

Terms of Service

Freshsessions' Terms of Service

Last modified: June 23, 2014

Freshsessions provides an online platform that connects individuals or entities that have home or professional recording studios available for rent ("**Studio Owners**") with musicians and others seeking to use such recording studios ("**Artists**"), which includes (a) the Freshsessions website at www.freshsessions.com and any other affiliated websites owned and operated solely by Freshsessions (collectively, the "**Site**"), (b) any Freshsessions-branded application for mobile devices (collectively the "**Application**"), (c) the reservation and payment services made available by Freshsessions through the Site or the Application, (d) any other services made available by Freshsessions through the Site or the Application. The platform and items in (a) through (d) above are referred to collectively as the "**Services**".

Your use of Services is subject to the terms of a legal agreement between you and Freshsessions. That agreement includes these Terms of Service, Freshsessions' privacy policy, found [here](#), and any other posted Freshsessions terms or policies applicable to Services (collectively, the "**Policies**"). Collectively this legal agreement is referred to as the "**Agreement**".

In this Agreement, "**Freshsessions**", "**we**" or "**us**" means Freshsessions Inc. and its affiliates, if any. This Agreement applies to all users of Services ("**Users**"), whether you are a Studio Owner or an Artist and whether you have registered with Freshsessions or whether you use Services without being registered. When this Agreement refers to "**you**" or a "**User**", it applies to you if you use Services, regardless of whether you have registered with Freshsessions.

1. **Acceptance.**

It is important that you read this Agreement carefully, as it governs your use of the Services. By accessing or using Services or clicking "accept" or "agree" to this Agreement you (a) acknowledge and agree that you have read, understood and accept the terms of the Agreement, and (b) represent that you are of legal age to form a binding contract with Freshsessions and are not prohibited by law from accessing or using the Services. If you do not agree to (or cannot comply with) to any term of this Agreement, then you should discontinue your use of the Services immediately, as Freshsessions permits you to use Services only upon the condition that you accept all of the terms contained in the Agreement. THIS AGREEMENT CONTAINS, AMONG OTHER THINGS, AN ARBITRATION PROVISION CONTAINING A CLASS ACTION WAIVER.

2. **Changes to the Agreement.**

Freshsessions may change this Agreement from time to time. Such changes will become effective immediately upon posting on our website. If the revision, at our sole discretion, is considered a material change we will notify you by posting an announcement on our website, and you agree that Freshsessions has no obligation to provide you with any other notice. You are responsible for reviewing and becoming familiar with any modifications. Your access or use of Services or your clicking of "accept or agree" to this Agreement after posting of changes to this Agreement constitutes your acceptance of the Agreement as changed.

3. **Privacy.**

Your privacy is very important to Freshsessions. Accordingly, we have adopted a privacy policy, found [here](#), which is designed to make important disclosures to you as to how we collect, store and use personally identifiable information you may provide to us in connection with the Services. We encourage you to read our privacy policy. You understand that through your use of Services, you consent to our collection, storage and use of your information as described in our privacy policy.

4. **Eligibility.**

You may not use the Services if you are under 18 years old. We make no representation that the Services or the Content are appropriate or available for use in any particular location. Those who access the Services do so of their own initiative, and are responsible for compliance with all applicable laws including local rules regarding online conduct and acceptable content. By using the Services, you represent that your use of the Services does not violate any applicable law.

5. **How the Services Work.**

The Services include an online platform and related technology which can be used to facilitate the listing and reservation of home and/or professional recording studios ("**Studios**"). Such Studios are included in Listings

posted through the Services by Studio Owners. You may view Listings as an unregistered user of the Services; however, if you wish to book an Studio as an Artist or create a Listing as a Studio Owner, you must first register to create a Freshsessions account. The Services permits Artists and Studio Owners to meet online and arrange for reservations of Studios directly with each other. Freshsessions is not an owner or operator of recording studios or other properties, nor is it a provider of recording studios or other properties, and Freshsessions does not own, sell, resell, furnish, provide, rent, re-rent, manage and/or control recording studios or other properties or provide recording services. Unless explicitly specified otherwise in the Freshsessions platform, Freshsessions' responsibilities are limited to: (i) facilitating the availability of the Services and (ii) serving as the limited payment collection agent of each Studio Owner for the purpose of accepting payments from Artists on behalf of the Studio Owner. PLEASE NOTE THAT, AS STATED ABOVE, THE SERVICES ARE INTENDED TO BE USED TO FACILITATE STUDIO OWNERS AND ARTISTS CONNECTING AND RESERVING AND PURCHASING USE OF RECORDING STUDIOS AND RELATED SERVICES DIRECTLY WITH EACH OTHER. FRESHSESSIONS CANNOT AND DOES NOT CONTROL THE CONTENT CONTAINED IN ANY LISTINGS AND THE CONDITION, LEGALITY OR SUITABILITY OF ANY STUDIOS. FRESHSESSIONS IS NOT RESPONSIBLE FOR AND DISCLAIMS ANY AND ALL LIABILITY RELATED TO ANY AND ALL LISTINGS AND STUDIOS. ACCORDINGLY, ANY RESERVATIONS AND USE OF STUDIOS WILL BE MADE AT THE ARTIST'S OWN RISK.

6. Changes to the Services.

Freshsessions is constantly innovating and changing the Services as we deem appropriate. You agree that Freshsessions may change some or all of the Services, add additional Services, stop (permanently or temporarily) providing a Service or any portion of a Service to you or to Users generally, restrict access to certain Services or impose limits on certain Services (such as restricting such Services to paying users) in each case at any time, for any reason, and without notice to you.

7. Your User Account.

In order to access or continue to access some or all of the Services, you may have to register with Freshsessions. As part of the registration process, you may be required to provide information to Freshsessions. The information you provide in the registration process or in updating such information is referred to as "**Profile Data**". You agree that all Profile Data you provide to Freshsessions will be and will remain accurate, current and complete and you agree to update this information to keep it accurate, current and complete. You acknowledge, consent and agree that Freshsessions may use and disclose your Profile Data as described in our privacy policy. If any account you use to access a Service requires a username and/or password, you are solely responsible for maintaining the confidentiality of that username or password. You agree not to use the username, password or account of another Freshsessions member. If you become aware of any unauthorized use of your username, password or account, you agree to notify Freshsessions immediately at info@freshsessions.com. You are solely responsible to Freshsessions for all activities that occur under your registered account.

