

## **1. Description of Services; Limitations; User Responsibilities**

### **1. About Our Services**

FOH and BOH offers various Services to help its users find, coordinate, and maintain quality staff in the hospitality and retail sectors. The Services we offer include, among others:

- We enable individuals (“Candidates”) seeking jobs (such as front of house manager, back of house manager, line cook server, bartender) to post profiles on the Site and apply to jobs (“Employer”).
- We provide search functionality on the Site to allow Employers to narrow the pool of Candidates they are interested in meeting based on their needs and preferences, and we provide a communications platform that allows Employers and Candidates to communicate without sharing contact information.
- The Site enables Registered Users to communicate and share information with other Registered Users who share a common interest or bond.

Our Services will continue to grow and change. Please refer to our Site for updated information about the Services we provide in the future.

### **1.2. Limitations of our Services**

We offer a variety of Services to help our users find, coordinate, and maintain staff for their businesses. However, we do not employ any Candidates. Employers are responsible for compliance with all applicable employment and other laws in connection with any employment relationship they establish (such as applicable payroll, tax and minimum wage laws). FOH and BOH does not have control over the quality, timing, or legality of the services actually delivered by Candidates, or of the integrity, responsibility or actions of Employers or Candidates and we neither refer or recommend Employers or Candidates nor make any representations about the suitability, reliability, timeliness, or accuracy of the services provided by Candidates or the integrity, responsibility or actions of Employers or Candidates whether in public, private or offline interactions.

Employer and Candidate content is primarily user generated, and we do not control or vet user generated content for accuracy. FOH and BOH does not assume any responsibility for the accuracy or reliability of any information provided by Candidates or Employers on or off this Site. We may offer certain Registered Users the opportunity to verify certain information such as their email address or cell phone number. If we indicate that a Registered User has verified certain information, it means that the user has complied with the process we have established for verifying such information. However, we do not guarantee, nor do we represent or warrant as to, the accuracy of such information.

### **1.3. User Responsibilities**

Any screening of an Employer or Candidate and his, her or its information by FOH and BOH is limited and should not be taken as complete, accurate, up-to-date or conclusive of the individual's or entity's suitability as an employer or candidate. Registered Users are solely responsible for interviewing, performing background and reference checks on, verifying

information provided by, and selecting an appropriate Employer or Candidate for themselves or their family.

Each Employer is responsible for complying with all applicable employment and other laws in connection with any employment relationship they establish, including verifying the age of the Candidate they select as well as that Candidate's eligibility to work in the US.

## **2. Eligibility to Use the Site and Services**

By requesting to use, registering to use and/or using the Site or the Services, you represent and warrant that you have the right, authority and capacity to enter into these Terms and you commit to abide by all of the terms and conditions hereof. You also represent and warrant that you meet the following eligibility criteria:

- Our Services are available only to individuals who are eighteen (18) years of age or older.
- The Site and the Services are currently available only to individuals who are legally in the United States or the territory of Puerto Rico.
- If you are registering as a candidate, you must be permitted to legally work within the United States or Puerto Rico.
- You must not be a competitor of FOH and BOH or using our Services for reasons that are in competition with FOH and BOH.

## **3. Rules for User Conduct and Use of Services**

### **3.1. Registration, Posting, and Content Restrictions**

The following rules pertain to "Content", defined as any communications, images, sounds, videos, and all the material, data, and information that you upload or transmit through the Site or Services, or that other users upload or transmit, including without limitation any content, messages, photos, audios, videos, reviews or profiles that you publish or display (hereinafter, "post"). By posting any Content while using our Service, you agree, represent and warrant as follows:

- You are responsible for providing accurate, current and complete information in connection with your registration for use of the Site and the Services.
- You will register your account in your own legal name, even if you are seeking care for another individual or family member.
- You are solely responsible for any Content that you post on the Site, or transmit to other users of the Site. You will not post on the Site, or transmit to other users, any defamatory, inaccurate, abusive, obscene, profane, offensive, sexually oriented, threatening, harassing, defamatory, racially offensive, or illegal material, or any material that infringes or violates another party's rights (including, but not limited to, intellectual property rights, and rights of privacy and publicity), or advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse, or give the impression that any Content emanates from FOH and

BOH where this is not the case. You will not provide inaccurate, misleading, defamatory or false information to FOH and BOH or to any other user of the Site, and all opinions stated as part of Content must be genuinely held. Without limiting the foregoing, you represent and warrant to us that you have the right and authority to post all information you post about yourself or others, including without limitation that you have authorization from a parent or guardian of any minor who is the subject of any Content you post to post such Content.

