

## TERMS

### I. Overview

These are the Terms of Use (“**Terms**”) for Bluegrass Restaurant Partners, LLC (here and after “**The Company**”) which govern your access to and use of the [www.birracibo.com](http://www.birracibo.com) website (the “**Site**”), as well as all other websites and online customer portals provided by The Company relating to Birracibo, including any Wi-Fi connections made available by The Company at Birracibo (collectively, the “**Services**”). The Company may also be referred to herein as “we,” “us,” and “our” within the Terms. The terms “user,” “you,” and “your” refer to you as a user of the Services.

PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, OBLIGATIONS, AND AVAILABLE REMEDIES RESULTING FROM YOUR USE OF THE SERVICES. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, AS DESCRIBED BELOW. YOUR ACCESS TO AND USE OF THE SERVICES IS CONDITIONED ON YOUR ACCEPTANCE OF AND COMPLIANCE WITH THESE TERMS.

Portions of the Site and Services contain links to other websites, including websites of third parties who are acting on our behalf as our agents, suppliers, or providers. These other websites are not operated by The Company and have their own terms of service that we encourage you to read before you use them.

### II. Accepting these Terms

Please be aware that these Terms constitute a binding legal agreement between you and The Company outlining your legal rights, obligations, and remedies arising from your use of the Services. You agree you are responsible for your use of the Services and any consequences resulting from your use of the Services. You may use the Services only in compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations. If you do not agree to these Terms, you may not use the Services.

You may use the Services only if you can form a binding contract with The Company and are not a person barred from receiving services under the laws of the United States or other applicable jurisdictions. If you are accepting these Terms and using the Services on behalf of a company, organization, government, or other legal entity, you represent and warrant that you are authorized to do so and that you agree, on behalf of the party that you represent, to this Agreement. If you reside in a jurisdiction that restricts the use of the Services because of age, or restricts the ability to enter into agreements such as this one due to age, you must abide by such age limits and you must not use the Services.

By accessing or using the Services, you represent and warrant that you have the right, authority, and capacity to enter into this Agreement, you will abide by these Terms, and that you have read, understand, and agree to be bound by these Terms, and by the terms of The Company’s Privacy Policy at [www.birracibo.com/privacy](http://www.birracibo.com/privacy). These Terms apply to anyone who accesses or uses the Services, whether or not you have registered for an account with The Company. By using the Services you agree you accept the terms and conditions of the Terms and Privacy Policy, including any dispute resolution, arbitration, limitation of damages, and choice of law provisions. The Services are always evolving and the form and nature of the Services may change from time to time without prior notice to you. In addition, The Company may permanently or temporarily stop providing the Services, or features of the Services, and may not provide you with prior notice.

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. BY ACCESSING OR USING THE SERVICES, YOU AGREE YOU ARE BOUND BY THESE TERMS OF USE IN THEIR ENTIRETY. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS INCLUDED WITHIN THESE TERMS, THEN YOU MAY NOT ACCESS OR USE THE SERVICES.

### **III. Privacy**

We know you care about your privacy. Please note any information you or other users provide to The Company or which we collect about you or others is subject to our Privacy Policy. To learn more about how The Company collects, uses, shares, and secures your information, please review The Company Privacy Policy at [www.birracibo.com/privacy](http://www.birracibo.com/privacy), which is incorporated into your agreement with The Company by this reference.

The Services are not directed to children under the age of 13. You may not use the Services if you are under the age of 13. We do not seek to collect information about children under the age of 13 or those that are not eligible to use the Services. No information should be submitted to or posted through the Services by users under 13 years of age. Certain other Services may be restricted to those over the ages of 18 or 21. You may not use the Services if you are not eligible. If you are the parent or guardian of a child under 13 years of age or another that has used the Services who is not eligible and believe that he or she has disclosed Personally Identifiable Information to us, please contact us at [privacy@fourthstreetlive.com](mailto:privacy@fourthstreetlive.com) so that we may delete this information.

