
FIND TOUCH SUPER SAVER ADVERTISER LEGAL TERMS

LAST UPDATE: FEBRUARY 2, 2011

Find Touch, Inc. and the business offering the Deal identified in the applicable Deal Schedule ("**Business**") hereby agree to be bound by to the terms and conditions set forth herein and in the applicable Deal Schedule (collectively, the "**Agreement**").

SECTION 1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

"**Business Content**" shall mean any content, information or other materials (including their associated Intellectual Property Rights) provided by Business to Find Touch to provide the Deal Services.

"**Confidential Information**" shall mean all nonpublic information of any kind, whether written or oral, regarding either party's business operations, including, without limitation, information concerning products, services, software, product development, Intellectual Property Rights, product pricing, product maintenance, business plans, strategies, service providers, finances, operations, assets, suppliers, customers, donors, employees, contracts, systems and processes, whether such information is obtained before or after the Effective Date of this Agreement, through any means or source or from any officer, director, employee, member, advisor, consultant, contractor, agent or representative. Notwithstanding the foregoing, Confidential Information shall exclude information (a) available to the public other than by a breach of this Agreement; (b) rightfully received from a third party not in breach of a contractual, fiduciary or other obligation of confidentiality; (c) known to the party at the time of disclosure as evidenced by the written records at the time of disclosure; (d) independently developed by the party without reference to the Confidential Information as evidenced by written records at the time of development or disclosure; or (e) solely to the extent produced in compliance with any law or court order; provided, however, that the producing party gives reasonable notice as allowed by law that such Confidential Information is being sought by a third party, so as to afford the opportunity to limit or prevent such disclosure.

"**Deal**" shall mean the online offer of Gift Certificates by Find Touch and its affiliates on behalf of Business specifying to the terms identified in a Deal Schedule.

"**Deal Revenue**" shall mean revenue collected by Find Touch or its service partners for the purchase of Business's Gift Certificates via the Site during a Deal.

"Deal Schedule" shall mean shall mean the email or other written terms agreed to by the parties setting forth the specific terms of the Deal which incorporate these terms and conditions and pursuant to which Business may order Deal Services from Find Touch.

"Deal Services" shall mean the promotion and sale of Gift Certificates relating to Deals by Find Touch and its affiliates on behalf of Business via the Site as set forth on Deal Schedules and otherwise in this Agreement.

"Gift Certificates" shall mean electronic certificates or coupons identified in a Deal Schedule that are issued by and will be honored at the Business at a later date for a pre-determined value of goods or services and offered or sold at a discount via the Site. **"Intellectual Property Rights"** shall mean all intangible legal rights or interests evidenced by or embodied in (a) any idea, design, concept, technique, invention, discovery or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; (b) any work of authorship, regardless of copyrightability, but including copyrights and any moral rights recognized by law; (c) any trademark, trade name or service mark; and (d) any other intellectual property, proprietary or similar rights, in each case on a worldwide basis and including all goodwill pertaining thereto.

"Site" shall mean the web site(s) of Find Touch and its affiliates identified in a Deal Schedule.

SECTION 2. OBLIGATIONS OF THE PARTIES

2.1 Deal Services. During the Term and subject to the terms and conditions of this Agreement, Find Touch (itself and through its service partners and affiliates) will run the Deal(s) via the Site on behalf of Business. Find Touch and its affiliates will promote the Gift Certificates relating to a Deal to prospective purchasers via the Site, email lists and various social media outlets and handle all sales of Gift Certificates relating to the Deal. Find Touch will provide online access to Find Touch's site in order for Business to access and download data surrounding the Deal (including identification numbers to verify the validity of Gift Certificates sold and certain purchaser data). Find Touch and its service partners and affiliates shall have the right to use purchaser data as allowed by law. Business shall be responsible for (a) acquiring, installing, maintaining and supporting its own technology environment and equipment necessary to properly access Find Touch's site and for any expenses relating to the foregoing; (b) the security and confidentiality of any usernames or passwords granted to Business to access Find Touch's site, and shall limit disclosure of such usernames and passwords to its employees and other authorized representatives with a need to know such information; and (c) any authorized or unauthorized access to Find Touch's site using such usernames and passwords, and any actions taken thereunder.

