

Terms and Conditions for Use of Services on Second Harvest Food Rescue App

1 DESCRIPTIONS AND DEFINITIONS

1.1 Second Harvest

Second Harvest Canada ("**Second Harvest**") is a registered Canadian charity that operates non-profit food rescue programs.

1.2 Second Harvest Food Rescue App

Second Harvest Food Rescue App is a food rescue program operated by Second Harvest that connects food donors and social services via an innovate online platform at the domain <https://FoodRescue.SecondHarvest.ca/>.

1.3 Food Rescues, Food Donors and Food Rescuers

Second Harvest Food Rescue App permits food businesses and other entities who are approved as a food donor ("**Food Donor**") to donate food ("**Food Rescue**") directly to an approved non-profit that provides social services ("**Food Rescuer**").

Food Rescues: Any donation of food from a Food Donor to a Food Rescuer via Second Harvest Food Rescue App is a Food Rescue.

Food Donors: Any food business that has surplus food to donate using the platform on Second Harvest Food Rescue App may apply to become a Food Donor. Once approved, Food Donors have access to certain services and programs offered on Second Harvest Food Rescue App – including being connected with certain Canadian charitable and not-for-profit social service organizations that rescue food.

Food Rescuers: Any registered Canadian charity, not-for-profit organization, or Indigenous community registered as qualified donees performing a function of government in Canada, that uses rescued food in social service programs may apply to become a Food Rescuer. Once approved, a Food Rescuer is granted access to services, programs, and Food Donors that have been cultivated on the Second Harvest Food Rescue App.

Partner: Every Food Donor and Food Rescuer is a partner of Second Harvest Food Rescue App ("**Partner**") and subject to these Terms and Conditions for Use of Services on Second Harvest Food Rescue App ("**Terms & Conditions**").

1.4 These Terms & Conditions

By seeking approval to be a Food Donor or Food Rescuer, you agree to be bound by these Terms & Conditions, as applicable. These Terms & Conditions constitute a legal

agreement and are entered into by and between you and Second Harvest. These Terms & Conditions, govern your access to and use, including any content, functionality, services and programs offered on or through Second Harvest Food Rescue App.

By applying to become a Partner and using Second Harvest Food Rescue App, you accept and agree to be bound and comply with these Terms & Conditions.

2 DONATION AND DISTRIBUTION OF FOOD

2.1 Acknowledgement of Donation of Food Legislation

You understand that the donation of food is governed by the *Ontario Donation of Food Act*, S.O. 1994. c. 1994 and similar legislation in other provinces and territories of Canada (collectively, the "Donation of Food Legislation"), except the Province of Quebec in which donations are governed by the Civil Code of Quebec. For a list of applicable Donation of Food Legislation, see [Appendix A](#) to These Terms & Conditions. You acknowledge that you have read and understand the applicable Donation of Food Legislation and understand that in most jurisdictions in Canada there is no liability for damages resulting from injuries or death caused by the consumption of the food unless:

1. the food was adulterated, rotten or otherwise unfit for human consumption, and
2. in donating or distributing the food, the person who donated or distributed the food intended to injure or to cause the death of any person who consumed the food or acted in reckless disregard for the safety of others.

2.2 Food Must Be Fit for Human Consumption

You agree that in compliance with the applicable Donation of Food Legislation, you will not donate or distribute donated food that is adulterated, rotten or otherwise unfit for human consumption. This includes food that is unable to be properly stored, cooled and/or kept at a food safe temperature until the donation is picked up.

2.3 Title and Risk of Loss

Title and risk of loss pass from the Food Donor to the Food Rescuer upon pick-up of the rescued food by the Food Rescuer, including pick-up by any directors, officers, employees, agents, or volunteers of the Food Rescuer.

2.4 No Reliance

The services and information on Second Harvest Food Rescue App are provided to facilitate food donations from Food Donors to Food Rescuers. It is not intended to amount to food donation services upon which you should rely. You should not rely on Second Harvest Food Rescue App to meet your operational needs and you must obtain other sources to donate and/or receive food to ensure that such operational needs are met.

