) that are not within the scope to which we deliver.

### 9.2

Your order will be fulfilled on the delivery date and time set out in the Order Confirmation, unless there are exceptional circumstances.

### 9.3

Your order will be delivered to the delivery address that you specify when placing your order. All deliveries are undertaken by A Cuter Cupcake Company or our couriers. Please make sure someone is available at the delivery address on the day and time of your scheduled delivery. If no one is on hand to accept the delivery, we will leave it with your receptionist. If there is no receptionist, then we will do our best to leave it somewhere safe and contact you to inform you where it was left. We cannot hold the cupcakes, cake, and/or baked goods for redelivery. If you would like us to deliver to an office, you will be responsible for letting the security, front desk, and/or receptionist know that you are expecting a delivery from A Cuter Cupcake Company. Once delivered, A Cuter Cupcake Company do not assume any liability for the treatment of your order and any mishandling. All our drivers are instructed in the correct handling of our products and will always pass the information to the person accepting the order but will not assume any liability for the subsequent handling of your order. If we are unable to deliver to your delivery address, for example if your delivery address is geographically remote, we will notify you and you may either modify your delivery address, or cancel your order. Failure to do so will result in the order being canceled by

us. We reserve the right not to deliver to any dresses outside of our delivery zone. Products comprised within the same order cannot be delivered to different addresses.

#### **9.4**

The Product(s) ordered will be at your risk from the time you receive the Product(s). Ownership of the Product(s) ordered will also pass to you upon your receipt of the Product(s), provided full payment of all sums due in respect of the Product(s), including any delivery charges, has been received.

## **10. Feedback**

Any questions, comments, suggestions, ideas, original or creative materials or other information you submit about A Cuter Cupcake Company or our Services (collectively, "**Feedback**"). Is non-confidential and will become the sole property of A Cuter Cupcake Company. We will own exclusive rights, including, without limitation, all intellectual property rights, in and to Feedback and will be entitled to the unrestricted use and dissemination of Feedback for any purpose, commercial or otherwise, without acknowledgement or compensation to you.

## **11. Limited License; Copyright and Trademark**

Our services and the text, graphics, images, photographs, videos, illustrations, trademarks, trade names, service marks, logos, slogans and other content contained therein (collectively, the "**A Cuter Cupcake Company Content**") are owned by or licensed to A Cuter Cupcake Company and are protected under both United States and foreign laws. Except as explicitly stated in this Agreement, A Cuter Cupcake Company and our licensors reserve all rights in and to our Service and A Cuter Cupcake Company content. You are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to access and use our Services and A Cuter Cupcake Company Context for your personal use; however, such license is subject to these Terms and does not include any right to (a) sell, resell or commercially use our Services or A Cuter Cupcake Company Content; (b) copy, reproduce, distribute, publicly perform or publicly display A Cuter Cupcake Company Content, except expressly permitted by us or our licensors; (c) modify the A Cuter Cupcake Company Content, remove any proprietary rights notices or markings, or otherwise make any derivative use of our Services or A Cuter Cupcake Company Content; (d) use any data mining, robots or similar data gathering or extraction methods; and (e) use our Services of A Cuter Cupcake Company Content other than

as specifically authorized herein, without prior written permission, is strictly prohibited and will terminate the license granted herein.

## 12. Indemnification

To the fullest extent permitted by applicable law, you will indemnify, defend, and hold harmless A Cuter Cupcake Company and our officers, directors, agents, partners and employees (together with A Cuter Cupcake Company, and "**A Cuter Cupcake Company Parties**") from and against any loss, liability, claim, demand, damages, expenses or costs (collectively, "**Claims**") arising out of or related to (a) your use or misuse of our Services; (b) your User Content or Feedback; (c) your violation of these Terms; and (d) your violation of any rights of another. You agree to promptly notify the A Cuter Cupcake Company Parties of any third party Claims and pay all fees, costs and expenses associated with defending such Claims (including but not limited to attorneys' fees). You further agree that the A Cuter Cupcake Company Parties shall have control of the defense or settlement of any third party Claims.