### **IV. Your Representations & Warranties to The Company**

By using the Services, you represent, warrant, and agree:

1. You will only use the Services for lawful purposes, and you will not use the Services for sending, storing, or distributing any unlawful material or for fraudulent purposes;
2. You will not use the Services to cause nuisance, annoyance or inconvenience;
3. You will not impair the proper operation of the Services or any network which is used to support or access the Services;
4. You will not try to harm the Services in any way whatsoever;
5. You will not copy, or distribute the Services or other content without written permission from The Company;
6. You will only use the Services for your own use and will not resell any aspect of the Services to a third party;
7. You will keep secure and confidential your account password or any identification we may provide you which allows access to the Services; and
8. You will provide us with whatever proof of identity we may reasonably request.

### **V. Accounts and Registration**

**A. Registering for an Account:** In order to use or access certain Services or features of the Services, you may be asked to register for a user account (an “**Account**”) and become a registered user of the Services (a “**Registered User**”). When you become a Registered User, you agree to: (1) provide accurate, current, and complete information about yourself and/or the Registered User during the registration process; (2) maintain and promptly update such information to keep it accurate, current, and complete; (3) maintain the security of your password

and login information, and that you will not disclose your password or login information to any third party; (4) accept full responsibility for all use of any Account you register, and for any actions that arise from or take place using your Account, whether or not you have authorized such actions or use; and (5) immediately notify The Company of any unauthorized use of your Account. Failure to abide by this Agreement constitutes a breach of these Terms, which may result in immediate termination of your Account.

**B. Your Account Information:** You may not select or use an Account name, handle, or login that: (1) is comprised of or includes the name of another person with the intent to impersonate that person; (2) is subject to any rights of a person other than you without appropriate authorization; (3) suggests a false association between you and The Company; or (4) that, in The Company's sole discretion, is offensive, vulgar, or obscene. The Company reserves the right to refuse registration of an Account, or cancel any account name, in its sole discretion.

**C. The Company's Termination of Access to the Services:** The Company maintains the right to suspend or disable your access to the Services and any Account you may have created, or terminate these Terms, at its sole discretion and without prior notice to you if you breach the Terms, or if The Company otherwise determines such action is warranted. The Company reserves the right to revoke your access to and use of the Services at any time, with or without cause, whether or not you have established an Account or are a Registered User.

**D. Your Cancellation of Your Account or Use of the Services:** You may cancel your Account or your access to the Services at any time by contacting The Company using the information below. Upon cancellation of your Account, The Company may: (1) retain your information and content indefinitely; (2) continue to use your information for research purposes indefinitely; and (3) retain, use, and continue to show information about your use of the Services.

## **VI. User Conduct**

As a condition of your use of the Services, you agree not to use the Services: (1) for any illegal purpose; (2) for any purpose that is prohibited by these Terms; or (3) for any other purpose not reasonably intended by The Company as typical or expected use of the Services consistent with the purposes for which the Services were created. You specifically agree not to:

- 1.** Use the Services to undertake or accomplish any unlawful purpose, including but not limited to, storing, transmitting or disseminating information, data or material which is libelous, obscene, unlawful, threatening or defamatory, or which infringes the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal offense, or otherwise violate any local, state, federal, or non-U.S. law, order, or regulation;
- 2.** Post, upload, or otherwise distribute or post links to any content that is unlawful, defamatory, libelous, inaccurate, or that you do not have all necessary rights to transmit, or that The Company or a reasonable person could deem to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate as determined by The Company in its sole discretion;
- 3.** Post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain any password or other confidential information, or private information from any Services user;
- 4.** Create or submit unwanted e-mail ("Spam") to any other person or any URL;