Second Harvest makes no representations, warranties, or guarantees, whether express or implied, that the content on Second Harvest Food Rescue App is accurate, complete, or up to date nor about the quality, quantity, availability, or frequency of donated food, Food Donors, Food Rescuers and the services provided by Second Harvest. Your use of Second Harvest Food Rescue App is at your own risk and Second Harvest has no responsibility or liability whatsoever for your use of Second Harvest Food Rescue App.

Second Harvest Food Rescue App includes content provided by third parties, including from Partners. All statements in any such third-party content, other than the content provided by Second Harvest, are solely the opinions and the responsibility of the person or entity providing those materials. Such materials do not necessarily reflect the opinion of Second Harvest. Second Harvest has no responsibility or liability whatsoever to you, or any third party, for the content or accuracy of any third-party materials.

2.5 No Sale or Barter

If you are a Food Donor or Food Rescuer, you will not sell or trade any form of cash, goods, or services in exchange for rescued food donated through the Second Harvest Food Rescue App.

2.6 Distribution

Partners agree that they will donate or distribute food, as applicable, in a fair, equitable, and dignified way and will not engage in discrimination, in offering this food, against any person because of race, colour, citizenship, religion, sex, national origin, ancestry, age, marital status, disability, sexual orientation, gender identity or any other analogous grounds of discrimination.

3 TERMS & CONDITIONS APPLICABLE TO FOOD DONORS

3.1 Accountability

As a Food Donor, you will ensure the minimum volume of food outlined in the posted donation details is made available at the agreed upon time and location, or you will provide at least four (4) hours' advance notice that the donation is being cancelled or rescheduled.

3.2 Food Safety and Traceability

As a Food Donor, you will ensure that food donations are stored and handled in a food safe manner in accordance with government regulations. You will also ensure that you have traceability procedures in place to manage potential food product recalls and that you will advise Second Harvest and any affected Food Rescuers promptly of any and all food recalls that could potentially affect food that you have donated.

3.3 Food Quality

As a Food Donor, you will ensure that food donations meet acceptable quality standards as outlined in Second Harvest's Best Before Date Timetable. Second Harvest allows Food Donors to donate food with dignity for all who participate.

4 TERMS & CONDITIONS APPLICABLE TO FOOD RESCUERS

4.1 Food Safety

Maintaining and preserving the safety of rescued food is of utmost importance to the success of the programs offered on Second Harvest Food Rescue App. If you are a Food Rescuer, then you are responsible for ensuring that the food you redistribute is safe for human consumption. You agree to the terms in this section 4.1.

1. You will only redistribute fresh and frozen raw (uncooked) meat to organizations that have demonstrated the capacity to accept, store and redistribute protein of this nature consistent with requirements set out by the government local public health authority.
2. You will sort all food to ensure it is safe for human consumption before distribution to end-recipients.
3. Except where local requirements dictate otherwise, your facilities where food is stored and prepared will be inspected by a local public health unit within 18 months of claiming any food through Second Harvest Food Rescue App, and you will continue to comply with all local requirements. Locations listed in your account on the Second Harvest Food Rescue App must be addresses affiliated with your operations and not digital satellite locations or private residences.
4. You will follow the rules and procedures set out in your provincial/territorial Ministry of Health's food safety acts and/or regulations. You acknowledge that you have read and understood applicable acts and regulations that apply to our province/territory.
5. You will track temperatures of any rescued food that must remain in a cold chain from donor to your facilities. You will retain appropriate temperature logs for a minimum of 1 year and make these available as requested by either, the Food Donor or any associated organizations.
6. You will follow the rules and procedures set out in your provincial/territorial Ministry of Health's food safety acts and/or regulations for maintaining safe food handling certification requirements of staff or volunteer's, who will physically handle food on site during your operational hours.

7. You have traceability procedures in place to manage potential food product recalls, which includes but are not limited to:
 - Registration with CFIA (CANADIAN FOOD INSPECTION AGENCY) for receiving email notifications for Food recall warnings.
8. You will ensure the arrangement of logistics for food rescues which includes van, truck, and refrigerated vehicles, corresponding to the donation listing.