- You understand and agree that FOH and BOH may, in its sole discretion, review, edit, and delete any Content, in each case in whole or in part, that in the sole judgment of FOH and BOH violates these Terms or which FOH and BOH determines in its sole discretion might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users of the Site or others.
- You have the right, and hereby grant, to FOH and BOH, its Affiliates, licensees and successors, an irrevocable, perpetual, non-exclusive, fully paid-up, transferable, worldwide license to use, copy, perform, display, reproduce, adapt, modify and distribute your Content and to prepare derivative works of, or incorporate into other works, such Content, and to grant and authorize sublicenses of the foregoing. You further represent and warrant that public posting and use of your Content by FOH and BOH will not infringe or violate the rights of any third party.
- Your use of the Services, including but not limited to the Content you post on the Site, must be in accordance with any and all applicable laws and regulations.
- FOH and BOH is not responsible for any claims relating to any inaccurate, untimely or incomplete information provided by users of the Site.
- Job Boards & Social Media Sites - As part of our service to source candidates on behalf of employers, FOH and BOH creates job descriptions from "saved searched" and shares these with job boards and social media sites, including but not limited to: Facebook, Indeed, Google, Zip Recruiter, and many others. FOH and BOH reserves the right to add or remove job posts as it deems necessary to ensure the best candidate and employer experience. These job posts include generic job descriptions, responsibilities and salary ranges based off of industry averages.
- We welcome your feedback and questions about the Site and Services. However, you agree that any comments, ideas, messages, questions, suggestions, or other communications you send to us or share with us through any channel (including, without limitation, the Site, email, telephone, surveys, and our social media accounts) shall be and remain the exclusive property of FOH and BOH and we may use all such communications, all without notice to, consent from, or compensation to you.

Opinions, advice, statements, offers, or other information or content made available on the Site or through the Site, but not directly by FOH and BOH, are those of their respective authors. Such authors are solely responsible for such content. FOH and BOH does not: (i) guarantee the accuracy, completeness, or usefulness of any information on the Site or available through the Service, or (ii) adopt, endorse or accept responsibility for the accuracy or reliability of any opinion, advice, or statement made by any party that appears on the Site or through the Service. Under no circumstances will FOH and BOH or its Affiliates be responsible for any loss or damage resulting from: (a) your reliance on information or other content posted on the Site or transmitted to or by any user of the Site or Service; or (b) reviews or comments made about you on the Site by other users.

You agree that FOH and BOH has no obligation to remove any reviews or other information posted on the Site about you or any other person or entity. If you disagree with a review, you may post one rebuttal to the review, provided your rebuttal complies with these

Terms. You may not terminate your registration and re-register in order to prevent a review from being associated with your account. The author of a review can always remove or request removal of a review they have written.

FOH and BOH disclaims any liability whatsoever for any misstatements and/or misrepresentations made by any users of the Site. Users hereby represent, understand and agree to hold FOH and BOH harmless for any misstatements and/or misrepresentations made by or on behalf of them on this Site or in any other venue.

### **3.2. Exclusive Use**

If you are a Job Seeker, you may use your account only to find a job for yourself. If you are an Employer, you may use your account only to find jobs for your company. You are responsible for all activity on and use of your account, and you may not assign or otherwise transfer your account to any other person or entity.