2.2 Business Obligations. Business shall use its best efforts to promote the Site and the Deal to prospective purchasers during the timeframes leading up to a Deal. Business shall place a link from Business's web site home page (if applicable) to the Site. Business and its employees and representatives shall (a) cooperate with Find Touch with respect to advertising, promoting, qualifying, selling and providing the Deal, (b) comply with all applicable laws and regulations applicable to Business's Gift Certificates and operations, as well as Find Touch's and its service partners' technical standards, policies, programs and requirements regarding the Site, and (c) make no false or misleading representations with regard to Find Touch, its service partners or the Site.

2.3 Sales of Gift Certificates. All sales of Gift Certificates shall be made via the Site. Find Touch (itself or through any of its third party payment processors and other subcontractors) shall be responsible for entering into all ecommerce transactions for the sale of Gift Certificates, for providing the functionality necessary to process purchases of Gift Certificates and for collecting fees in connection with such purchases.

2.4 Support. Business will assist Find Touch in resolving any issues or disputes relating to Gift Certificates or a Deal.

2.5 Subcontractors. Business understands and agrees that Find Touch may, in its sole discretion, subcontract its obligations under this Agreement to third parties (for example, third party service partners) provided that it remains ultimately responsible for the Deal Services.

2.6 Additional Obligations. Find Touch and Business shall be responsible for such additional obligations, if any, set forth in a Deal Schedule.

SECTION 3. GRANT OF LICENSES

3.1 Business Content License. Business hereby grants to Find Touch and its service providers a nontransferable, nonexclusive, worldwide, royalty-free right and license during the Term to use, reproduce, modify, distribute, perform and display all Business Content solely for the purpose of providing the Deal Services and fulfilling its obligations hereunder. As between the parties, the Business Content shall remain the exclusive property of Business. Business will provide to Find Touch the Business Content at such times and in such format as requested by Find Touch in order to provide the Deal Services. Find Touch shall have the right to refuse to post on and/or remove from the Site any Business Content containing any content or materials which Find Touch reasonably determines conflict with, interfere with or are detrimental to Find Touch's or its service partners' interests, reputation or business or which may violate any law, infringe the rights of any person or subject Find Touch or its service partners to unfavorable regulatory action or liability for any reason.

3.2 Trademark License; Usage. Subject to the terms and conditions of this Agreement, Find Touch hereby grants to Business a limited, nonexclusive, nontransferable right and license to refer to the name of the Site and provide links to the Site during the Term solely for purposes of promoting its specific Deal(s). Business shall not make any other use of the name of the Site or any other trademarks of Find Touch or its services providers without prior written permission. Business shall not make any disparaging remarks about Find Touch, its services partners or the Site during and after the Term.

3.3 Reserved Rights. All rights not specifically granted to Business hereunder are reserved by Find Touch. Find Touch reserves the right to provide similar deal services to other businesses.

SECTION 4. FEES AND PAYMENT

Find Touch shall remit to Business "Fees" relating to Deal Revenue in the amount, at the times and in the manner set forth in a Deal Schedule. Business shall be responsible for all taxes and duties on any Fees paid to Business. Fees previously paid by Find Touch to Business shall be subject to

refunds, returns and chargebacks issued by or levied against Find Touch related to the purchase of the Gift Certificates. In the event any of the foregoing events occur affecting previously paid Fees, such reductions shall be applied by Find Touch to future Fees due or, if no future Fees are due, shall be promptly refunded by Business upon notice from Find Touch.

SECTION 5. TERM & TERMINATION

5.1 Term. This Agreement will begin on the Effective Date (as set forth on the cover of this Agreement) and shall continue until the earlier of: (a) the date six (6) months after completion of all Deal Services to be performed under all outstanding Deal Schedules; or (b) pursuant to this Section 5.

5.2 Termination with Cause. Either party may terminate this Agreement immediately upon written notice to the other party in the event that the other party: (a) violates any provision of this Agreement and fails to cure such violation within ten (10) days after receiving written notice of such violation, (b) is the subject of a voluntary or involuntary bankruptcy, reorganization or liquidation proceeding, is insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts when due, or (c) dissolves or otherwise ceases operation of its business. Additionally, Find Touch may immediately suspend performance and/or terminate this Agreement in the event that Business fails to honor valid Gift Certificates.

5.3 Termination for Convenience. Either party may terminate this Agreement for any or no reason upon thirty (30) days prior written notice to the other party.

5.4 Consequences upon Termination. Upon termination or expiration of this Agreement for any reason, (a) Find Touch shall cease providing the Deal Services; (b) the parties shall cease use of the other parties' respective content and Intellectual Property Rights, and (c) each party shall immediately return to the other all property, equipment and materials provided to such party by the other.

