
FIND TOUCH TERMS AND CONDITIONS FOR EMPLOYERS

LAST UPDATE: JUNE 4, 2010

AGREEMENT

This Agreement (hereinafter referred to as the “Agreement”) is by and between FIND TOUCH CORPORATION, a Washington corporation having its principal place of business in Seattle, Washington (hereafter “Find Touch,” “we,” “us”) and you (“you,” “your”), who agree to the terms of this Agreement by clicking the “I AGREE” checkbox on the Employer Registration form on the Find Touch Web Site. This Agreement governs your use of the FindTouch.com Web Site (“Web Site”, “Service”) and the transactions and services conducted through this Web Site including, but not limited to, the billing and payment services described herein. NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be bound, hereby agree as follows:

1. DEFINITIONS

As used herein and throughout this Agreement:

- 1.01.** “Employer” means an entity that has registered with Find Touch through the Web Site and has entered into this Agreement with Find Touch. Employers are entities looking for professionals to deliver massage services to their clients.
- 1.02.** “Professional” means a properly licensed massage therapist who is looking for opportunities to perform massage therapy services.
- 1.03.** “Registered Professionals” means any Professional who has registered through the Web Site and has entered into this Agreement with Find Touch.
- 1.04.** The term “Registered Users” includes all individuals or entities who have registered through the Find Touch Web Site, including, but not limited to, you and each Registered Professional.

2. TERM OF CONTRACT

- 2.01.** This Agreement is made to be effective as of the date accepted by Find Touch following your execution and submission of this Agreement by clicking the “I AGREE” checkbox on the Employer Registration form. Notice of acceptance by Find Touch will be given to you via email.
- 2.02.** This Agreement will continue in effect until terminated as provided in Article 8 of this Agreement.
- 2.03.** Find Touch grants you a non-exclusive, non-transferable, worldwide right to access and use the Web Site, solely with supported browsers through the Internet for your own internal purposes, subject to these Terms of Service. You may not permit the Web Site to be used by or for the benefit of unauthorized third parties. Nothing in the Terms of Service shall be construed to grant you any right to transfer or assign rights to access or use the Web Site. All rights not expressly granted to you are reserved by Find Touch and its licensors. You shall not:
- (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Web Site in any way;
 - (ii) modify or make derivative works based upon the Web Site;
 - (iii) reverse-engineer or access the Web Site in order to
 - (a) build a competitive product or service,
 - (b) build a product using similar features, functions or graphics of the Web Site, or
 - (c) copy any features, functions or graphics of the Web Site

You further acknowledge and agree that, as between the parties, Find Touch owns all right, title, and interest in and to the Web Site, including all intellectual property rights therein.

3. RELATIONSHIP OF THE PARTIES

- 3.01.** Find Touch provides services to and is retained by you only for the purposes and to the extent set forth in this Agreement and Find Touch's relationship to you shall, during the term of this Agreement, be that of an Independent Contractor.
- 3.02.** Find Touch is not a party to the actual transactions between Registered Professionals and Companies; your contract or agreement to provide work in exchange for compensation is a separate agreement between you and a Registered Professional. Find Touch will not in any way be involved in the terms and conditions of any Professional's employment. You agree that Find Touch is not responsible for and will not control either the manner in which you operate or your hiring, firing, discipline or working conditions decisions in relation to any Professional hired through Find Touch. Find Touch will not provide Professionals with any materials or tools with which to provide their massage services. You agree not to involve Find Touch in the resolution of any problems, complaints or questions regarding the work environment, performance or other terms and conditions of employment and/or contracting between you and any Professional. Find Touch is also under no obligation to ensure the timeliness, quality, or professionalism of any Professional's services. You agree that Find Touch is not liable for any harm to your reputation, revenue, or property that may be caused by any Professional.
- 3.03.** If it is determined by a court of competent jurisdiction that a contract exists between Find Touch and a Professional you have engaged through Find Touch under which the Professional is entitled to any payment from Find Touch, you hereby expressly agree to indemnify Find Touch for any and all liability, under a theory of contract or any related legal obligation, for any amounts owed to the Professional.
- 3.04.** No Registered User shall be considered the employee, agent, partner or joint venturer of Find Touch and Find Touch shall not be considered the employer, agent, partner or joint venturer of any Registered User.
- 3.05.** You are responsible for payment and reporting of any taxes. Find Touch is not obligated to determine the applicability of any taxes or to remit, collect or report any such applicable taxes, unless otherwise agreed to by both parties pursuant to the terms of any provision of tax services provided to you by Find Touch.