#### **Prohibited Uses**

By using the Site or Services of FOH and BOH , you agree that you will not under any circumstances:

- use the Site, Services, or any information contained therein in any way that is abusive, threatening, obscene, defamatory, libelous, or racially, sexually, religiously, or otherwise objectionable and offensive;
- use the Site or Services for any fraudulent or unlawful purpose, for any purpose not expressly intended by FOH and BOH or for the promotion of illegal activities;
- harass, abuse or harm another person or group, or attempt to do so;
- use another user's FOH and BOH account;
- provide false or inaccurate information when registering an account on FOH and BOH, using the Services or communicating with other Registered Users;
- attempt to re-register with FOH and BOH if we have terminated your account for any or no reason or terminate your registration and re-register in order to prevent a review from being associated with your account;
- interfere or attempt to interfere with the proper functioning of FOH and BOH 's Services;
- make any automated use of the system, or take any action that we deem to impose or to potentially impose an unreasonable or disproportionately large load on our servers or network infrastructure;
- bypass any robot exclusion headers or other measures we take to restrict access to the Service or use any software, technology, or device to scrape, spider, or crawl the Service or harvest or manipulate data (whether manually or through automated means);
- use the communication systems provided by or contacts made on FOH and BOH for any commercial solicitation purposes;
- publish or link to malicious content intended to damage or disrupt another user's browser or computer.

In order to protect our users from prohibited activity, we reserve the right to take appropriate actions, including but not limited to restricting the amount of phone numbers an

Employer may view or the amount of emails a user may send in any 24-hour period to an amount which we deem appropriate in our sole discretion.

Should FOH and BOH find that you violated the terms of this Section or any terms stated herein, FOH and BOH reserves the right, at its sole discretion, to immediately terminate your use of the Site and Services. By using the Site and/or Services, you agree that FOH and BOH may assess, and you will be obligated to pay, \$10,000 per each day that you: (i) maintain Employer or Candidate information (including but not limited to, names, addresses, phone numbers, or email addresses) or copyrighted material that you scraped (either directly or indirectly in a manual or automatic manner) from the Site, or (ii) otherwise mis-use or mis-appropriate Site Content, including but not limited to, use on a "mirrored", competitive, or third party site. This obligation shall be in addition to any other rights FOH and BOH may have under these Terms or applicable law.

Further, in order to protect the integrity of the Site and the Services, FOH and BOH reserves the right at any time in its sole discretion to block users from certain IP addresses from accessing the Site.

#### **4. Termination**

FOH and BOH reserves the right, in its sole discretion, to immediately terminate your access to all or part of the Site, FOH and BOH and/or Services, to remove your profile and/or any content posted by or about you from the Site, and/or to terminate your account with FOH and BOH, with or without notice for any reason or no reason in its sole discretion, including without limitation if FOH and BOH should determine that you are not eligible to use the Services, have violated any terms stated herein or in any of the Additional Terms, are not suitable for participation as a Registered User, have mis-used or mis-appropriated Site content, including but not limited to use on a "mirrored," competitive, or third-party site. Upon termination, FOH and BOH shall be under no obligation to provide you with a copy of any content posted by or about you on the Site. If we terminate your registration, we have no obligation to notify you of the reason, if any, for your termination.

Following any termination of any individual's use of the Site or the Services, FOH and BOH reserves the right to send a notice thereof to other Registered Users with whom we believe the individual has corresponded. Our decision to terminate an individual's registration and/or to notify other Registered Users with whom we believe the individual has corresponded does not constitute, and should not be interpreted or used as information bearing on, the individual's character, general reputation, personal characteristics, or mode of living.

#### **5. Payment and Refund Policy**

In order to utilize some FOH and BOH Services or product offerings, the user of such Services or product offerings must pay FOH and BOH either a recurring subscription, one-time, or other fees. In addition, the user is responsible for any state or local sales taxes associated with the Services or product offerings purchased.

##### **5.1 Billing and Payment**

If you sign up for a FOH and BOH paid membership subscription, you agree to pay FOH and BOH all subscription charges associated with the plan you subscribe to as described on

the Site at the time you subscribe and provide your payment information. You also authorize FOH and BOH , or a third-party payment processor that works on our behalf, to charge your chosen payment method according to the terms of the plan to which you subscribe. The subscription period and the amount and frequency of the charges will vary depending on the subscription plan you select. FOH and BOH reserves the right to correct any errors or mistakes that it makes even if it has already requested or received payment.