## 13. Disclaimers

**We do not control, endorse or take responsibility for any User Content or third-party content available on or linked to by our Services, including User Content.**

**Your use of our Services is at your sole risk. Our Services are provided "as is" and "as available" without warranties of any kind, either express or implied. In additions, A Cuter Cupcake Company does not represent or warrant that our Services are accurate, complete, reliable, current or error-free. While A Cuter Cupcake Company attempts to make your access to and use of our Services safe, we cannot and do not represent or warrant that our Services or servers are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of the Services.**

## 14. Limitation of Liability

**To the fullest extent permitted by applicable law, the A Cuter Cupcake Company Parties will not be liable to any indirect, special, incidental or consequential damages of any kind arising out of or in any way related to the access to or use of the Services or the purchase of Products through the Servcies, including but not limited to any damages caused by or**

resulting from reliance on information obtained from A Cuter Cupcake Company Parties and from events beyond A Cuter Cupcake Company Parties' reasonable control, even if A Cuter Cupcake Company or other A Cuter Cupcake Company Parties have been advised of the possibility of such damages.

To the fullest extent permitted by applicable law, the total liability of the A Cuter Cupcake Company parties for any claim arising out of or relating to these Terms, our Services or Products purchased through the Seervices, regarding less of the form of action, is limited to the greater of (a) the purchase price of the Product(s) giving rise to the claim or (b) \$50.

The limitations set forth in this section will not limit or exclude the A Cuter Cupcake Company Parties' liability for personal health, injury or damages caused by the Products you purchase through the Services or for A Cuter Cupcake Company Parties' gross negligence, fraud, intentional, willful, malicious or reckless misconduct.

## 15. Arbitration Clause and Class Action Waiver

**Please review as this affects your legal rights**

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH A CUTER CUPCAKE COMPANY AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US, UNLESS YOU OPT OUT OF ARBITRATION BY FOLLOWING THE INSTRUCTIONS SET FORTH BELOW. NO CLASS OR REPRESENTATIVE ACTIONS OR ARBITRATIONS ARE ALLOWED UNDER THIS ARBITRATION AGREEMENT. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR HAVING A JURY TRIAL.

### 15.1

You and A Cuter Cupcake Company agree that any dispute arising out of or related to this agreement or our Services is personal to you and A Cuter Cupcake Company and that any dispute will be resolved solely through individual action, and will not be brought as a class arbitration, class action, or any other type of representative proceeding.

## 15.2

Except for small claims disputes in which you or A Cuter Cupcake Company seeks to bring an individual action in small claims court located in the county of your billing address or disputes in which you or A Cuter Cupcake Company seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and A Cuter Cupcake Company waive your rights to a jury trial and to have any dispute arising out of or related to this Agreement or our Services resolved in court. Instead, for any dispute or claim that you have against A Cuter Cupcake Company or relating in any way to the Services, you agree to first contact A Cuter Cupcake Company and attempt to resolve the claim informally by sending a written notice of your claim ("**Notice**") to A Cuter Cupcake Company by email at [support@acutercupcake.com](mailto:support@acutercupcake.com). The Notice must (a) include your name, residence address, email address, and telephone number; (b) describe the nature and basis of the claim; and (c) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and A Cuter Cupcake Company cannot reach an agreement to resolve the claim within thirty (30) days after such Notice is received, then either party may submit the dispute to binding arbitration administered by JAMS or, under the limited circumstances set forth above, in court. All disputes submitted to JAMS will be resolved through confidential, binding arbitration. Arbitration proceedings will be held in New York County, New York or may be conducted telephonically or via video conference for disputes alleging damages less than \$500, in accordance with the JAMS Streamlined Arbitration Rules and Procedures ("**JAMS Rules**"). The most recent version of the JAMS Rules are available on the [JAMS website](#) and are hereby incorporated by reference. You either acknowledge and agree that you have read and understand the JAMS Rules or waive your opportunity to read the JAMS Rules and waive any claim that the JAMS Rules are unfair or should not apply for any reason.

## 15.3

You and A Cuter Cupcake Company agree that this Agreement affects interstate commerce and that the enforceability of this Section 15 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "**FAA**"), to the maximum extent permitted by applicable law. As limited by the FAA, this Agreement and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

#### 15.4

The arbitrator, A Cuter Cupcake Company, and you will maintain the confidentiality of any arbitration proceedings, judgments and awards, including, but not limited to, all information gathered, prepared and presented for purposes of the arbitration or related to the dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply to the extent that disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy or in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.