4. SERVICES TO BE PERFORMED BY FIND TOUCH

ONLINE PLATFORM

- 4.01.** Find Touch agrees to provide to you a non-transferable, revocable, non-sublicensable, non-exclusive and limited license to use a Web Site for you to:
- (a)** search for available Professionals
 - (b)** send job invitations to Professionals to provide massage therapy services on a temporary and permanent basis.
 - (c)** manage the hiring workflow for Professionals
- 4.02.** Find Touch reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, at its sole discretion, the Web Site (or any part thereof) with or without notice.
- 4.03.** Find Touch shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Web Site.
- 4.04.** Find Touch reserves the right to update and change the Terms of Service from time to time without notice. Any new features that augment or enhance the current Web Site, including the release of new tools and resources, shall be subject to the Terms of Service. Continued use of the Web Site after any such changes shall constitute your consent to such changes.
- 4.05.** Find Touch reserves the right at any time, for the protection and benefit of all users, to remove from its site any user-generated content that it deems either harmful or inappropriate without notification to nor consent from the party originating the content.
- 4.06.** In the event of "force majeure" (as defined below), Find Touch may terminate this Agreement without liability to you. For purposes of the Agreement, "force majeure" shall mean circumstances or occurrences beyond the reasonable control of Find Touch, whether or not foreseeable at the time of entering into the Agreement, in consequence of which Find Touch cannot reasonably be required to perform its obligations hereunder or otherwise perform its obligations under the Agreement. Such circumstances or occurrences include, but are not limited to: acts of God, war, civil war, insurrection, fires, floods, labor disputes, epidemics, governmental regulations and/or similar acts, embargoes, termination or temporary unavailability of any computer hardware or software, server, or network on which the Find Touch Website is located or maintained or through which the Find Touch services are provided, and non-availability of any permits, licenses and/or authorizations required by governmental authority.

5. FEES AND CHARGES

- 5.01.** A current signed Service Agreement from you on file with Find Touch establishes the pricing plan under which you use the Find Touch service. Any applicable fees are billed monthly to the credit card on file for your organization. Statement reflecting your account activity and related charges will be posted electronically on a monthly basis and available for viewing through the Find Touch Website. You will not receive paper statements from Find Touch.
- 5.02.** Prices, as well as pricing structures, are subject to change as described in section 4.04.
- 5.03.** If you fail to timely pay amounts due, Find Touch may assign your account for collection and the collections agency may pursue such claims in court limited strictly to the collection of the past due debt and any interest or cost of collection permitted by Law or this Agreement.

6. OBLIGATIONS OF FIND TOUCH

PRIVACY AND CONFIDENTIALITY

- 6.01.** Find Touch agrees to abide by its Privacy Policy, which is incorporated by reference into this Agreement in its entirety. The Privacy Policy is posted on the Web Site and may be updated from time to time.

7. YOUR OBLIGATIONS

COMPLIANCE WITH LAW; INDEMNIFICATION

- 7.01.** You agree to abide by any and all applicable non-discrimination, employment, tax, and other federal and state, regulations, or common law. You agree to hold harmless and indemnify Find Touch for any and all liability arising from a violation of any such statute, regulation, or common law.

ASSIGNMENT

- 7.02.** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by you without the prior written consent of Find Touch.