You acknowledge that you do not own the Freshsessions account you use to access the Services, nor do you possess any rights of access or rights to data stored by or on behalf of Freshsessions on Services. Freshsessions owns any information or data generated through your use of the Services, including without limitation any data representing your account history that you may obtain through certain aspects of the Services.

By providing Freshsessions with your email address you consent to our using the email address to send you notices relating to your Freshsessions account and this Agreement, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you email messages that are features of the Services, such as daily emails of Content we think you would like, as well as other messages relating to the Services such as messages regarding changes in Services and features, special offers and other matters. If you do not want to receive such email messages, you may opt out or change your preferences in your Freshsessions account settings. Please note that you cannot unsubscribe from certain correspondence from us, including messages relating to your account transactions.

8. Listings.

If you are a Studio Owner, you may create Listings. To create a Listing, you will be asked a variety of questions about the Studio to be listed, including, but not limited to, the location, capacity, size, features, and availability of the Studio and pricing and related rules and financial terms. In order to be featured in Listings via the Services, all Studios must have valid physical addresses. Listings must prominently display your cancellation or refund policy. Listings will be made publicly available via the Services. Artists will be able to book your Studio via the Services based upon the information provided in your Listing. You understand and agree that once an Artist requests a reservation of your Studio, you may not request the

Artist to pay a higher price or otherwise change the terms of your Listing upon which the reservation request was made.

You acknowledge and agree that you are responsible for any and all Listings you post. Accordingly, you represent and warrant that any Listing you post and the reservation of, or an Artist's use of, a Studio in a Listing you post (i) will not breach any agreements you have entered into with any third parties, and (ii) will (a) be in compliance with all applicable laws, tax requirements, and rules and regulations that may apply to any Studio included in a Listing you post (including having all required permits, licenses and registrations), and (b) not conflict with the rights of third parties. Please note that Freshsessions assumes no responsibility for a Studio Owner's compliance with any agreements with or duties to third parties or with applicable laws, rules and regulations. Freshsessions reserves the right, at any time and without prior notice, to remove or disable access to any Listing for any reason, including Listings that Freshsessions, in its sole discretion, considers to be objectionable for any reason, in violation of this Agreement or Freshsessions' then-current Policies, or otherwise harmful to the Services.

If you are a Studio Owner, you understand and agree that Freshsessions does not act as an insurer or as your contracting agent. If an Artist requests a reservation of your Studio and uses your Studio, any agreement you enter into with such Artist is between you and the Artist and Freshsessions is not a party thereto. Notwithstanding the foregoing, Freshsessions serves as the limited authorized payment collection agent of the Studio Owner for the purpose of accepting, on behalf of the Studio Owner, payments from Artists of such amounts stipulated by the Studio Owner (including fees and/or taxes).

When you create a Listing, you may also choose to include certain requirements which must be met by the Users who are eligible to request a reservation of your Studio, including, but not limited to, requiring Users to have a profile picture or verified phone number, in order to book your Studio. Any User wishing to book Studios included in Listings with such requirements must meet these requirements. More information on how to set such requirements is available via the "Studio Owner" section of the Services.

If you are a Studio Owner, Freshsessions makes certain tools available to you to help you to make informed decisions about which Users you choose to confirm for reservation for your Studio. You acknowledge and agree that, as a Studio Owner, you are responsible for your own acts and omissions and are also responsible for the acts and omissions of any individuals present at the Studio at your request or invitation, excluding the Artist (and other individuals present at the Studio at the request or invitation of the Artist, if applicable.) Artists are responsible for their own acts and omissions and for the acts or omissions of any individuals present at the Studio at their request or invitation. Freshsessions recommends that Studio Owners obtain appropriate insurance for their Studios. Please review any insurance policy that you may have for your Studio carefully, and in particular please make sure that you are familiar with and understand any exclusions to, and any deductibles that may apply for, such insurance policy, including, but not limited to, whether or not your insurance policy will cover the actions or inactions of Artists (and the individuals the Artist invites to the Studio, if applicable) while at your Studio.

9. No Endorsement

Freshsessions does not endorse any Studio, Studio Owner or Artist. In addition, although this Agreement requires Users to provide accurate information, we do not attempt to confirm, and do not confirm, any User's data posted through the services or other purported identity or background and we do not make any representations above, confirm or endorse any User or the User's posted data or other purported identify and background.

You are responsible for determining the identity and suitability of others who you contact via the Services, and for determining whether the User is trustworthy, safe or suitable (including without limitation with respect to any Studio, Studio Owner or Artist). We therefore recommend that you always exercise due diligence and care when deciding whether to reserve or use a Studio as an Artist or to accept a reservation request from an Artist as a Studio Owner, or to have any other interaction with any other User. We are not responsible for any damage or harm resulting from your interactions with any other User.

By using the Services, you agree that any legal remedy or liability that you seek to obtain for actions or omissions of other Users or other third parties will be limited to a claim against the particular Users or other third parties who caused you harm and you agree not to attempt to impose liability on, or seek any legal remedy from Freshsessions with respect to such actions or omissions. Accordingly, we encourage you to communicate directly with other Users on the Services regarding any reservations or Listings made by you. This limitation shall not apply to any claim by a Studio Owner against Freshsessions regarding the

remittance of payments received from an Artist by Freshsessions on behalf of a Studio Owner, which instead shall be subject to the limitations described in the section below entitled "Limitation of Liability".