4.2 No Compensation

If you are a Food Rescuer, then you will inform end-recipients that they must not return donated food to the Food Donor, or any other retail outlet, with any intention of complaint or refund request.

4.3 Accountability

If you are a Food Rescuer, you must ensure your accessibility to Second Harvest staff by either a phone or email. In case of an inquiry generated by a Second Harvest team member, you are obligated to respond within 72 hours. In the event of non-availability of the primary contact, provide an alternate contact for correspondence.

When you claim a Food Rescue through Second Harvest Food Rescue App, you are agreeing to pick up the donation at the time and location specified by the Food Donor. You will provide at least four (4) hours advance notice of any inability to pick up the food donation, so that this food may be offered to others. You will not attempt to pick up donations through the Second Harvest Food Rescue App that you have not claimed and do not have proper proof of claim documentation.

Once a food donation has been picked up, you are responsible for completing the donation by accurately entering the weight of the food you received on the Second Harvest Food Rescue App in a timely manner. Your account should not exceed more than 3 outstanding completions within any two-week period. Once confirmed, the details of this Food Rescue will be attributed to both your organization's and the Food Donor's data reports.

4.4 Re-donating Food

As a Food Rescuer, if you re-donate food that has been rescued using Second Harvest Food Rescue App to another organization, you should re-donate such food to another Food Rescuer through Second Harvest Food Rescue App. **If you are unable to re-donate rescued food through Second Harvest Food Rescue App and wish to re-donate the food to another non-profit organization, you must have written agreements in place with the recipient organization for food chain traceability and appropriate terms to protect you from liability.**

5 PROMOTION

5.1 Data Collection by Second Harvest

You acknowledge that Second Harvest will collect and use data in compliance with the [Second Harvest Privacy Policy](#) and that Second Harvest will collect and use this data for the purpose of tabulating and measuring data about successful and attempted Food Rescues as well as the capability and needs of Partners with respect to the food rescue programs offered on Second Harvest Food Rescue App.

5.2 Data Sharing

You acknowledge that in order to participate in a Food Rescue, Second Harvest Food Rescue App must share information that identifies your organization to other Partners.

You acknowledge that Partners will have access to data collected about Food Rescues in which they are participating and to aggregated data about Food Rescues. Except as described in subsections 6.5 and 6.6 of these Terms & Conditions, Partners are only permitted to use such information for operation and planning purposes.

At the request of Food Donors, additional data about their Food Rescues, including information about the Food Rescuers that participated in successful and attempted Food Rescues, may be provided to Food Donors.

5.3 Ongoing Data Measurement

Any data collected from your use of Second Harvest Food Rescue App may continue to be tabulated and measured, even if your organization ceases to be associated with Second Harvest Food Rescue App.

5.4 Consent to Recognition

You consent to Second Harvest identifying your organization as a Partner on Second Harvest Food Rescue App or in any Second Harvest or Second Harvest Food Rescue App's promotional/informational material. You are free to decline or withdraw your consent by emailing your request to FoodRescue@SecondHarvest.ca or adjusting the privacy setting in your profile on Second Harvest Food Rescue App. You recognize that if you cease to be associated with Second Harvest Food Rescue App or request the removal of your organization's name(s) or logo(s) from any electronic or print material, it will take a reasonable time to complete the removal.

5.5 Permission to Publish Personal Information

Second Harvest acknowledges and encourages sharing celebratory details and good news stories about Food Rescues and the work being done by Partners and Second Harvest in social and other public media communications, such as Twitter, Facebook, websites, newsletters, reports, promotional materials, press releases, media interviews, etcetera,

however, before publicizing or sharing any information that identifies another Partner or other participants (e.g. volunteer) in Food Rescues or Second Harvest Food Rescue App, you must obtain clear verbal or written consent to identify the Partner or other participant. If you intend to publicize or share information about an individual under the age of 16 years, then his or her parent or guardian must consent, in writing only and in advance, to the individual's inclusion in the publicity. Consent is not required to share celebratory details and good news stories such as the Partner's own participation in Second Harvest Food Rescue App or Food Rescues, the types of food donated or the types of people or programs receiving rescued food, or other general information that does not identify a specific Partner or individual.