To the extent you elect to purchase other Services or product offerings we may offer for a fee, you authorize FOH and BOH to charge your chosen payment provider for the Services and/or products you purchase. You agree that if FOH and BOH already has your credit card on file as a result of prior purchases you have made, we may charge that credit card for the additional Services/products you purchase.

## **5.2 Automatic Subscription Renewal and Cancellation**

**FOH and BOH PAID MEMBERSHIP SUBSCRIPTIONS WILL CONTINUE INDEFINITELY UNTIL CANCELLED BY THE USER. AFTER YOUR INITIAL SUBSCRIPTION COMMITMENT PERIOD, AND AGAIN AFTER ANY SUBSEQUENT SUBSCRIPTION PERIOD, YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW FOR AN ADDITIONAL EQUIVALENT PERIOD AS THE SUBSCRIPTION TERM YOU ORIGINALLY SELECTED AND AT THE SUBSCRIPTION RATE AND FREQUENCY DISCLOSED TO YOU ON THE SITE WHEN YOU ORIGINALLY SUBSCRIBED, UNLESS OTHERWISE PROVIDED AT THE TIME YOU SUBSCRIBED. IF YOU SIGN UP FOR A PAYMENT PLAN THAT ALLOWS YOU TO BE CHARGED MONTHLY OVER THE SUBSCRIPTION PERIOD AND YOU DECIDE TO CANCEL YOUR SUBSCRIPTION DURING THE SUBSCRIPTION PERIOD, YOU ACKNOWLEDGE AND AGREE THAT YOU WILL CONTINUE TO BE BILLED FOR THE SUBSCRIPTION ON A MONTHLY BASIS UNTIL ITS ORIGINALLY SCHEDULED EXPIRATION DATE.**

You may cancel your paid membership subscription at any time by following the instructions on your account settings page or contacting FOH and BOH 's customer service department at 615-480-4660 or info@ FOHandBOH.com If you cancel your subscription, you typically will be permitted to use your subscription until the end of your then-current subscription term. Your subscription will not be renewed after your then-current term expires, but your payment method will be charged, and you will be required to pay, any cancellation or other fees associated with your early termination and disclosed to you at the time you signed up for the subscription plan.

## **5.3 Free Trial Offers**

FOH and BOH may offer limited-time free trial subscriptions to certain users from time-to-time. Users who sign up for a FOH and BOH Service on a free trial basis may have limited access to the Service and/or features of the Site. If a user signs up for a free trial subscription, unless he or she cancels before the expiration of the free trial period, the user will be charged the price then in effect for a subscription to the Service, unless otherwise informed by FOH and BOH at the time of original subscription. If a user does not want to continue with the Service after the expiration of the free trial period, the Job Seeker or Employer must downgrade or cancel their subscription, and request a refund of the subscription fee within thirty (30) days of being charged the subscription fee for the Service. Upon cancellation, the Job Seeker or Employer's credit card will be refunded for the amount of the most recent subscription charge so long as he or she has not used the subscription after the expiration of the free trial period.

## **5.4 Refund Policy**

Except as set forth in these Terms or as described on the Site at the time you make a purchase, all payments for services/products are non-refundable and there are no refunds or credits for unused or partially used services/products or service/product cancellations. Notwithstanding the foregoing, if you have a paid membership subscription that is automatically renewed, we will refund the most recent charge to your credit card if: (i) you have not used your subscription during the current subscription renewal period and (ii) you downgrade or cancel your membership and request a refund of the most recent charge to your credit card within thirty (30) days of the most recent charge. Any such refunds will apply only to the most recent charge, regardless of how such refund request is made, for example, whether to FOH and BOH or to your credit card company. FOH and BOH does not provide refunds or credits under any other circumstances, unless it determines in its sole discretion that a refund or credit is warranted due to extenuating circumstances, such as a duplicate account.

#### Release of Liability for Conduct and Disputes

FOH and BOH is not an employer of Candidates on the Site. Employers may seek the services of a Candidate through the use of the Site or Services, and Candidates may post profiles and submit proposals to Employers regarding their services.