10. Reservations and Financial Terms for Studio Owners

If you are a Studio Owner and a reservation is requested for your Studio via the Services, you will be required to either confirm or reject the reservation within a commercially reasonable time (as determined by Freshsessions in its sole discretion, but typically within 24 hours) of when the reservation is requested or the reservation request will be cancelled. When a reservation of a Studio is requested by an Artist via the Services, we will share with the Studio Owner (i) the first and last name of the Artist who has requested the reservation and, if applicable, the name of the entity requesting the reservation, (ii) a link to the Artist's Freshsessions account profile page, (iii) the names of any members of an SNS with whom you are "friends" or associated on the SNS if such individuals are also "friends" or associated with the Artist on such SNS, and (iv) an indication that the name that the Artist provided to Freshsessions when the Artist became a User matches the name that the Artist provided to the SNSs to which the Artist has linked his or her Freshsessions Account, so that you can view such information before confirming or rejecting the reservation. If you are unable to confirm or decide to reject a reservation of a Studio within such 24 hour period, any amounts collected by Freshsessions for the requested reservation will be refunded to the applicable Artist's credit card and any pre-authorization of such credit card will be released. When you confirm a reservation requested by an Artist, Freshsessions will send you an email or message via the Services confirming such reservation, depending on the selections you make via the Services. Each Listing will include the amounts due and payable by an Artist to the Studio Owner for the use of the applicable Studio (the "**Studio Fees**"). Where applicable, taxes may be charged in addition to the Studio Fees. The Studio Fees and applicable taxes are collectively referred to in this Agreement as the "**Total Fees**". Please note that it is the Studio Owner and not Freshsessions which determines the Studio Fees.

11. Artist Reservations and Fees

Prior to the Studio Owner confirming such a reservation, Studio Owners understand and agree that Freshsessions is permitted to obtain a pre-authorization of the payment for the Total Fees and bank account verification is required to confirm the Artist's identity and ability to pay in order for the reservation request to be submitted to the Studio Owner. Once Freshsessions receives confirmation of an Artist's reservation from the applicable Studio Owner, Freshsessions will collect the Total Fees in accordance with the terms and conditions of this Agreement and the pricing terms set forth in the applicable Listing. Within a commercially reasonable period of time after the reserved use of the Studio is scheduled to have occurred, Freshsessions will initiate payment of the Studio Fees (less Freshsessions' Studio Owner Fees (defined below) and any amounts payable to third party payment processors) to the Studio Owner, except to the extent that a refund is due to the Artist for a cancellation made by the Artist in accordance with the cancellation policy of the Studio Owner. While Freshsessions may request confirmation from both Studio Owner and that a reserved use of the Studio took place as contemplated, Freshsessions shall be entitled to rely solely on communications from the Studio Owner as to whether the session occurred and if not whether the session was cancelled in accordance with the Studio Owner's cancellation policy. The Studio Owners, not Freshsessions, are solely responsible for the suitability of their Studios and compliance with their Listings, including without limitation their cancellation policies, and any concerns an Artist may have with respect to the same must be raised directly with the Studio, and Freshsessions will have no liability therefor.

12. Agreements between Studio Owners and Artists

By confirming a reservation of a Studio via the Services, each of the Studio Owner and Artist agrees to honor the terms, and the amount of money that the Artist will pay the Studio Owner, as specified in the Listing when the Studio Owner accepted the Artist's reservation request for the Studio. Studio Owners may further require Artists sign a formal agreement for the use of the Studio, and if a Studio Owner and Artist enter into any such agreement, each of them agree to honor the terms of such Agreement.

Studio Owners, not Freshsessions, are solely responsible for honoring any confirmed bookings and making available any Studios reserved through the Services in accordance with the applicable reservation. If you, as an Artist, choose to enter into a transaction with a Studio Owner for the reservation and use of a Studio, you agree and understand that you may be required to enter into an agreement with Studio Owner and you agree to accept any terms, conditions, rules and restrictions associated with such Studio imposed by the Studio Owner. Studio Owners and Artists acknowledge and agree that they, and not Freshsessions, will be responsible for performing their respective obligations with respect to reservation and use of a Studio and in any such agreements, that Freshsessions is not a party to such agreements, and that, with the exception of its payment obligations hereunder, Freshsessions disclaims all liability arising from or related to reservation and use of a Studio by an Artist from a Studio Owner or any such agreements or the acts or omissions of Studio Owner or Artist.

13. Release

Users are solely responsible for their interactions with one another and any and all claims, injuries, illnesses, damages, liabilities, and costs ("**Claims**") suffered by a User as a result of such User's interaction with another User or reservation or use of a Studio. You hereby release the Freshsessions Parties from any and all such Claims. IN CONNECTION WITH THE FOREGOING, IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." You hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to the release of any unknown or unsuspected claims you may have against the Freshsessions Parties pertaining to the subject matter of this Section 13.

14. Cancellations and Refunds

If, as an Artist, you cancel your requested reservation before the requested Studio is confirmed by a Studio Owner, Freshsessions will cancel any pre-authorization to your credit card and/or refund any nominal amounts charged to your credit card in connection with the requested reservation within a commercially reasonable time.

If, as an Artist, you wish to cancel a confirmed reservation made via the Services, either prior to or after arriving at the Studio, the cancellation policy of the Studio Owner contained in the applicable Listing will apply to such cancellation. Freshsessions' ability to refund the Total Fees or any portion thereof charged to you will depend upon the terms of the applicable cancellation policy of the Studio Owner. If a Studio Owner cancels a confirmed reservation made via the Services, Freshsessions will refund the Total Fees for such reservation to the applicable Artist within a commercially reasonable time after the cancellation. In addition to its rights to suspend or terminate use of the Services as provided below, Freshsessions reserves the right to apply penalties or consequences to a Studio Owner that cancels a confirmed reservation other than in accordance with the Studio Owner's cancellation policy included in the applicable Listing, or if Freshsessions otherwise determines in its direction that a Studio Owner has failed to comply with its obligations with respect to a reservation, which may include publishing an automated review that a reservation was cancelled or imposing a cancellation fee (to be withheld from future payouts). Any cancellation fee will be notified to Studio Owner's in the Studio Owner section of the Services.