- 5.** Impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity via the Services;
- 6.** Restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Services (except for tools for safety and security functions such as parental controls, for example), including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to use, send, or retrieve information;
- 7.** Submit content linking or otherwise directing others to affiliate programs, multi-level marketing schemes, or off-topic content;
- 8.** With the exception of accessing RSS feeds, to use any robot, spider, scraper or other automated means to access the Services for any purpose without our express written permission;
- 9.** Take any action that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our infrastructure;
- 10.** Interfere or attempt to interfere with the proper working of the Services or any activities conducted on or through the Services;
- 11.** Interfere with the operation of the Services or any user's enjoyment of the Services, including without limitation, by: (i) uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious software or code; (ii) making unsolicited offers, advertisements, or other solicitations, directing spam or other unsolicited communications to other users, or conducting your own contests or promotions using the Services; (iii) attempting to collect personal information about users or third parties without their consent; or (iv) interfering with or disrupting any networks, equipment, or servers connected to or used to provide the Services, or violating the regulations, policies, or procedures of such networks, equipment, or servers;
- 12.** Register under the name of, nor attempt to use the Services under the name of, another person;
- 13.** Allow another person to access the Services using your credentials;
- 14.** Capture, rip, download, or otherwise create a copy of any content available through the Services without obtaining any required permission of the content owner;
- 15.** Take any actions for the purpose of manipulating or distorting, or that may undermine the integrity and accuracy of, any ratings or reviews of any service or product that may be presented by the Services;
- 16.** Use the Services, related content, or any component thereof, for any unintended commercial purpose, including advertising, offering for sale, or selling any item using the Services;
- 17.** Violate, or encourage others to violate, the rights of third parties, including by infringing or misappropriating third party Intellectual Property or other legal rights;
- 18.** Reproduce, distribute, publicly display or perform, modify, make derivative works of, redistribute, sublicense, rent, publish, sell, assign, lease, market, transfer, or otherwise make the Services, Content, code or program, available to others, in whole or part;
- 19.** Interfere with security features of the Services, including without limitation, by: (i) disabling or circumventing features that prevent or limit use or copying of content, or which violate copyrighted or otherwise legally protected software; or (ii) reverse engineering or otherwise

attempting to extract the source code of the Services or any part thereof, except to the extent that such activity is expressly permitted by applicable law;

**20.** Perform any fraudulent activity using or in connection with the Services, including impersonating any person or entity, claiming false affiliations, accessing the accounts or passwords of others without permission, or falsifying your age, date of birth, or contact information; or

**21.** Attempt to do any of the foregoing in this Section, or assist or permit any persons in engaging in any of the activities described in this Section.

## **VII. Content and Limited Licenses**

**A. Content Definitions:** There are various types of content involved in providing and operating the Services. Throughout the remainder of these Terms, we will use the term “**Content**” to mean all text, links, graphics, images, photos, music, software, audio, video, information, software, copyrights, trademarks, trade dress, and other materials and intellectual properties comprising or included within the Services. “**The Company Content**” means Content that The Company makes available to you through the Services, including Content owned by The Company or licensed to The Company from a third party (excluding User Content). “**User Content**” means Content posted, uploaded, published, submitted, transmitted, or otherwise made available through the Services by a user, whether or not a Registered User, or whether or not a user owns or created the Content, including all copyrights, inventions, and other Intellectual Property rights. “**Collective Content**” collectively refers to all of the Content available through the Services, including The Company Content and User Content.

**B. Content Ownership:** All The Company Content is owned by The Company or its third party licensing partners. Your use of the Services does not grant you any rights to the use or control of any of The Company Content, except those rights expressly granted by this Agreement. Any copying, republication, redistribution, or creation of derivative works based upon The Company Content, including by caching, framing or any similar means, without the prior written consent of The Company is strictly prohibited.

The Services and The Company Content are protected by copyright, trademark, and other laws of the United States and foreign countries. Except as expressly provided in these Terms, The Company and its licensors exclusively own all right, title and interest in and to the Services and The Company Content, including all associated Intellectual Property rights. You may not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or The Company Content. The Company or its partners shall retain all worldwide rights in and to all Intellectual Property comprising or included within The Company Content, including, but not limited to all trademarks, graphics, logos, designs, page headers, button icons, scripts, service names, software code, the “look and feel” of the Services, and copyrighted works associated with the Service is common law and/or registered copyrights, trademarks, and/or trade dress of The Company.