By using this Site or our Services, you hereby represent, understand, and expressly agree to hold FOH and BOH harmless for any claim or controversy that may arise out of the actions of or relationship between you and any Employer, Candidate or other user(s) of the Site. You agree to take reasonable precautions in all interactions with Employers, Candidates or other users of the Site or the Services, particularly if you decide to meet offline. By using the Site or the Services, you agree to report any alleged improprieties of any users therein to FOH and BOH immediately by notifying FOH and BOH of the same via electronic correspondence.

## 6. Disclaimers; Limitations; Waivers;

### Indemnification 6.1. No Warranty

The information and materials contained on the Site, including text, graphics, information, links or other items are provided "as is," "as available." Further, opinions, advice, statements, offers, or other information or content made available through the Services, but not directly by FOH and BOH, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content. **FOH and BOH DOES NOT: (1) WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THIS INFORMATION AND MATERIALS; (2) ADOPT, ENDORSE OR ACCEPT RESPONSIBILITY FOR THE ACCURACY OR RELIABILITY OF ANY OPINION, ADVICE, OR STATEMENT MADE BY ANY PARTY OTHER THAN FOH and BOH; (3) WARRANT THAT YOUR USE OF THE SITE OR SERVICES WILL BE SECURE, FREE FROM COMPUTER VIRUSES, UNINTERRUPTED, ALWAYS AVAILABLE, ERROR-FREE OR WILL MEET YOUR REQUIREMENTS, OR THAT ANY DEFECTS IN THE SERVICES WILL BE CORRECTED; OR (4) GIVE ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, FOH and BOH EXPRESSLY EXCLUDES ALL CONDITIONS, WARRANTIES AND OTHER TERMS WHICH MIGHT OTHERWISE BE IMPLIED BY STATUTE, COMMON LAW OR THE LAW OF EQUITY AND DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THIS INFORMATION AND MATERIALS.**

**IN ADDITION, AND WITHOUT LIMITING THE FOREGOING, FOH and BOH MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND WHETHER EXPRESS OR IMPLIED REGARDING THE SUITABILITY OF ANY USER OF OUR SITE TO PROVIDE SERVICES AS A CANDIDATE OR TO EMPLOY THE SERVICES OF A CANDIDATE.**

### **6.2. Assumption of Risk**

You assume all risk when using the Site and the Services, including but not limited to all of the risks associated with any online or offline interactions with users of the Site or the Services. You agree to take all necessary precautions when interacting with other site visitors or Registered Users.

### **6.3. Limitation of Liability**

**Incidental Damages and Aggregate Liability.** In no event will FOH and BOH be liable for any indirect, special, incidental, or consequential damages, losses or expenses arising out of or relating to the use or inability to use the Site or Services, including without limitation damages related to any information received from the Site or Services, removal of content from the Site, including profile information, any email distributed to any user or any linked web site or use thereof or inability to use by any party, or in connection with any termination of your subscription or ability to access the Site or Services, failure of performance, error, omission, interruption, defect, delay in operation or transmission, computer virus or line or system failure, even if FOH and BOH, or representatives thereof, are advised of the possibility of such damages, losses or expenses. UNDER NO CIRCUMSTANCES WILL FOH and BOH'S AGGREGATE LIABILITY, IN ANY FORM OF ACTION WHATSOEVER IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE SERVICES OR THE SITE, EXCEED THE PRICE PAID BY YOU FOR YOUR ACCOUNT, OR, IF YOU HAVE NOT PAID FOH and BOH FOR THE USE OF ANY SERVICES, THE AMOUNT OF \$25.00.

**No Liability for non- FOH and BOH Actions.** IN NO EVENT WILL FOH and BOH BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, COMPENSATORY, AND/OR CONSEQUENTIAL, ARISING OUT OF OR RELATING TO THE CONDUCT OF YOU OR ANYONE ELSE IN CONNECTION WITH THE USE OF THE SITE OR THE SERVICES OR ANY AGREEMENT OR RELATIONSHIP FORMED USING THE SITE OR SERVICE, INCLUDING WITHOUT LIMITATION, BODILY INJURY, EMOTIONAL DISTRESS, AND/OR ANY OTHER DAMAGES RESULTING FROM ANYONE'S RELIANCE ON INFORMATION OR OTHER CONTENT POSTED ON THE SITE, OR TRANSMITTED TO OR BY ANY USERS OR ANY OTHER INTERACTIONS WITH OTHER REGISTERED USERS OF THE SITE OR SERVICES, WHETHER ONLINE OR OFFLINE. THIS INCLUDES ANY CLAIMS, LOSSES OR DAMAGES ARISING FROM THE CONDUCT OF USERS WHO HAVE REGISTERED UNDER FALSE PRETENSES OR WHO ATTEMPT TO DEFRAUD OR HARM YOU.