SECTION 6. WARRANTIES; LIMITATION OF LIABILITY

6.1 Warranties. Find Touch represents and warrants to Business that (a) it has full power and authority to enter into and fully perform this Agreement; and (b) it has the right to provide the Deal Services in accordance with the terms and conditions of this Agreement. Business represents and warrants to Find Touch and its service partners and affiliates that (i) it has full power and authority to enter into and fully perform this Agreement; (ii) it has the right to license the Business Content to Find Touch in accordance with the terms and conditions of this Agreement; (iii) the Business Content, the Gift Certificates and Find Touch's and its service partners' and affiliates' use and sale thereof shall not violate any applicable law or infringe upon or violate the rights of any person; (iv) it will honor valid Gift Certificates and the terms thereof; (v) it is properly licensed, bonded and insured and will comply with any and all applicable laws, codes and regulations.

6.2 Disclaimer. WITH THE EXCEPTION OF THE LIMITED WARRANTIES SET FORTH IN SECTION 6.1, THE DEAL SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND Find Touch HEREBY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

TITLE OR NONINFRINGEMENT OR ANY WARRANTY, GUARANTEE OR REPRESENTATION REGARDING THE AVAILABILITY, USE OR THE RESULTS OF THE USE OF THE DEAL SERVICES. Find Touch MAKES NO WARRANTY REGARDING THE LEVEL OF EXPOSURE OF OR REVENUE THAT MAY BE GENERATED THROUGH THE DEAL SERVICES.

6.3 Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL Find Touch BE LIABLE TO BUSINESS FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT, THE DEAL SERVICES, THE SITE, OR THE INTERNET GENERALLY, INCLUDING, WITHOUT LIMITATION, USE OR INABILITY TO ACCESS AND USE THE SITE OR ANY CONTENT, ANY CHANGES TO OR INACCESSIBILITY OF THE SITE OR ANY CONTENT, DELAY, FAILURE, UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY TRANSMISSION OR DATA, ANY MATERIAL OR DATA SENT OR RECEIVED OR NOT SENT OR RECEIVED, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE AND EVEN IF Find Touch WAS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL Find Touch'S TOTAL LIABILITY FOR DIRECT DAMAGES EXCEED THE TOTAL DEAL REVENUE GENERATED DURING THE PREVIOUS TWELVE (12) MONTHS.

6.4 Indemnification by Business. Business shall indemnify, defend and hold Find Touch, and its officers, shareholders, members, directors, employees, agents, service partners and affiliates (each, an "Find Touch Indemnified Party") harmless from and against any and all costs, liabilities, losses and expenses, including, but not limited to, reasonable attorneys' fees resulting from or arising out of any claim, suit, action, arbitration or proceeding brought by a third party against any Find Touch Indemnified Party relating to: (a) a breach or alleged breach by Business of any of its representations, warranties, covenants or obligations hereunder, (b) infringement or misappropriation of any Intellectual Property Rights or other rights by Business or by use of the Business Content in accordance with this Agreement, (c) any violations by Business or by the Gift Certificates of any applicable laws, and (d) Business's operations.

SECTION 7. RELATIONSHIP OF THE PARTIES

7.1 Relationship of the Parties. The relationship of Find Touch and Business established by this Agreement shall be solely that of independent contractors, and nothing herein shall create or imply any partnership, joint venture or other relationship. Nothing in this Agreement shall be construed to give either party the power to direct or control the daily activities of the other party. Nothing in this Agreement shall grant either party or any of its representatives the power or authority to make or give any agreement, statement, representation, warranty or other commitment on behalf of the other party, or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of the other party, or to transfer, release, or waive any right, title, or interest of the other party.

7.2 Changes to the Site. Find Touch and its service partners reserve the right at any time without liability or prior notice to add, change or terminate any of the specifications, features, content or functions of the Site (with the exception of Business Content except as otherwise provided pursuant to this Agreement).

7.3 Expenditures. Business acknowledges and agrees that any expenses it incurs in furtherance of this Agreement are voluntary in nature and are made with the knowledge that this Agreement may expire or be terminated as provided herein. Business shall make no claim against Find Touch or its

service partners or affiliates, and Find Touch and its service partners and affiliates shall not be liable with respect to the recoupment of any expenditures or investment made by Business.