15. Appointment of Freshsessions as Payment Agent for Studio Owner

Each Studio Owner hereby appoints Freshsessions as the Studio Owner's limited agent solely for the purpose of collecting payments made by Artists on behalf of the Studio Owner. Each Studio Owner agrees that payment made by an Artist to Freshsessions shall be considered the same as a payment made directly to the Studio Owner and the Studio Owner will make the Studio available to Artist in the agreed upon manner as if the Studio Owner has received the Studio Fees. Each Studio Owner agrees that, Freshsessions may, in accordance with the cancellation policy selected by the Studio Owner (i) permit the Artist to cancel the reservation and (ii) refund to the Artist that portion of the Studio Fees specified in the applicable cancellation policy. Each Studio Owner understands that as Freshsessions accepts payments from Artists as the Studio Owner's limited payment collection agent, and Freshsessions' obligation to pay the Studio Owner is subject to and conditional upon Freshsessions successfully receiving the payments from Artists. Freshsessions does not guarantee payments to Studio Owners for amounts that have not been successfully received from Artists. In accepting appointment as the limited authorized agent of the Studio Owner, Freshsessions assumes no liability for any acts or omissions of the Studio Owner.

All Studio Owners who offer use of their Studio through a Listing on the Services must receive payment through the Services. Freshsessions will terminate a use of the Services if such Studio Owner is found to be accepting payment outside the Services for Studio offered through the Services.

16. Studio Owner Fees

In consideration for the use of the Services by Studio Owners to offer their Studios and for the reservation and payment services provided by Freshsessions, Freshsessions charges the Studio Owner Fees. "**Studio Owner Fees**" means the fee that Freshsessions charges a Studio Owner for the use of the Services, which is calculated as a percentage of the applicable Studio Fees. Where applicable, taxes may also be charged in respect of the Studio Fees. Freshsessions deducts the Studio Owner Fees from the Studio Fees before remitting the balance to the Studio Owner as described in this Agreement. Freshsessions will also deduct amounts paid to its third party payment processor from any remittances to Studio Owners. The balances will be remitted by via check or other payment methods described on the Services, in U.S. dollars. The

applicable Studio Owner Fee percentage and other information regarding deductions and remittances to Studio Owners will be displayed to Studio Owners in the "Studio Owner" portion of the Services.

Please note that Freshsessions does not currently charge fees for the reservation of Studios by Artists or other use of the Services by Artists, or for the creation of Listings by Studio Owners or otherwise for the use of the Services, except for the Studio Owner Fees. However, you acknowledge and agree that Freshsessions reserves the right, in its sole discretion, to charge you for and collect fees from you for reservation of Studios, the creation of Listings or otherwise for use of any portion of the Services or for the Services in general. Please note that Freshsessions will provide notice of any such fees via the Services, prior to implementing such additional fees.

17. Taxes.

Tax regulations may require us to collect appropriate tax information from Studio Owners, or to withhold taxes from payouts to Studio Owners, or both. You as a Studio Owner are solely responsible for keeping the information we are required to collect from you current, complete and accurate. If you as a Studio Owner fail to provide us with documentation that we determine to be sufficient to alleviate our obligation (if any) to withhold payments to you, we reserve the right in our sole discretion to freeze all payouts to you until resolution, to withhold such amounts as required by law, or to do both.

You as a Studio Owner understand and agree that you are solely responsible for (i) determining your applicable tax reporting requirements, and (ii) determining the taxes that should be included, taxes to be collected and any obligations relating to applicable taxes, and for including the same in Listings. You are also solely responsible for remitting to the relevant authority any taxes included or received by you. Freshsessions cannot and does not offer tax-related advice to any Users.

In certain jurisdictions, Freshsessions may decide in its sole discretion to facilitate collection and remittance of taxes from Artists on behalf of and in-lieu of Studio Owners, if such tax jurisdiction asserts Freshsessions or Studio Owners have a tax collection and remittance obligation. In any jurisdiction in which we decide to facilitate collection and remittance of any taxes, whether you are an Artist or a Studio Owner you hereby instruct and authorize Freshsessions to collect such taxes from Artists on behalf of and in lieu of Studio Owners at the time Studio Fees are collected, and to remit such taxes to the applicable tax authority. Artists and Studio Owners agree that in any jurisdiction where Freshsessions facilitates collection and remittance of any taxes on behalf of and in lieu of Studio Owners, such Studio Owners are not permitted to also collect and/or remit such taxes on any portion of the Studio Fees. Artists and Studio Owners acknowledge and agree that in some jurisdictions, Freshsessions may not be able to facilitate collection and remittance of taxes. In any jurisdiction in which we have not provided notice of, or are not facilitating collection and remittance of taxes to the applicable tax authority, Artists and Studio Owners remain solely responsible and liable for the collection and/or remittance of any and all taxes that may apply to the reservation and use of Studios and Studio Fees. For any jurisdiction in which we facilitate collection and remittance of taxes, Artists and Studio Owners expressly grant us permission to transfer data and other information relating to taxes, if any, collected and remitted relating to your transactions.

Artists and Studio Owners agree that we may seek additional amounts from you in the event that the taxes collected or remitted are insufficient to fully discharge your obligations to the applicable tax authority, and agree that your sole remedy for taxes collected is a refund of taxes collected by Freshsessions from the applicable tax authority in accordance with applicable procedures set by that tax authority.

18. Communications from Freshsessions. Applications may use GPS locator capabilities to identify your current location. If you provide a mobile phone number, you hereby expressly consent to receive SMS text messages from Freshsessions regarding the Services and as otherwise described in our privacy policy . The communication standards for the Services include, but are not limited to: SMS, GPS, and web-based browser technology. In order to use the SMS-based Services, you must maintain an active account with a carrier of electronic communications through mobile devices and you may not use a prepaid cellular phone to access the Services.

19. Technical Requirements. Use of the Services requires Internet access through your computer or mobile device. You are responsible for all mobile carrier charges resulting from your use of the Services, including from any notifications provided by the Services. Freshsessions does not guarantee that the Services will be compatible with all devices or will be supported by all mobile carriers. You may be required to have JavaScript (or similar technologies) enabled to use the Site, and some features and portions of the

Site (including, but not limited to, making, modifying, or canceling reservations) may not be accessible with JavaScript disabled.