INFORMATION POSTED ON THE WEB SITE

- 7.03.** You are solely responsible for information that you post on our Web Site, including but not limited to any posting or listing in any public message area or through any email feature. You grant us a non-exclusive, worldwide, perpetual, royalty free, irrevocable right to exercise all copyright and publicity rights with respect to this information.
- 7.04.** You are solely responsible for your Find Touch Employer Account information, job postings, and Profile or other information ("User Content", "User-Generated Content", "Your Data") that you post on the Find Touch Web Site or transmit to other Users. You agree that in submitting User Content or otherwise using the Find Touch service that you will not impersonate any person, or submit any materials to Find Touch that are false, inaccurate, misleading, offensive, unlawful, or are otherwise in violation of your obligations under these Terms of Service. Non-compliance may result in termination of this Agreement.
- 7.05.** You are responsible for backing up Your Data on your own computer. Find Touch does not warrant or otherwise guarantee that it will back up your data or that data which has been backed up can be retrieved, and will not be responsible for any archiving or backup of Your Data. If any of Your Data is damaged, deleted, lost or corrupted in any way, or becomes otherwise unavailable due to termination or suspension of your account pursuant to this Agreement, Find Touch will have no obligation or liability to you.
- 7.06.** Find Touch has no obligation to exert any editorial or other subjective control over the substantive content of your User Content. Find Touch cannot be held responsible for the accuracy, correctness, or legality of such information. You are solely responsible for the content of your User Content and for verifying the accuracy and suitability of information and services you obtain from third parties via the internet.

PRIVACY AND CONFIDENTIALITY

7.07. You agree to abide by the Find Touch Privacy Policy, which is incorporated by reference into this Agreement in its entirety. The Privacy Policy is posted on the Find Touch Web Site and may be updated from time to time.

SYSTEM INTEGRITY

7.08. You agree not to use any device, software, or routine intended to damage or interfere with the proper working of the Web Site or any transaction being conducted on our site, or to surreptitiously intercept or expropriate any system, data or personal information from the Web Site. You may not take any action that imposes an unreasonable or disproportionately large load on our infrastructure, including but not limited to "spam" (unsolicited mass emailing), "spiders" or "bots".

IMPERMISSIBLE ACTS

7.09. You agree not to:

- (a) upload, post, email, transmit or otherwise make available any information, materials or other content that is illegal, harmful, threatening, abusive, harassing, defamatory, obscene, pornographic, offensive, invades another's privacy, or promotes bigotry, racism, hatred or harm against any individual or group;
- (b) impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (c) "stalk" or otherwise harass anyone;
- (d) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Web Site;
- (e) upload, post, email, transmit or otherwise make available any information, materials or other content that infringes another's rights, including any intellectual property rights;
- (f) upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, that constitutes or contains "affiliate marketing," "link referral code," "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- (g) upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (h) use any manual or automated software, devices, or other processes to "crawl," "spider" or "screen scrape" any web pages contained in the Web Site;
- (i) use automated means, including spiders, robots, crawlers, data mining tools, or the like to download data from the Web Site;
- (j) reverse engineer, decompile or disassemble any of the software used to provide the Web Site;

- (k)** reproduce, duplicate or copy or exploit any other portion of the Web Site, without the express written permission of Find Touch;
- (l)** interfere with or disrupt the Web Site, or any servers or networks connected to the Web Site, or disobey any requirements, procedures, policies or regulations of networks connected to the Web Site;
- (m)** attempt to gain unauthorized access to Web Site's computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of, the Web Site.
- (n)** obtain, collect, store or modify the personal information about other users;
- (o)** modify, adapt or hack the Web Site or falsely imply that some other site is associated with the Web Site or Find Touch;
- (p)** use the Web Site for any illegal or unauthorized purpose. You must not, in the use of the Web Site, violate any laws in your jurisdiction (including but not limited to copyright laws);

8. TERMINATION OF AGREEMENT

VIOLATION OF TERMS OF SERVICE

8.01. Find Touch reserves the right to investigate and prosecute violations of any of these Terms of Service to the fullest extent of the law. Find Touch may involve and cooperate with law enforcement authorities in prosecuting users who violate the Terms of Service. You acknowledge that Find Touch has no obligation to pre-screen or monitor your access to or use of the Web Site or any information, materials or other content provided or made available through the Web Site, but has the right to do so. You hereby agree that Find Touch may, in the exercise of Find Touch's sole discretion, remove or delete any entries, information, materials or other content that violates these Terms of Service or that is otherwise objectionable.