In addition to the preceding paragraphs of this section and other provisions of these Terms, any advice that may be posted on the Site is for informational purposes only and is not intended to replace or substitute for any professional financial, medical, legal, or other advice. FOH and BOH makes no representations or warranties and expressly disclaims any and all liability concerning any treatment, action by, or effect on any person following the information offered or provided within or through the Site. If you have specific concerns or a situation arises in which you require professional or medical advice, you should consult with an appropriately trained and qualified specialist.

### **6.4. Indemnification**

By agreeing to these Terms, users of the Site and Services agree to indemnify, defend and hold harmless FOH and BOH from and against any and all claims, losses, expenses or demands of liability, including reasonable attorneys' fees and costs incurred by FOH and BOH in connection with any claim by a third party (including an intellectual property claim) arising out of (i) materials and content you submit, post or transmit through the Site, (ii) use of the Site or Services by you in violation of these Terms of Use or in violation of any applicable law, or (iii) any relationship or agreement formed with an Employer or Candidate using the Site or Services. Users further agree that they will cooperate as reasonably required in the defense of such claims. FOH and BOH reserve the right, at their own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by users, and users shall not, in any event, settle any claim or matter without the written consent of FOH and BOH. Users further agree to hold harmless FOH and BOH from any claim arising from a third party's use of information or materials of any kind that users post to the Site.

## **7. Release of Liability for Conduct and Disputes**

FOH and BOH is not an employer of Candidates. Employers may seek the services of a Candidates through the use of the Site or Services, and Candidates may post profiles and submit proposals to Employers regarding their services.

By using this Site or our Services, you hereby represent, understand, and expressly agree to hold FOH and BOH harmless for any claim or controversy that may arise out of the actions of or relationship between you and any Employer, Candidate or other user(s) of the Site. You agree to take reasonable precautions in all interactions with Employers, Candidates or other users of the Site or the Services, particularly if you decide to meet offline. By using the Site or the Services, you agree to report any alleged improprieties of any users therein to FOH and BOH immediately by notifying FOH and BOH of the same via electronic correspondence.

## **7. Age Restrictions**

FOH and BOH is intended for people 14 or over. FOH and BOH will not knowingly collect any information from individuals under 14. Should we determine that you do not meet the age requirements for using our Site or Services, your registration will be terminated immediately.

## **8. Copyright Notices/Complaints**

It is FOH and BOH's policy to respond to notices of alleged copyright infringement with the Digital Millennium Copyright Act ("DMCA"). If you believe any materials accessible on or from our Site infringe your copyright, you may request removal of those materials (or access thereto) from the Site by contacting FOH and BOH's copyright agent (identified below) and providing the following information:

1. Identification of the copyrighted work that you believe to be infringed. Please describe the work, and where possible include a copy or the location (e.g., URL) of an authorized version of the work.

2. Identification of the material that you believe to be infringing and its location. Please describe the material, and provide us with its URL or any other pertinent information that will allow us to locate the material.
3. Your name, address, telephone number and (if available) e-mail address.
4. A statement that you have a good faith belief that the complained of use of the materials is not authorized by the copyright owner, its agent, or the law.
5. A statement that the information that you have supplied is accurate, and indicating that "under penalty of perjury," you are the copyright owner or are authorized to act on the copyright owner's behalf.
6. A signature or the electronic equivalent from the copyright holder or authorized representative.
7. FOH and BOH's agent for copyright issues relating to this Site is as

follows: Copyright Agent

FOH and BOH  
3802 Woodmont Lane  
Nashville, Tennessee 37215

In an effort to protect the rights of copyright owners, FOH and BOH maintains a policy for the termination, in appropriate circumstances, of Members and other users of this Site who are repeat infringers.