20. Studio Owner Referral Program.

As a Studio Owner, you may participate in the "**Studio Owner Referral Program**", which is a loyalty program we offer to Studio Owner Users. If you choose to participate in the Studio Owner Referral Program, for each five (5) Studio Owners that are not affiliated with you that you refer to Freshsessions and who register and create an account with the Services and create one or more Listings for Studios [that receives a confirmed reservation via the Services], Freshsessions will waive the Studio Owner Fees for one reservation of your Studio by an Artist, as designated by Freshsessions (the "**Referral Reward**").

It is a condition of the Studio Owner Referral Program that you will only refer Studio Owners personally known to you. You agree not to publicly solicit referrals, or use any methods, platforms and media where you have no reasonable basis for believing that all or most of the readers or recipients are personally known to you. All Freshsessions accounts and Listings created resulting from a breach of the above will be disregarded for determining eligibility for a Referral Reward.

Freshsessions may suspend or terminate the Studio Owner Referral Program or your participation in the Studio Owner Referral Program at any time for any reason. Freshsessions will not grant any further Referral Rewards after the suspension or termination of the Studio Owner Referral Program or your participation in it, but any Referral Rewards already awarded or received will not be affected by the suspension or termination.

21. Content.

You understand that all content (such as audio files, written text or images) which you have access to as part of, or through your use of the Services, whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such content originated. All such information is referred to as "**Content**". You should be aware that Content presented to you as part of the Services may be protected by intellectual property rights. Unless you have been specifically told that you may do so by Freshsessions or by the owners of that Content in a separate agreement, you may use such Content only in the context of the Service with which it is presented and may not otherwise use such Content or modify, rent, lease, loan, sell, distribute or create derivative works based on such Content.

Some of the Content displayed on or through the Services is Content that is provided by or collected from third party sources, which is mostly done automatically, or is Content submitted, posted or displayed by Users (collectively, "**Third Party Content**"). Freshsessions does not control Third Party Content and therefore does not guarantee the accuracy, integrity, or quality of such Third Party Content. You understand that by using the Services, you may be exposed to Content that is offensive, indecent or objectionable. Freshsessions does not plan to pre-screen Third Party Content for appropriateness, but Freshsessions reserves the right to pre-screen, filter, modify, refuse, or remove any or all Content from any Service.

You agree that you must evaluate, and bear all risks associated with, your use of any Content. Content is provided to you "as is" for your personal use only, and may not be used, downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed or otherwise exploited for any commercial purposes or any other purposes whatsoever except as expressly permitted under this Agreement or with the prior written consent of Freshsessions or the respective Content owner.

22. Your Submissions.

You may be able to submit, post or display reviews, comments, ratings, suggestions, ideas, questions, messages or other Content on your own initiative or in response to queries, or by engaging in other forms of communication through the Services. This Content submitted, posted or displayed by you or other users is referred to as "**User Submissions**". By submitting, posting or displaying User Submissions on or through the Services, you grant Freshsessions and its affiliates a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sub-licensable and transferable license to use, reproduce, modify, create derivative works of, distribute, display, perform and otherwise exploit such User Submissions in any media and for any purpose. If you do not wish to grant to Freshsessions the foregoing rights, do not submit, post or display User Submissions on or through the Services.

You understand that User Submissions may be published through the Services, and that Freshsessions does not guarantee the confidentiality of your User Submissions. You agree that you are solely responsible for your own User Submissions and the consequences of submitting, posting or displaying them. You affirm, represent and warrant that: (i) your User Submissions will be in compliance with the terms of this

Agreement, including without limitation the User Conduct provisions hereof and any Policies; (ii) your User Submissions will not infringe or violate the rights of any other party or any laws; and (iii) you own or have all the necessary licenses, rights, consents and permissions to enable inclusion of the User Submissions in the manner contemplated by the Services and to grant the rights granted to Freshsessions under this Agreement. Freshsessions reserves the right (but has not obligation) to monitor, remove or edit User Submissions in Freshsessions' sole discretion for any reason, but you acknowledge that Freshsessions may not regularly review User Submissions.

23. Social Media.

You may be able to register for the Services or be able to connect your Freshsessions account to certain social media websites and applications ("**Social Media Applications**"). If you choose to register through or connect to a Social Media Application, you'll be able to take advantage of various social features we will be creating as well as features available from such Social Media Applications. These features will be designed to share information with others - the essence of social media. For example, Freshsessions may personalize and otherwise enhance your experience based on your information from Social Media Applications and share information you share through such Social Media Applications with other Freshsessions users or publicly. Please pay careful attention to your privacy settings in your accounts with Social Media Applications, which will impact this feature and may give you some control over the information that is shared and who it is shared with. Please note however that if you disconnect or changes such privacy settings, Freshsessions may retain and continue to use information obtained prior to such disconnection or change in your privacy settings. **BY CONNECTING YOUR FRESHSESSIONS ACCOUNT TO YOUR ACCOUNT WITH A PARTNER COMMUNITY, YOU ACKNOWLEDGE AND AGREE THAT YOU ARE CONSENTING TO THE CONTINUOUS RELEASE OF INFORMATION ABOUT YOU TO OTHERS, INCLUDING TO THE SOCIAL MEDIA APPLICATION (IN ACCORDANCE WITH ANY PRIVACY SETTINGS). IF YOU DO NOT WANT INFORMATION ABOUT YOU, INCLUDING PERSONALLY IDENTIFYING INFORMATION, TO BE SHARED IN THIS MANNER, DO NOT REGISTER THROUGH OR USE THE FEATURES ENABLING CONNECTION WITH SOCIAL MEDIA APPLICATIONS.** If you use any Social Media Application to share information relating to your Freshsessions account or other Content, you agree that (i) you are consenting to the information or Content being shared, (ii) your use of the application may cause personally identifying information to be publicly disclosed and/or associated with you, even if Freshsessions has not provided such information, and (ii) your use of such Social Media Application is at your own option and risk. We and Social Media Applications may make changes and improvements to our connection and interoperability, and therefore the available features and information that is shared may change from time to time. These changes may take place without notice to you and may not be described in this Agreement.