TERMINATION ON NOTICE

- 8.02.** Unless otherwise agreed to in writing between the parties, either party may terminate this Agreement at any time upon written notice to the other party. In such event,
- (a) Find Touch shall continue to perform the Services necessary to complete any process for transactions already set in motion.
 - (b) You agree that you shall continue to be obligated to pay
 - Find Touch any past due amounts owed; and
 - all Professionals for any Job for which you have engaged such Professionals in order to complete any transactions already set in motion

For the purposes of this Section, written notice may be given as provided in Section 10.01 of this agreement, or through means provided and indicated on Find Touch's Web Site, which may be changed from time to time.

TERMINATION BY FIND TOUCH FOR DEFAULT OF COMPANY

- 8.03.** If you default in the performance of this Agreement or materially breach any of its provisions, Find Touch, at Find Touch's option, may terminate this Agreement by giving written notification to you. In the event of an executed annual Member service agreement, monthly services fees shall apply until the expiration of the agreement. For the purposes of this Section, material breach of this Agreement shall include, but not be limited to, the following:
- (a) avoidance of fees through misrepresentation of the number of operating locations of your business thereby circumventing necessary per-site service contracts.
 - (b) willful misrepresentation in any communication with or through Find Touch.
 - (c) violation of terms of this agreement.

9. LIMITATION OF LIABILITY

INDEMNIFICATION

9.01. You agree to defend, hold harmless and indemnify Find Touch from and against any and all losses, costs, expenses, damages or other liabilities incurred by Find Touch from and against any cause of action, claim, suit or proceeding brought by a third party against Find Touch in connection with your use of the Services including any payment obligations incurred through use of the Services. You further agree to indemnify, defend and hold Find Touch harmless from and against any and all claims, demands, actions, costs, liabilities, losses and damages of any kind (including attorneys' fees) resulting from:

- (a) your use of the Web Site;
- (b) your decision to supply credit information via the Web Site, including personal financial information;
- (c) your decision to submit job postings and accept job applications from other Registered Users;
- (d) any breach of contract or other claims made by Registered Users with which you conducted business through the Web Site;
- (e) your breach of any provision of this Agreement;
- (f) any liability arising from the tax treatment of Payments or any portion thereof;
- (g) any negligent or intentional wrongdoing by you;
- (h) any act or omission of yours with respect to the Payment in respect of awarded job contracts;
- (i) your obligations to a Professional.

Any such indemnification shall be conditioned on our: (i) notifying you in writing of any such claim, demand, action, cost, liability, loss or threat of any thereof; (ii) cooperating with you in the defense or settlement thereof; and (iii) allowing you to control such defense or settlement. We shall be entitled to participate in such defense through our own counsel at our own cost and expense.

9.02. In connection with your indemnification obligations as provided for above, Find Touch agrees to (a) notify you in writing promptly after learning of any such claim; (b) turn over to you all responsibilities and control with respect to such claim; and (c) reasonably cooperate with you in the defense thereof.

DISPUTES WITH OTHER REGISTERED USERS OR THIRD PARTIES

9.03. In the event that you have a dispute with one or more Registered Users or any third party in relation to the Web Site or other Services provided by Find Touch, you agree to release us (and our agents and employees) from claims, demands and damages (actual, consequential and punitive) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with the Web Site, the Services, or such dispute. You waive the provisions of any state law limiting or prohibiting a general release.