You should assume that everything you read or see on the Services is copyrighted or otherwise protected and owned by The Company, or a third party who licensed the right to use such content to The Company. Unless otherwise expressly noted, nothing that you read or see on the Services or other Collective Content, or any of the source code or HTML code that The Company uses to generate the Services may be copied, reproduced, modified, distributed, transmitted, republished, displayed, or performed for commercial use without the prior written consent of The Company or

the appropriate Content owner without prior written consent, except as provided in these Terms or otherwise permitted by relevant law.

No Collective Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without The Company's prior written permission, with the exception of your own User Content that you legally post on the Services. Except for your own User Content, you may not upload or republish Collective Content on any Internet, Intranet or Extranet site or incorporate the information in any other database or compilation, and any other use of the Collective Content is strictly prohibited.

The Company is not the publisher or speaker of User Content, or any other information on the Services provided by third party content providers, and The Company is not liable for any claims related to such information. Any mention in the Services of products or Services provided by third parties is for informational purposes only and constitutes neither an endorsement nor a recommendation by The Company. The Company assumes no responsibility for those products or Services.

**C. The Company's License to You:** Subject to your compliance with these Terms, The Company grants you, to the extent it is able to do so, a limited, non-exclusive, non-transferable, non-sublicensable license to access, view, download, print, and otherwise use the Services and the Collective Content as intended.

You agree you will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services or Collective Content, except as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise except for the licenses and rights expressly granted in these Terms. Any use of the Services or the Collective Content other than as specifically authorized herein, without the prior written permission of The Company, is strictly prohibited and will immediately terminate the license granted herein. Such unauthorized use may also violate applicable laws including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms shall be construed as conferring any license to Intellectual Property rights, whether by estoppel, implication or otherwise. This license is revocable by The Company at any time without notice and with or without cause.

**D. Your License to The Company:** Certain features of the Services may permit our users to post, upload, publish, submit, or transmit User Content they created, owned, or are authorized to use, to be made available through the Services. By making available User Content through the Services, you hereby grant to The Company and its respective subsidiaries, affiliates, successors, assigns, licensees, resellers, sub-licensees, and other such parties as The Company may designate from time to time, which may include any or all other users of the Services, an irrevocable, worldwide, perpetual, non-exclusive, transferable, sublicensable, royalty-free license, to use, reproduce, access, view, copy, adapt, import, edit, modify, reformat, translate, post, distribute, license, sell, offer to sell, transfer, commercialize, publicly display, publicly perform, transmit, stream, broadcast, create derivative works from, and otherwise utilize such User Content, in whole or in part, for any purpose whatsoever, in any and all media and distribution methods (now known or later developed), including, without limitation, on or within the Services, or for advertising or marketing of the Services, as well as a license to use your name and likeness in marketing materials and in the Services to promote your use of the Services. You agree and

acknowledge that this license cannot be terminated and the waiver cannot be revoked without the express written consent of The Company once you have submitted User Content within the Services.

Your grant of this license to The Company to utilize your User Content and any derivative works of the User Content created by using the Services does not displace your ownership of the User Content, or any license or authority you may have from any third parties to utilize the Content you share as User Content. The Company does not claim ownership rights in your User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any such User Content.

You acknowledge and agree that you are solely responsible for all User Content that you make available through the Services. Accordingly, you represent and warrant that: (1) you either are the sole and exclusive owner of all User Content that you make available through the Services, or that you have all rights, licenses, consents, and releases necessary to utilize and share the User Content, and to grant The Company the rights in such User Content contemplated under these Terms; (2) neither the User Content, your posting, uploading, publication, submission, or transmittal of the User Content, or The Company's use of the User Content (or any portion thereof) on, through, or by means of the Services will infringe, misappropriate, or violate a third party's patent, copyright, trademark, trade secret, moral rights, or other Intellectual Property rights, or rights of publicity or privacy, or contractual rights or agreements, or result in the violation of any applicable law or regulation; and (3) any persons identified, depicted, or shown in your User Content, in whole or part, if any, (and if a minor, the parent or guardian of the minor) has provided consent to the use of the User Content on and through the Services.