#### 15.5

You and A Cuter Cupcake Company agree that for any arbitration you initiate, you will pay the filing fee and A Cuter Cupcake Company will pay the remaining JAMS fees and costs. For any arbitration initiated by A Cuter Cupcake Company, A Cuter Cupcake Company will pay all JAMS fees and costs. You and A Cuter Cupcake Company agree that the state or federal courts of the State of New York and the United States sitting in New York county, New York have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

#### 15.6

**Any claim arising out of or related to this Agreement or our Services must be filed within one year after such claim arose; otherwise, the claim is permanently barred, which means that you and A Cuter Cupcake Company will not have the right to assert the claim. You have the right to opt out of binding arbitration within 30 days of the date you first accepted the terms of this Section 15 by emailing [Support@acutercupcake.com](mailto:Support@acutercupcake.com).** In order to be effective, the opt-out notice must include your full name and address and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve disputes in accordance with Section 20.1.

#### 15.7

If any portion of this Section 15 is found to be unenforceable or unlawful for any reason, (a) the unenforceable or unlawful provision shall be severed from this Agreement; (b) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of this Section 15 or the parties' ability to compel

arbitration of any remaining claims on an individual basis pursuant to this Section 15; and (c) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this Section 15 is found to prohibit an individual claim seeking public injunctive relief, that provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this Section 15 will be enforceable.

## **16. Termination.**

We reserve the right, in our sole discretion, to restrict, suspend, or terminate this Agreement and your access to all or any part of the Site or the Content at any time and for any reason (including if we believe that you have engaged in any suspected fraudulent or abusive activity, or violated or acted inconsistently with the letter or spirit of this Agreement) without prior notice or liability, including the right to reject any order you place for the purchase of Products, which may result in the forfeiture and destruction of all information associated with your Account. We reserve the right to change, suspend, or discontinue all or any part of the Services or the Content at any time without prior notice or liability. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, licenses of User Content, ownership provisions, warranty disclaimers, indemnity, limitations of liability, class action waivers and arbitration.

## **17. User Must Comply with Applicable Laws.**

### **17.1**

You are solely responsible for ensuring compliance with the laws of your specific jurisdiction and for abiding by all applicable local, state, provincial, national and international laws and regulations.

### **17.2**

The United States controls the export of products and information. You expressly agree to comply with such restrictions and not to export or re-export any of the Content to countries or persons prohibited under the export control laws. By downloading the

Content, you are expressly agreeing that you are not in a country where such export is prohibited or are a person or entity for which such export is prohibited. You are solely responsible for compliance with the laws of your specific jurisdiction regarding the import, export, or re-export of the Content.

## **18. Transfer and Processing of Personal Data.**

In order for us to provide the Services, you agree that we may process, transfer and store information about you in the United States and other countries, where you may not have the same rights and protections as you do under local law.

## **19. U.S. Government Restricted Rights.**

The Content is provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the Government is subject to the restrictions contained in 48 CFR 52.227-19 and 48 CFR 252.227-7013 et seq. or its successor. Use of the Services or Content by the Government constitutes acknowledgement of our proprietary rights in the Services and Content.

## **20. Miscellaneous.**

### **20.1**

This Agreement is governed by the internal substantive laws of the State of New York, without respect to its conflict of laws provisions. Any dispute between you and A Cuter Cupcake Company that is not subject to arbitration or cannot be heard in small claims court will be resolved in state and federal courts sitting in the City of New York in the State of New York. If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. Our failure to act on or enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical,



electronic or communications failure or degradation. Any information you submit to or provide through the Site might be publicly accessible, and you should protect important and private information. We are not liable for protection of privacy of email or other information transferred through the Internet or any other network that you may use.

## **20.2**

Except as expressly agreed by us and you, this Agreement constitutes the entire agreement between us and you with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between us and you with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement is personal to you, and is not assignable, transferable or sublicensable by you except with our prior written consent. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. Unless otherwise specified in this Agreement, all notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Electronic notices should be sent to [support@acutercupcake.com](mailto:support@acutercupcake.com)

## **20.3**

A Cuter Cupcake Company, LLC is a New York State Limited Liability Company with its headquarters in New York, NY 10011. You may contact us at the following email address: [Support@acutercupcake.com](mailto:Support@acutercupcake.com)

## **21. Contact Us**

If you have questions about these Terms of Service, please contact us electronically to the following email address: [support@acutercupcake.com](mailto:support@acutercupcake.com). We will take reasonable steps to respond to your request(s).