## **9. Agreement to Arbitrate**

### **9.1 Agreement to Arbitrate**

This Section 9 is referred to in these Terms as the "Arbitration Agreement". Unless you opt-out as set forth in section 9.8, you agree that all claims relating to or arising out of these Terms or the breach thereof, whether sounding in contract, tort, or otherwise that have arisen or may arise between you and FOH and BOH or a FOH and BOH Affiliate, whether relating to these Terms (including any alleged breach thereof), the Services, the Site, or otherwise, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except you may assert individual claims in small claims court, if your claims qualify. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

### **9.2 Prohibition of Class and Representative Actions and Non-Individualized Relief**

YOU AND FOH and BOH AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ARBITRATION, ACTION OR PROCEEDING. UNLESS BOTH YOU AND FOH and BOH EXPRESSLY AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AGAINST FOH and BOH AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY,

INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER FOH and BOH USERS. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

### **9.3 Pre-Arbitration Dispute Resolution**

FOH and BOH is always interested in resolving disputes amicably and efficiently. So before you commence arbitration, we suggest that you contact us to explain your complaint, as we may be able to resolve it without the need for arbitration. You may contact us via email or at FOH and BOH, 3802 Woodmont Lane, Nashville Tennessee 37215.

### **9.4 Arbitration Procedures**

If we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration and not in courts of general jurisdiction. Arbitration will be conducted by a neutral arbitrator in accordance with the rules of JAMS that are in effect at the time the arbitration is initiated (collectively referred to as the "JAMS Rules"), as modified by this Arbitration Agreement, and excluding the JAMS Class Action Procedures. For information on JAMS, please visit its website, <https://www.jamsadr.com/>. Information about JAMS's Rules and fees for consumer disputes can be found at the JAMS consumer arbitration page, <https://www.jamsadr.com/rules-comprehensive-arbitration/>. If there is any inconsistency between the JAMS Rules and this Arbitration Agreement, the terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms as a court would, including without limitation, the limitation of liability provisions in Section 6. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the Terms and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

To commence an arbitration against FOH and BOH, you must write a demand for arbitration that includes a description of the dispute and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at [www.jamsadr.com](http://www.jamsadr.com). You should send three copies of the Demand, plus the appropriate filing fee, to JAMS at 500 North State College Blvd., Suite 600, Orange, CA 92868, and send one copy to FOH and BOH at FOH and BOH, 3802 Woodmont Lane, Nashville, Tennessee 37215. For more information, see the JAMS arbitration rules and forms, <https://www.jamsadr.com/rules-download/>. You may represent yourself in the arbitration or be represented by an attorney or another representative. Once we receive your arbitration claim, we may assert any counterclaims we may have against you.

The arbitration shall be held in the county in which you reside or at another mutually agreed location. If the value of the relief sought is \$10,000 or less you or FOH and BOH may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and FOH and BOH subject to the arbitrator's discretion to require an in-person hearing, if the circumstances warrant. Attendance at any in-person

hearing may be made by telephone by you and/or FOH and BOH, unless the arbitrator requires otherwise.

The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all claims relating to or arising out of this contract, or the breach thereof, whether sounding in contract, tort, or otherwise and all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms, including, but not limited to any claim that all or any part of these Terms are void or voidable, or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written, and binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

The arbitrator will decide the substance of all claims in accordance with the laws of the State of Tennessee, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different FOH and BOH users, but is bound by rulings in prior arbitrations involving the same FOH and BOH user to the extent required by applicable law.

### **9.5 Costs of Arbitration**

Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the JAMS Rules, unless otherwise provided in this Agreement to Arbitrate. If you demonstrate to the arbitrator that you are economically unable to pay your portion of the Arbitration Fees or if the arbitrator otherwise determines for any reason that you should not be required to pay your portion of the Arbitration Fees, FOH and BOH will pay your portion of such fees. In addition, if you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, FOH and BOH will pay as much of the Arbitration Fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. Each party will be responsible for all other fees it incurs in connection with the arbitration, including without limitation, all attorney fees. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse FOH and BOH for all fees associated with the arbitration paid by FOH and BOH on your behalf that you otherwise would be obligated to pay under the JAMS rules.