24. User Conduct

You understand and agree that you are solely responsible for compliance with any and all laws, rules, regulations and tax obligations that may apply to your use of the Services and Content. As a condition of use, you promise not to use the Services for any purpose that is unlawful or prohibited by this Agreement, or any other purpose not reasonably intended by Freshsessions.

By way of example, and not as a limitation, you agree that you will not do any of the following:

- impersonate any person or entity or falsely state or otherwise misrepresent your identity or affiliation with a person or entity;
- post Content or otherwise use the Services in a manner that is fraudulent, misleading, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, of a "spamming" nature, hateful, or racially, ethnically or otherwise objectionable;
- access or use any account belonging to someone else;
- engage in any activity that could interfere with, damage or disrupt the Services (or the servers or networks which are connected to the Services);
- use the Service with the intention of artificially inflating or altering the results of Services;
- upload viruses or other malicious code;
- attempt to override or circumvent any of the usage rules or security features embedded into the Services;
- violate or facilitate or encourage any violation of this Agreement or any applicable local, state, national or international law or regulation;
- post Content or otherwise use the Services in a manner that infringes or violates the rights of any person or entity, including without limitation (1) any patent, trademark, trade secret, copyright or other proprietary rights; (2) rights of privacy (specifically you must not distribute another person's personal information of any kind without their express permission); or (3) any confidentiality obligations or other rights arising from contractual or fiduciary relationships;

- use, reproduce, modify, distribute, resell or otherwise exploit the Services or any portion thereof, including any Content, for any purpose not expressly permitted by this Agreement;
- collect or harvest any User Submissions or User information, including account names, from the Services;
- access or use the Services for commercial purposes or solicit any other Users for any commercial purposes that are not expressly permitted by this Agreement; or
- access, use or collect information from the Services through any automated means (such as harvesting bots, robots, spiders or scrapers) without our permission; or
- use the Services to transmit, distribute, post or submit any information concerning any other person or entity, including without limitation, photographs of others without their permission, personal contact information or credit, debit, calling card or account numbers;
- use the Services or Content in connection with the distribution of unsolicited commercial email ("spam") or advertisements unrelated to reservation and use of Studios;
- bully, intimidate, "stalk" or harass any other User, or collect or store any personally identifiable information about any other User other than for purposes of transacting as an Artist or Studio Owner;
- offer, as a Studio Owner, any Studio that you do not yourself own (without limiting the foregoing, you will not list Studios as a Studio Owner if you are serving in the capacity of a rental agent or listing agent for a third party);
- offer, as a Studio Owner, any Studio the use of which may not be rented as contemplated hereby pursuant to the terms and conditions of an agreement with a third party;
- register for more than one Freshsessions account or register for a Freshsessions account on behalf of an individual other than yourself;
- unless Freshsessions explicitly permits otherwise, request or reserve the use of a Studio if you will not actually be using the Studio yourself;
- contact a Studio Owner for any purpose other than asking a question related to a reservation, such as Studio Owner's Studios or Listings;
- contact an Artist for any purpose other than asking a question related to a reservation or such Artist's use of the Services;
- recruit or otherwise solicit any Studio Owner or other User to join third-party services or websites that are competitive to the Services, without Freshsessions' prior written approval;
- use the Services or Content to find a Studio Owner or Artist and then complete a reservation or use of a Studio independent of the Services, in order to circumvent the obligation to pay any Studio Owner Fees related to Freshsessions' provision of the Services or for any other reasons;
- as a Studio Owner, submit any Listing with false or misleading price information, or submit any Listing with a price that you do not intend to honor;
- systematically retrieve data or other content from the Services to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;
- use, display, mirror or frame the Services or Content, or any individual element within the Services or Content, Freshsessions' name, any Freshsessions trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page in the Services, without Freshsessions' express written consent;
- access, tamper with, or use non-public areas of the Services, Freshsessions' computer systems, or the technical delivery systems of Freshsessions' providers;
- attempt to probe, scan, or test the vulnerability of any Freshsessions system or network or breach any security or authentication measures;
- forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services or Content to send altered, deceptive or false source-identifying information;
- attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content; or
- advocate, encourage, or assist any third party in doing any of the foregoing.

25. Indemnity.

You will indemnify and hold harmless and (at Freshsessions' request) defend Freshsessions and its affiliates and its and their officers, directors, agents, employees, partners, independent contractors, and licensors ("**Freshsessions Parties**") from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your User Submissions, your use of the Services, your violation of this Agreement, or your violation of any rights of another person or entity.

26. No Warranties.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WITHOUT WARRANTY OF ANY KIND. FRESHSESSIONS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, OR ANY WARRANTY ARISING FROM A COURSE OF DEALING, PERFORMANCE, OR TRADE USAGE. FRESHSESSIONS DOES NOT WARRANT THAT THE SERVICES OR CONTENT, INCLUDING WITHOUT LIMITATION THE LISTINGS OR ANY STUDIOS, WILL MEET YOUR REQUIREMENTS, THAT YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT FRESHSESSIONS WILL REVIEW THE INFORMATION OR MATERIALS MADE AVAILABLE THROUGH THE SERVICES FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN ANY SUCH INFORMATION OR MATERIALS WITHOUT LOSS. FRESHSESSIONS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF FRESHSESSIONS. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL, WHETHER CAUSED BY VIRUS OR OTHERWISE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM FRESHSESSIONS OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

FRESHSESSIONS MAKES NO WARRANTY REGARDING THE QUALITY OF ANY LISTINGS, STUDIOS, SERVICES OR CONTENT OR THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY CONTENT OBTAINED THROUGH THE SERVICES. YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY STUDIO OWNERS OR ARTISTS. YOU UNDERSTAND THAT FRESHSESSIONS DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE SERVICES OR TO REVIEW OR VISIT ANY STUDIOS. FRESHSESSIONS MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SERVICES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USERS OF THE SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, STUDIO OWNERS AND OWNERS, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON REGARDLESS OF WHETHER SUCH MEETINGS ARE ORGANIZED BY FRESHSESSIONS. NOTWITHSTANDING FRESHSESSIONS' APPOINTMENT AS THE LIMITED PAYMENT COLLECTION AGENT OF THE STUDIO OWNERS FOR THE PURPOSE OF ACCEPTING PAYMENTS FROM ARTISTS ON BEHALF OF THE STUDIO OWNERS, FRESH SESSIONS EXPLICITLY DISCLAIMS ALL LIABILITY FOR ANY ACT OR OMISSION OF ANY ARTIST, STUDIO OWNER OR OTHER THIRD PARTY.