We do not approve, control or endorse your or anyone else's User Content and have no obligation to do so. However, we reserve the right (but assume no obligation) to remove or modify any User Content from the Services at any time, for any reason.

### **VIII. Third Party Advertising & Marketing**

The Company may employ third party advertising and marketing to deliver ads, information, and other promotions to you, both through the Services, and via other mechanisms to provide such materials to you outside of the Services such as on third party websites or platforms. More information on how The Company uses your information for promotions and marketing is available in our Privacy Policy at [www.birracibo.com/privacy](http://www.birracibo.com/privacy). By agreeing to our Terms, you agree to receive such advertising and marketing from The Company and our partners. If you do not wish to receive such advertising, you may notify us in writing using the contact information provided below. The Company may compile and release information regarding you and your use of the Services on an anonymous basis as part of a customer profile or similar report or analysis. You agree that it is your responsibility to take reasonable precautions in all actions and interactions with any third party you interact with through the Services.

### **IX. Copyright Policy**

The Company respects the Intellectual Property of others. It is our policy to respond expeditiously to legitimate claims of copyright and other Intellectual Property infringement. We will promptly process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable Intellectual Property laws. Upon receipt of notices complying or substantially complying with the DMCA, we may act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and may act expeditiously to remove or disable access to any

reference or link to material or activity that is claimed to be infringing. We may terminate access for users of the Services who are infringers. We reserve the right to remove Content alleged to be infringing without prior notice, at our sole discretion, and without liability to you. In appropriate circumstances, The Company will also terminate a user's account if the user is determined to be a repeat infringer.

**A. Notifying The Company of Copyright Infringement:** To provide The Company with notice of an infringement, you must provide a written communication to the attention of "Birraco DMCA Notification Department" at [DMCA@ecimgt.com](mailto:DMCA@ecimgt.com) that sets forth the information specified by the DMCA (which may be available at: <http://www.copyright.gov/title17/92chap5.html#512>). Please note that you may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that an activity is infringing your copyright.

We must receive the following information from you:

1. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other Intellectual Property interest;
2. A description of the copyrighted work or other Intellectual Property that you claim has been infringed;
3. A detailed description of where the material that you claim is infringing is located or found on the Service;
4. Your address, telephone number, and e-mail address;
5. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. A statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or Intellectual Property owner or authorized to act on the copyright or Intellectual Property owner's behalf.

**B. Providing The Company with Counter-Notification:** If we remove or disable access to content in response to an infringement notice, we may make reasonable attempts to contact the owner or administrator of the affected content. If your material has been removed and you feel that your material does not constitute infringement, you may provide us with a counter notification by written communication to the attention of "Birraco DMCA Counter Notification Department" at [DMCA@ecimgt.com](mailto:DMCA@ecimgt.com) that sets forth all of the necessary information required by the DMCA (which may be available at: <http://www.copyright.gov/title17/92chap5.html#512>). Please note that you may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that an activity is not infringing the copyrights of others. If you are uncertain whether an activity constitutes infringement, we recommended seeking advice of an attorney.

## **X. Intellectual Property**

The Company and its licensors and partners own all rights, titles, and interests in and to the Services, and all related Intellectual Property rights, including all registered and unregistered trademarks, trade dress, graphics, logos, designs, page headers, button icons, scripts, service names, software code, inventions, copyrights, and copyrightable works, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Services, (collectively, the "**The Company IP**"). The Company IP may not be used in connection with any product or service in any manner that is likely to cause confusion or otherwise violate the rights granted to us in The Company IP, including use of any



The Company IP as part of third party trademarks, trade dress, and/or as part of domain names, e-mail addresses, account names or handles, or other digital properties.