SECTION 8. INTELLECTUAL PROPERTY RIGHTS

8.1 Intellectual Property Rights. As between the parties, Find Touch and its service partners and affiliates, as the case may be, shall have and retain sole ownership of all Intellectual Property Rights in and to the Site and the Deal Services (except the Business Content), including, without limitation, all current and future enhancements, revisions, releases and updates thereof, any derivative works based thereon and all documentation thereto. Business hereby irrevocably assigns to Find Touch and its service partners and affiliates, as the case may be, any and all rights relating to suggestions, enhancement requests, recommendations or other feedback provided by Business to Find Touch relating to the Site and the Deal Services.

8.2 No Copying or Modification. Business shall not copy, reproduce, disassemble, translate, reverse engineer, modify, edit, adapt, publish, display, distribute, transmit, sell, sublicense, create derivative works or compilations incorporating, assign, transfer, rent, lease or unbundle the Site or any part thereof, or grant any other person or entity the right or access to do so, except as expressly allowed by Find Touch in writing.

8.3 Confidential Information. During the course of performance of this Agreement, each party may disclose certain Confidential Information to the other party. The receiving party shall maintain the secrecy of all such Confidential Information and shall not use, disclose or otherwise exploit any Confidential Information for any purpose not specifically authorized by the disclosing party in this Agreement. All files, lists, records, documents, drawings, specifications, equipment and computer programs that incorporate or refer to any Confidential Information shall be returned, deleted or destroyed by the receiving party promptly upon termination or expiration of this Agreement.

8.4 Remedies. Business agrees that a breach of this Section will cause Find Touch irreparable injury and damage. The parties expressly agree that Find Touch shall be entitled to injunctive and other equitable relief to prevent such a breach, in addition to any other remedy to which Find Touch might be entitled. The parties waive the posting of any bond or surety prior to the issuance of an injunction hereunder. All remedies for such a breach shall be cumulative.

SECTION 9. GENERAL PROVISIONS

9.1 Binding Nature of Agreement; Assignment. Except as otherwise provided herein, the terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that Business may not assign or transfer its rights or obligations under or interest in this Agreement without the prior written consent of Find Touch.

9.2 Severability; Survival. If any term or provision of this Agreement is found to be invalid, the terms and conditions of this Agreement will remain in full force and effect, and such provision will be changed and interpreted so as to best accomplish its objectives within the limits of applicable law or applicable court decisions. Sections 1, 3.2, 3.4, 5.4 and 6 through 9 shall survive the

termination of this Agreement as well as those other provisions included in this Agreement and any Deal Schedules that by their content are intended to survive the termination of this Agreement.

9.3 No Third-Party Beneficiaries; No Waiver. With the exception of Find Touch's service partners and affiliates, the terms and provisions of this Agreement are intended solely for the benefit of each party hereto, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person. No failure or delay by any party hereto in exercising any right, power, or privilege hereunder shall operate as a waiver of any right, power or privilege hereunder. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No partial exercise of any right, power or privilege shall preclude the further or full exercise thereof.

9.4 Governing Law; Venue; Attorneys' Fees. This Agreement shall be governed by and shall be construed, interpreted and enforced in accordance with the laws of the State of Washington, without reference to its internal principles of conflicts of law. The parties agree that the sole and exclusive jurisdiction and venue for any disputes arising hereunder shall be in any trial court located in King County, Washington. In the event of any litigation between the parties hereto arising from or related to a party's performance or breach of this Agreement, the prevailing party shall be entitled to, in addition to any relief granted by a court of law, its reasonable attorneys' fees and other costs and expenses incurred in prosecuting or opposing the prosecution of such action.

9.5 Notices; Counterparts; Electronic Agreement. All notices, demands or other communications given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, mailed via registered mail, postage prepaid, to the attention of the persons who executed this Agreement or transmitted via facsimile or other electronic means of communication (with satisfactory evidence of transmission). This Agreement and any Deal Schedule may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. The parties understand and agree that this Agreement may be agreed to and executed electronically. The parties consent to the use of electronic methods of acknowledgement and electronic signatures and agree that the electronic signature of their authorized representatives as affixed to writings and documents relating to this Agreement is the legal equivalent of a manual signature on such documents (including, without limitation, email confirmation of acceptance of a Deal Schedule communicated by a party to the other). The parties also agree that no certification authority or other third party verification is necessary to validate their electronic signature, and the lack of such certification or third party verification will not in any way affect the enforceability of an electronic signature or any resulting agreement between the parties.

9.6 Entire Agreement. This Agreement, including any Deal Schedules executed between the parties, shall be the entire agreement among the parties with respect to the transactions contemplated among them and supersedes all previous negotiations, commitments and writings. No alteration, modification or change of this Agreement or any Deal Schedule shall be valid unless made in writing and executed by the parties hereto.