Some jurisdictions do not allow the disclaimer or limitation of certain implied warranties, so the foregoing disclaimers or limitations may not apply to you. To the extent that in a particular circumstance any disclaimer or limitation set forth in this Section is prohibited by applicable law, then, instead of the provisions hereof in such particular circumstance, Freshsessions shall be entitled to the maximum disclaimers and/or limitations available at law and equity in that particular circumstance.

27. Limitations of Liability.

FRESHSESSIONS SHALL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF FRESHSESSIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, FRESHSESSIONS'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION, WILL AT ALL TIMES BE LIMITED TO THE GREATER OF \$50.00 OR THE AMOUNT YOU HAVE PAID US, IF ANY, FOR ACCESSING OR USING THE SERVICES.

Some jurisdictions do not allow the limitation of liability for incidental or consequential damages or other damages or liability, so the foregoing limitations may not apply to you. To the extent that in a particular circumstance any limitation on damages or liability set forth in this Section is prohibited by applicable law, then, instead of the provisions hereof in such particular circumstance, Freshsessions shall be entitled to the maximum limitations on damages and liability available at law and equity in that particular circumstance.

You and Freshsessions understand and agree that the disclaimers, exclusions, and limitations in this Section 27 and in Section 26 are essential elements of this Agreement and that they represent a reasonable allocation of risk. In particular, you understand that Freshsessions would be unable to make the Services available to you except on these terms and agree that this Agreement will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

28. Third Party Websites, Applications or Resources.

The Services may contain, or User Submissions or other Content may contain, links to other websites, applications or resources or such websites, applications or resources may be otherwise accessible through the Services. You acknowledge that these other websites, applications or resources are not controlled by us, different terms of service and privacy policies may apply, and we are not responsible for any such third party websites, applications or resources. You are responsible for compliance with the terms of service for such third party websites, applications or resources. We do not endorse and are not responsible or liable for any Content, advertising, products or other materials on or available from such third party web sites, applications or resources. You acknowledge and agree that Freshsessions is not liable for any damage or loss that may be incurred by you in connection with your use of any such website, application or resource.

29. Proprietary Rights; Licenses; Restrictions.

Subject to your rights in your User Submissions, all right, title, and interest in and to the Services and the Content remains the property of Freshsessions or its licensors (such Content other than User Submissions, "**Freshsessions Content**"). Subject to the terms and conditions of this Agreement, Freshsessions grants you a personal, non-transferable and non-exclusive right to use the Services and Freshsessions Content solely for your own personal and non-commercial purposes as contemplated and permitted by the Services and this Agreement.

Subject to the terms and conditions of this Agreement, Freshsessions grants you a non-exclusive, non-transferable, revocable license to use the Application, in object code form only, on your compatible mobile devices, solely to support your permitted use of the Services.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make the Services or such Content available to any third party; (ii) modify or make derivative works based upon the Services or such Content; or (iii) attempt to reverse compile or otherwise reverse engineer any software used in providing the Services. You agree that you will not remove, obscure or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within the Services or the Content. You cannot use any of the trademarks or protected copyright materials found on and within the Services or the Content except in accordance with applicable law and as expressly permitted herein or with prior written permission of the owner. Any unauthorized use may violate copyright laws, trademark laws, the laws of privacy and publicity, and civil or criminal statutes. Nothing contained in the Services or the Content should be construed as granting by estoppel or otherwise, any license or right of use to any trademark.

30. Notice and Procedure for Making Claims of Copyright Infringement.

If Freshsessions receives a notice alleging that you have engaged in behavior that infringes any of its or a third party's intellectual property rights and reasonably concludes that such information is credible, Freshsessions may, at its discretion, suspend or terminate your access to the Services with or without notice to you. If Freshsessions takes action under this Section, it shall have no liability or responsibility to you, including for any amounts that you have previously paid.

Freshsessions will investigate notices of copyright infringement and take appropriate actions under applicable local law including, in the United States, the Digital Millennium Copyright Act. If you are a

copyright owner or an agent thereof and believe that any User Submission or other Content infringes upon your copyrights, written notification of claimed copyright infringement must be submitted as follows:

Freshsessions Inc.
225 Bush Street, Floor 12
San Francisco, CA 94105
info@Freshsessions.com

To be effective, the notification must include the following:

- An electronic or physical signature of the copyright owner or the person authorized to act on the copyright owner's behalf;
- A description of the copyrighted work claimed to have been infringed;
- A description of the location of the infringing material and information reasonably sufficient to permit Freshsessions to locate the material;
- Your contact information, including your address, telephone number, and email address;
- A statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and, under the penalty of perjury, that you are authorized to act on behalf of the copyright owner.

31. Termination.

You may discontinue your use of the Services at any time. You agree that Freshsessions may at any time and for any reason terminate or suspend your access to any Services or your Freshsessions account. Termination of your account with respect to the Services may include: (i) removal of access to all offerings within the Services accessed through your account and (ii) barring of further use of the Services. Termination of your account may further include deletion of any password and all related information, files, User Submissions, Profile Data and other Content associated with or inside your account (or any part thereof). Any suspension or termination shall be made in Freshsessions's sole discretion and Freshsessions shall not be liable to you or any third party for any suspension or termination of your account or your access to the Services or the deletion of your User Submissions, Profile Data or other Content. Freshsessions shall have no obligation to maintain or forward any of your User Submissions, Profile Data or other Content. Any provisions that expressly or by their nature survive termination of your account or this Agreement will survive any termination of your account or this Agreement.