This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Services, or any Intellectual Property rights owned by The Company. The Company name, logos and designs, and the product and service names associated with the Services are trademarks of The Company or its affiliated third parties, and no right or license is granted to you by this Agreement to use The Company IP for purposes not directly related to your use of the Services.

## **XI. Linking and Framing**

The Company grants you a limited, revocable, and nonexclusive right to create a hyperlink to the webpages of the Services, so long as the links do not portray The Company or its products or Services in a false or misleading manner. You may not use any of The Company's logo or other proprietary graphics or trademarks as part of the link without express permission. "Framing" or "mirroring" the Services or any of their content is prohibited without the prior written consent of The Company.

The Services may contain links to third-party websites or resources, such as our online store, YouTube, Twitter, and Facebook. You acknowledge and agree that The Company is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by The Company of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources. You further acknowledge and agree that The Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or Services available on or through any such site or resource.

## **XII. E-mail SMS, and MMS Notifications**

As part of your use of the Services, you may be asked to elect to receive certain e-mail, SMS, and MMS notifications from The Company and its partners. These messages may include event updates and other promotions. Your election to receive such messages represents your express written consent to receiving e-mails, SMS, and MMS messages from The Company related to the Services. You may opt-out of receiving certain notifications in association with the Services by completing the opt-out process provided to you with each e-mail message or by logging into your Account and modifying your settings to no longer receive further messages. By opting-out of receiving notifications, you understand that we may not be able to communicate important information to you. Please note we may still contact you regarding certain important Services announcements or notifications even if you have opted-out from other messages.

## **XIII. Notices**

You consent to receive from The Company all communications, including notices, agreements, legally required disclosures or other information in connection with the Services (collectively, "**Notices**") electronically. The Company may provide such Notices by posting them on or within the Services, by electronic mail to your e-mail address on record in The Company's account information, or by written communication sent by first class mail or pre-paid post to your address on record. You agree that we may communicate with you regarding The Company and other

entities by electronic means to your mobile device and that certain information about your usage of the Services may be communicated to us. In the event you change or deactivate your mobile device, you agree to promptly update your Account information to ensure that your messages are not sent to the person that acquires your old device.

#### **XIV. Termination**

The Company may change, suspend or discontinue the Services for any reason, at any time, including the availability of any Services, features, or Content, without notice to you. The Company may also impose limits on certain Services, features, or Content, or restrict your access to parts or all of the Services with or without notice to you.

The Company may also terminate or suspend your use of or access to the Services at any time, immediately, without notice, and without refund, for any violation of these Terms, in our sole and absolute discretion. Upon such termination or suspension, you must immediately cease accessing or using the Services, and agree not to access, re-download, re-register or otherwise make use of, or attempt to use, the Services.

The Company may also suspend or ban your access to the Services at any time for any violation of these Terms, including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such content. To report violations of the Terms, please contact The Company using the information below. You are solely responsible for your interactions with other users of the Services. The Company reserves the right, but has no obligation, to monitor disputes between you and other users.

You acknowledge that we reserve the right to take action, technical, legal, or otherwise, to block, nullify, or deny your ability to access the Services. You understand that we may exercise this right in our sole discretion, and this right shall be in addition to and not in substitution for any other rights and remedies otherwise available The Company. Continued use of the Services, its components, databases, or documentation, or any part thereof, after termination is a breach of the terms of this Agreement and a violation of copyright laws. You acknowledge that we may disable access to, refuse to post, or modify or remove any information or content, in whole or in part, for any reason or no reason at all. All provisions of this Agreement, which by their nature should survive termination, shall survive the termination of this Agreement, including, without limitation, provisions regarding ownership, warranty disclaimers, indemnity, and limitations of liability.