LIMITATIONS ON TYPES OF DAMAGES

- 9.04.** In no event shall Find Touch be liable to you or any other registered user for any special, indirect, consequential, or punitive damages pursuant to this agreement, including but not limited to, loss of profits, loss of business opportunities, or loss of goodwill, even if advised of the possibility of such damages.
- 9.05.** Notwithstanding any other provision of this Agreement, in no event will Find Touch's liability to you for any action or claim related to the Services provided under this Agreement, whether based on contract, tort, negligence, or any other theory of liability, exceed the greater of: (A) \$1000 or (B) the aggregate amount of Posting Fees actually collected by Find Touch from you during the period to which the liability relates, up to and not exceeding a period of six (6) months.
- 9.06.** You agree to release Find Touch from any liability for any loss of data or transactions resulting from delays, non-deliveries, mis-deliveries or service interruptions caused by any third party, including the acts of any web services provider or problems with the Internet infrastructure and networks external to the Web Site.

10. NO JOINT VENTURE OR PARTNERSHIP

- 9.07.** Nothing in this Agreement is intended by the Parties to create or constitute an agency, joint or collaborative venture, or partnership of any kind between Find Touch and you, nor shall anything in this Agreement be construed as constituting or creating any such agency, joint or collaborative venture, or partnership between Find Touch and you. Find Touch shall have no control or ownership interests of any kind in your business. Find Touch shall have no direct financial or other interest in, nor in any way "own" any online venture pertaining to your use of the Find Touch Web Site. Relationship between Find Touch to you shall be restricted to matters pertaining to the provision set forth in this agreement.

10. GENERAL PROVISIONS

NOTICE

10.01. Any notices to be given under this Agreement by either party to the other may be effected either by personal delivery in writing, by registered or certified mail with postage prepaid and with return receipt requested, or by electronic mail ("email"). Mailed notices to Find Touch shall be addressed to Find Touch main corporate office address as provided on the Find Touch Web Site and mailed notices to you will be sent to the address given by you in the Registration Form. However, each party may change the address for receipt of notice by giving written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated at the time of delivery. Mailed notices will be deemed communicated two (2) days after mailing.

ENTIRE AGREEMENT OF THE PARTIES

10.02. This Agreement supersedes any and all agreements, both oral and written, between the parties with respect to the rendering of services by Find Touch for you, and contains all of the covenants and agreements between the parties with respect to the rendering of these services in any manner whatsoever. Each party acknowledges that no representations, inducements, promises, or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in this Agreement. Any modification of this Agreement will be effective only if it is in a writing signed by both parties.

PARTIAL INVALIDITY

10.03. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

ALTERNATIVE DISPUTE RESOLUTION; FORUM SELECTION

10.04. Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement will be settled first by good faith negotiation between the principle agents of the you and Find Touch. If, after good faith negotiations, the parties are unable to reach a resolution, the parties hereby agree to mediation of the dispute through the King County Dispute Resolution Center. If the dispute can not be resolved through such negotiation and mediation, it is agreed that exclusive jurisdiction and venue for any legal action between the parties arising out of this Agreement shall be in the Superior Court for King County, Washington.

ATTORNEYS' FEES

10.05. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The attorneys' fees may be set by the court in the same action or in a separate action brought for that purpose.

GOVERNING LAW

10.06. This Agreement will be governed by and construed in accordance with the laws of the State of Washington, without regard for its conflict of law principles.

By clicking the “I AGREE” checkbox on the Employer Registration form you agree to the terms and conditions of this Agreement and, by reference herein, the terms of the Find Touch Privacy Policy. In so doing, you are also simultaneously:

- (a) registering as a “Registered User” (as defined herein),
- (b) designating yourself as an “Employer” (as defined in Section 3 below),
- (c) representing and warranting that you can legally enter into this Agreement, and
- (d) agreeing to the terms and conditions of this Agreement.

IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO USE THE WEB SITE.

If you have any questions about this Agreement, please contact service@findtouch.com.