32. Government End Users.

The Services constitute a "commercial item" as defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire any Freshsessions Application with only those rights set forth therein.

33. Export Control.

You may not use, export, or re-export any Application or other aspects of the Services (or any copy or adaptation of the foregoing) in violation of applicable law, including, without limitation, United States and foreign export laws and regulations. You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a "terrorist supporting" country and that you are not listed on any U.S. Government list of prohibited or restricted parties.

34. Governing Law; Disputes.

This Agreement and your relationship with Freshsessions under this Agreement are governed by the laws of the State of California (USA), consistent with the Federal Arbitration Act, without giving effect to any principles that provide for the application of the law of another jurisdiction.

35. ARBITRATION AGREEMENT AND JURY TRIAL WAIVER, CLASS ACTION WAIVER, AND FORUM SELECTION CLAUSE.

Any and all controversies, disputes, demands, counts, claims, or causes of action (including the interpretation and scope of this clause, and the arbitrability of the controversy, dispute, demand, count, claim, or cause of action) between you and the Freshsessions Parties or their successors or assigns shall exclusively be settled through binding and confidential arbitration.

Arbitration shall be subject to the Federal Arbitration Act and not any state arbitration law. The arbitration shall be conducted before one commercial arbitrator with substantial experience in resolving commercial

contract disputes from the American Arbitration Association (“AAA”). As modified by this Agreement, and unless otherwise agreed upon by the parties in writing, the arbitration will be governed by the AAA’s Commercial Arbitration Rules and, if the arbitrator deems them applicable, the Supplementary Procedures for Consumer Related Disputes (collectively, the “**Rules and Procedures**”).

You are thus GIVING UP YOUR RIGHT TO GO TO COURT to assert or defend your rights EXCEPT for matters that you file in small claims court. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. You are entitled to a FAIR HEARING, BUT the arbitration procedures are SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT. Arbitrator decisions are as enforceable as any court order and are subject to VERY LIMITED REVIEW BY A COURT.

You and Freshsessions must abide by the following rules: (1) ANY CLAIMS BROUGHT BY YOU OR FRESHSESSIONS MUST BE BROUGHT IN THE PARTY’S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; (2) THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS, MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND MAY NOT AWARD CLASS-WIDE RELIEF; (3) in the event that you are able to demonstrate that the costs of arbitration will be prohibitive as compared to costs of litigation, Freshsessions will pay as much of your filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation, (4) Freshsessions also reserves the right in its sole and exclusive discretion to assume responsibility for all of the costs of the arbitration; (5) the arbitrator shall honor claims of privilege and privacy recognized at law; (6) the arbitration shall be confidential, and neither you nor we may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award; (7) the arbitrator may award any individual relief or individual remedies that are permitted by applicable law; and (8) each side pays its own attorneys’ fees and expenses unless there is a statutory provision that requires the prevailing party to be paid its fees and litigation expenses, and, in such instance, the fees and costs awarded shall be determined by the applicable law.

Notwithstanding the foregoing, either you or Freshsessions may bring an individual action in small claims court. Further, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party’s patent, copyright, trademark, or trade secret shall not be subject to this arbitration agreement. Such claims shall be exclusively brought in the state or federal courts located in San Francisco County, California. Additionally, notwithstanding this agreement to arbitrate, either party may seek emergency equitable relief before the state or federal courts located in San Francisco County, California in order to maintain the status quo pending arbitration, and hereby agree to submit to the exclusive personal jurisdiction of the courts located within San Francisco County, California for such purpose. A request for interim measures shall not be deemed a waiver of the right to arbitrate.

With the exception of subparts (1) and (2) in this Section (prohibiting arbitration on a class or collective basis), if any part of this arbitration provision is deemed to be invalid, unenforceable, or illegal, or otherwise conflicts with the Rules and Procedures, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting part was not contained herein. If, however, either subpart (1) or (2) is found to be invalid, unenforceable, or illegal, then the entirety of this arbitration provision shall be null and void, and neither you nor Freshsessions shall be entitled to arbitration. If for any reason a claim proceeds in court rather than in arbitration, the dispute shall be exclusively brought in state or federal court located in San Francisco County, California.

36. Notices.

Freshsessions may provide you with notices, including those regarding changes to this Agreement, by email or regular mail and Freshsessions may also post such changes on the Services. You shall send any notices to Freshsessions at: FreshSessions Inc, 225 Bush Street, Floor 12, San Francisco, CA 94105 USA, Attn.: Legal.

37. Questions and Feedback.

Should you have any questions concerning this Agreement, or if you desire to contact Freshsessions for any reason, please write to: FreshSessions Inc., 225 Bush Street, Floor 12, San Francisco, CA 94105 USA or info@freshsessions.com. We appreciate your feedback or other suggestions about Freshsessions, but you understand that we may use them without any obligation to compensate you for them (just as you have no obligation to offer them).

38. Miscellaneous Provisions.

This Agreement constitutes the entire legal agreement between you and Freshsessions and governs your use of the Services (but excluding any services which Freshsessions may provide to you under a separate written agreement). This Agreement completely replaces any prior agreements between you and Freshsessions regarding the Services. You agree that if Freshsessions fails to exercise or delays the exercise of any of its rights or remedies under this Agreement or applicable law, that failure or delay will not be considered a waiver of those rights or remedies, and those rights or remedies will still be available to Freshsessions. This Agreement and its rights and obligations may not be transferred, assigned or delegated in any manner by you, but may be freely transferred, assigned or delegated by Freshsessions. You and Freshsessions agree that you are not agents, partners or joint venturers, and that this Agreement does not create any fiduciary duty or comparable relationship of trust between the parties. If any provision of this Agreement is found by a court having jurisdiction to decide on the matter to be invalid, then that provision will be removed from the Agreement without affecting the rest of this Agreement. The remaining provisions of this Agreement will continue in full force and effect.