#### **XV. Export Control**

You agree to comply fully with all U.S. and foreign export laws and regulations to ensure that neither the Services, nor any technical data related thereto, nor any direct product thereof, is exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations. By using the Services, you represent and warrant that: (1) 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 (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

#### **XVI. International Use**

The Services are controlled and operated by The Company from within the United States. The Company makes no representations that materials contained within the Services are appropriate or available for use in other locations, and access to the Services from locations where such

activity is illegal is prohibited. Those who choose to use the Services from other locations do so of their own initiative and are solely responsible for compliance with all applicable laws.

## **XVII. Indemnity**

You agree to indemnify, defend, and hold harmless The Company and its licensors, (including each's parents, subsidiaries, and affiliates and all of their respective officers, directors, employees, agents, licensors, suppliers and any third-party information providers) against all claims, losses, expenses, damages, liability, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers arising out of or related to the Services, use of the Services, violation of the Terms, or the infringement by you of any Intellectual Property, or violation of any right of any person or entity by you or any third party using your Account, login information, or password, and resulting from any breach of the Terms or unauthorized use of the Services or any of its Content. The Company reserves the right, at its election to assume the exclusive defense and control of any matter subject to indemnification by you and you agree to cooperate with The Company in connection with our defense.

These Terms give you specific legal rights and you may also have other rights which vary from country to country. Some jurisdictions do not allow the exclusion of certain kinds of limitations or exclusions of liability, so the limitations and exclusions set out in these Terms may not apply to you. Other jurisdictions allow limitations and exclusions subject to certain conditions. In such a case the limitations and exclusions set out in these Terms shall apply to the fullest extent permitted by the laws of such applicable jurisdictions.

## **XVIII. Warranty Disclaimers**

You acknowledge that The Company has no control over, and no duty to take any action regarding: (1) which users gain access to the Services; (2) what effects the Content or the Services may have on you; (3) how you may interpret or use the Content or the Services; or (4) what actions you may take as a result of having been exposed to the Content or the Services.

You release The Company from all liability for you having acquired or not acquired Content through the Services. The Services may contain, or direct you to sites containing, information that some people may find offensive or inappropriate. The Company makes no representations concerning any content contained in or accessed through the Services, and The Company will not be responsible or liable for the accuracy, copyright compliance, legality or decency of material contained in or accessed through the Services. The Company makes no guarantee or warranty, express or implied, as to the reliability, accuracy, timeliness or completeness of that information and assumes no responsibility for any errors or omissions therein. The Company cannot guarantee that you will obtain the results you seek or warrant that Services will be error-free. The Company makes no representation or warranty of any kind with respect to use of Services or the use or accuracy of the information on the Services.

YOUR USE OF AND BROWSING OF THE SERVICES ARE AT YOUR RISK. NEITHER WE NOR ANY OF OUR LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES OR ITS CONTENTS, WHICH ARE PROVIDED FOR USE "AS IS" AND ON AN "AS AVAILABLE" BASIS. WE EACH DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES AND ANY WEBSITE WITH WHICH IT IS

LINKED. WE DO NOT WARRANT THAT THESE SERVICES, ITS SERVERS OR E-MAIL SENT FROM US WILL BE FREE OF ANY HARMFUL COMPONENTS (INCLUDING VIRUSES). WE ALSO MAKE NO REPRESENTATIONS OR WARRANTIES AS TO WHETHER THE INFORMATION ACCESSIBLE VIA THESE SERVICES, OR ANY WEBSITE WITH WHICH IT IS LINKED, ACCURATE, COMPLETE, OR CURRENT. WE DO NOT PROVIDE ANY REPRESENTATIONS OR WARRANTIES AGAINST THE POSSIBILITY OF DELETION, MISDELIVERY OR FAILURE TO STORE COMMUNICATIONS, PERSONALIZED SETTINGS, OR OTHER DATA. YOU ACCEPT THAT OUR SHAREHOLDERS, OWNERS, OFFICERS, DIRECTORS, EMPLOYEES AND OTHER REPRESENTATIVES SHALL HAVE THE BENEFIT OF THIS CLAUSE.