### **9.6 Confidentiality**

All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator, will be strictly confidential for the benefit of all parties.

### **9.8 Opt-Out Procedure**

You can choose to reject this Arbitration Agreement by mailing us a written opt-out notice ("Opt-Out Notice") in accordance with the terms of this Section. For new FOH and BOH users, the Opt-Out Notice must be postmarked no later than 30 Days after the date you use our Site or Services for the first time. You must mail the Opt-Out Notice to FOH and BOH, 3802 Woodmont Lane, Nashville, Tennessee 37215. The Opt-Out Notice must state that you do not agree to the Arbitration Agreement and must include your name, address, phone number, and the email address(es) used to log in to the fohandobh.com account(s) to which the opt-out applies. You must sign the Opt-Out Notice for it to be effective. This procedure is the only way you can opt out of the Arbitration Agreement. If you opt out of the Arbitration Agreement, FOH and BOH will likewise not be bound by these arbitration provisions. All other

terms of these Terms will continue to apply. Opting out of the Arbitration Agreement has no effect on any previous, other, or future arbitration agreements that you may have with us.

### **9.9 Future Changes to this Arbitration Agreement**

Notwithstanding any provision in these Terms to the contrary, you and we agree that if we make any change to this Arbitration Agreement (other than a change to any notice address or website link provided herein) in the future, such change shall not be effective until at least 60 days from the date of posting, and shall not apply to any claim that was filed in a legal proceeding against FOH and BOH prior to the effective date of the change. Moreover, if we seek to terminate this Arbitration Agreement from these Terms, such termination shall not be effective until 30 days after the version of these Terms not containing the Arbitration Agreement is posted to the Site, and shall not be effective as to any claim that was filed in a legal proceeding against FOH and BOH prior to the effective date of removal.

## **10. Governing Law and Jurisdiction**

These Terms, and all claims relating to or arising out of this contract, or the breach thereof, whether sounding in contract, tort, or otherwise, shall be governed by the laws of the State of Tennessee, including Tennessee's statutes of limitations governing your claim, without giving effect to its principles of conflicts of law, provided that the Federal Arbitration Act shall govern the interpretation and enforcement of Section 13, the Arbitration Agreement.

Unless you and we agree otherwise, in the event that the Arbitration Agreement is found not to apply to you or to a particular claim or dispute (except for small-claims court actions), either as a result of your decision to opt-out of the Arbitration Agreement or as a result of a decision by the arbitrator or a court order, you agree that any claim or dispute that has arisen or may arise between you and FOH and BOH must be resolved exclusively by a state or federal court located in the State of Tennessee. You and FOH and BOH agree to submit to the personal jurisdiction of the courts located within the State of Tennessee for the purpose of litigating all such claims or disputes.

## **11. Miscellaneous**

Nothing in this Agreement shall be construed as making either party the partner, joint venturer, agent, legal representative, employer, contractor or employee of the other. Neither party shall have, or hold itself out to any third party as having any authority to make any statements, representations or commitments of any kind, or to take any action, that shall be binding on the other, except as provided for herein or authorized in writing by the party to be bound. The invalidity, illegality or unenforceability of any term or provision of these Terms shall in no way effect the validity, legality or enforceability of any other term or provision of these Terms. Each Affiliate (as defined in Section 1.2) is expressly made a third party beneficiary of this Agreement and may enforce this Agreement directly against you. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

## **12. Severability**

If a court decides that any term or provision of these Terms other than Section 13.2 is invalid or unenforceable, the parties agree to replace such term or provision with a term or

provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and these Terms shall be enforceable as so modified. If a court decides that any of the provisions of Section 13.2 are invalid or unenforceable, then the entirety of Section 13 shall be null and void. The remainder of the Terms will continue to apply.

### **13. Contact Information**

If you have any questions or need further information as to the Site or Services provided by fohandboh.com, or need to notify FOH and BOH as to any matters relating to the Site or Services please contact FOH and BOH at:

FOH and BOH  
3802 Woodmont Lane  
Nashville, TN 37215