5.6 Use of Graphics and Trademarks

Partners agree to obtain written consent prior to displaying a graphic logo or trademarks of other Partners, affiliates of Partners and Second Harvest (including its logos) in social and other public media communications, such as Twitter, Facebook, websites, newsletters, reports, promotional materials, press releases, media interviews, etcetera. You agree to indemnify and hold harmless another party from any and all losses, damages or expenses incurred or suffered as a result of unauthorized use of the other party's logo or other trademarks.

5.7 Positive Statements

If you make any public statements about Second Harvest or Second Harvest Food Rescue App, you will only make statements that reflect positively on Second Harvest, Second Harvest Food Rescue App, Partners as well as any and all their respective officers, directors, employees, contractors, staff, volunteers and representatives.

5.8 Terms of Use and Privacy

Your use of Second Harvest Food Rescue App is subject to the Website Terms of Use and Privacy Policy for Second Harvest, which are available at:

<https://www.secondharvest.ca/terms-use>

<https://www.secondharvest.ca/privacy-policy/>

6 GENERAL TERMS

6.1 Termination

Second Harvest may terminate your organization's participation as a Partner if the programs offered on Second Harvest Food Rescue App cease to operate, or if your organization (i) violates these Terms & Conditions; (ii) is deemed, in Second Harvest's sole discretion, to no longer be able to comply with these Terms & Conditions, (iii) acts, or fails to act, in a manner that, in Second Harvest's opinion, negatively impacts on Second Harvest, Second Harvest Food Rescue App, another Partner, or Second Harvest's

relationship(s) with other Partners, sponsors or donors, or any of Second Harvest's fundraising efforts or food rescue programs. Upon any such termination, your organization's ability to participate as a Partner will be withdrawn without further notice. In addition, either Second Harvest or a Partner may terminate the Partner's participation in the programs offered in Second Harvest Food Rescue App by providing at least ten (10) days' prior written notice.

6.2 Disclaimer of Warranties

You understand and agree that your use of Second Harvest Food Rescue App, its content, and any services or food found or attained through Second Harvest Food Rescue App is at your own risk. The website, its content, and any services or items found or attained through the website are provided on an "as is" basis, without any warranties of any kind, either express or implied including, but not limited to, the implied warranties of merchantability, fitness of a particular purpose, or non-infringement. The foregoing does not affect any warranties that cannot be excluded or limited under applicable law.

Neither Second Harvest nor its affiliates or their respective directors, officers, employees, agents, service providers, contractors, licensors, licensees, respect to the completeness, security, reliability, suitability, accuracy, currency, or availability of Second Harvest Food Rescue App or its contents. Without limiting the foregoing, neither Second Harvest nor its affiliates or their respective directors, officers, employees, agents, service providers, contracts, licensors, licensees, suppliers or successors represent or warrant that Second Harvest Food Rescue App, its content, or any web services or items found or attained through Second Harvest Food Rescue App will be accurate, reliable, error-free, or uninterrupted, that defects will be corrected, that Second Harvest Food Rescue App or the server that makes it available are free of viruses or other harmful components.

6.3 Limitation on Liability

Except where such exclusions are prohibited by law, under no circumstances will Second Harvest nor its affiliates or their respective directors, officers, employees, agents, service providers, contractors, licensors, licensees, suppliers, or successors be liable for negligence, gross negligence, negligent misrepresentation, fundamental breach, damages of any kind, under any legal theory, including any direct, indirect, special, incidental, consequential, or punitive damages, including, but not limited to, personal injury, pain and suffering, emotional distress, loss of revenue, loss of profits, loss of business or anticipated savings, loss of use, loss of goodwill, loss of data, and whether cause by tort (including negligence), breach of contract, breach of privacy or otherwise, even if the party was allegedly advised or had reason to know, arising out of or in connection with your use, or inability to use or reliance on, Second Harvest Food Rescue App, any linked websites or such other third-party websites and website content, materials and programs on Second Harvest Food Rescue App, posting or information thereon even if the party was allegedly advised or had reason to know.

6.4 Indemnification

Each party will indemnify, defend and hold harmless the other parties for and against all liabilities, losses, costs, expenses or damages whatsoever arising from or out of (i) any breach of any agreement, representation or warranty by the indemnifying party and (ii) the indemnifying party's acts or omissions beyond the scope of its authority under this Agreement, including, without limitation, any injury (whether to body, property of personal or business character or reputation) sustained by any person or organization or to any person or to property. Each party will include the other parties as an additional insured as their interests may appear in all commercial general liability or property insurance policies of the indemnifying party that provide protection or indemnity against any liability to customers, consumers or third parties with respect to the liability or responsibility referred to above.

6.5 Complete Agreement

These Terms & Conditions, the Website Terms of Use, and the Second Harvest Food Rescue App Privacy Policy will be deemed the final and integrated agreement between you and Second Harvest on the matters contained in these Terms & Conditions.

6.6 Waivers

No waiver of any part of the Terms & Conditions will be deemed to be a waiver of any other provision in these Terms & Conditions. No term of these Terms & Conditions will be deemed to be waived by reason of any previous failure to enforce it. No term of these Terms & Conditions may be waived except in a written document signed by the party waiving enforcement.

6.7 Amendments

Second Harvest may make changes to the terms of these Terms & Conditions from time to time and at any time. If changes are made to these Terms & Conditions, you understand that your organization will be provided with fourteen (14) days written notice of the changes and a copy of the then most current version of these Terms & Conditions. Second Harvest may, but they are not obliged to, ask your organization to actively confirm your consent to the revised Terms & Conditions. If Second Harvest does not do so, but your organization continues to use Second Harvest Food Rescue App after the changes come into effect, your organization will be deemed to have agreed to abide by the revised Terms & Conditions. If your organization does not agree with the revised Terms & Conditions without qualification, your organization will not log into Second Harvest Food Rescue App, you will discontinue using Second Harvest Food Rescue App and you will instruct Second Harvest to disable any password(s) for Second Harvest Food Rescue App assigned to your organization. Should any provision of these Terms & Conditions be held to be invalid by a court of competent jurisdiction, then that provision will be enforced only to the extent permissible, and all other provisions will remain in effect and are enforceable by the parties.

6.8 Assignments

You may not transfer any of our rights or obligations as a Partner nor your rights and obligations under these Terms & Conditions, either in whole or in part, without the prior written consent of Second Harvest. Such consent shall not be unreasonably withheld. Should Second Harvest consent to any such assignment, such consent may be subject to such additional Terms & Conditions as Second Harvest may require. No assignment shall relieve you from your obligations under these Terms & Conditions. Second Harvest may, in whole or in part, assign these Terms & Conditions.

6.9 Relationships

These Terms & Conditions do not establish any relationship of partnership joint venture, employment, franchise or agency between your organization and Second Harvest, or any of the other Partners. No party will have the power to incur any obligations that are not expressed in these Terms & Conditions.

6.10 Interpretation

No provision of these Terms & Conditions will be interpreted against any party merely because that party or its legal representative drafted the provision. All remedies are cumulative. These Terms & Conditions are for the benefit of, and binding upon the parties, their successors, and permitted assigns. The headings used in these Terms & Conditions are for convenience of reference only and are not intended to be full or accurate descriptions of the content of the sections.

6.11 Choice of Law

These Terms & Conditions will be governed by and construed in accordance with the laws of the Province of Ontario and applicable laws of Canada. You agree that any legal proceedings will take place in courts located in Toronto.

6.12 Survivability

Sections 5 and 6 of these Terms & Conditions will survive any termination of your participation in the programs offered on the Second Harvest Food Rescue App and use of the Second Harvest Food Rescue App.

Agreement to these Terms & Conditions is made electronically when completing the registration process online and must be made by a signing authority of your organization.

If you have any questions, please reach out to us at foodrescue@secondharvest.ca so that we can best capture your feedback to create better experiences.

We thank you for your desire to rescue food!

The Second Harvest Team