Without limiting the generality of the foregoing, neither The Company, nor any of its licensors, warrants or represents that use of content displayed via the Services will not infringe the rights of third parties not owned by or affiliated with The Company or its licensors. Please note that some jurisdictions may not allow the exclusion of implied warranties, so some of the above exclusions may not apply to you. Check your local laws for any restrictions or limitations regarding the exclusion of implied warranties.

#### **XIX. Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, WE, ON BEHALF OF OURSELVES, OUR LICENSORS, ANY PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES, EACH'S EMPLOYEES, AGENTS, SUPPLIERS, AND CONTRACTORS, EXCLUDE AND DISCLAIM LIABILITY FOR ANY LOSSES AND EXPENSES OF WHATEVER NATURE AND HOWSOEVER ARISING INCLUDING, WITHOUT LIMITATION, ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOSS OF USE, LOSS OF DATA, LOSS CAUSED BY A VIRUS, LOSS OF INCOME OR PROFIT, LOSS OF OR DAMAGE TO PROPERTY, CLAIMS OF THIRD PARTIES, OR OTHER LOSSES OF ANY KIND OR CHARACTER, EVEN IF WE OR ANY OF OUR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE SERVICES OR ANY WEBSITE WITH WHICH IT IS LINKED. YOU ASSUME TOTAL RESPONSIBILITY FOR ESTABLISHING SUCH PROCEDURES FOR DATA BACK UP AND VIRUS CHECKING AS YOU CONSIDER NECESSARY. THIS LIMITATION OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER BASIS. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

The "Disclaimer" and "Limitation of Liability" provisions of this Agreement are for the benefit of The Company as defined herein, and each of these individuals or entities shall have the right to assert and enforce these provisions directly against you on its own behalf.

#### **XX. BINDING ARBITRATION**

Please read this section carefully. It affects rights that you may otherwise have. It provides for resolution of most disputes through arbitration instead of court trials and class actions. Arbitration is final and binding and subject to only very limited review by a court. This arbitration clause shall survive termination of this Agreement.

This provision is intended to be interpreted broadly to encompass all disputes or claims arising out of our relationship. Any dispute or claim made by you against us (or against any of our

subsidiary, parent or affiliate companies) arising out of or relating to this Agreement or your use of the Services (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration except that (a) you may take claims to small claims court if they qualify for hearing by such a court, or (b) you or we may choose to pursue claims in court if the claims relate solely to the collection of any debts you owe to us. However, even for those claims that may be taken to court, you and we both waive any claims for punitive damages and any right to pursue claims on a class or representative basis.

You must first present any claim or dispute to us by contacting us in writing or by electronic mail, at the information provided in the "Contacting Us" section herein, to allow us an opportunity to resolve the dispute. You may request arbitration if your claim or dispute cannot be resolved within sixty (60) days. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") as modified by this Agreement. The AAA Rules and information about arbitration and fees are available upon request from the AAA (call 1-800-778-7879) or online at [adr.org](http://adr.org). You and we agree that this Agreement evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the U.S. Federal Arbitration Act and federal arbitration law. Unless you and we agree otherwise, any arbitration will take place in either Baltimore, Maryland or Louisville, Kentucky depending on your location and will be conducted in the English language. An arbitrator may not award relief in excess of or contrary to what this agreement provides, order consolidation or arbitration on a class wide or representative basis, or award punitive damages or any other damages aside from the prevailing party's actual damages, except that the arbitrator may award on an individual basis damages required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. In any arbitration applying the AAA Rules applicable to large/complex cases, the arbitrators must also apply the Federal Rules of Evidence, and the losing party may have the award reviewed in accordance with the review procedures set forth in the AAA Rules. Any 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. Judgment on any arbitration award may be entered in any court having proper jurisdiction. If any portion of this arbitration clause is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

All administrative fees and expenses of any arbitration will be divided equally between you and us, unless otherwise prohibited by law. In all arbitrations, each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration.

**WAIVER OF PUNITIVE DAMAGE CLAIMS AND CLASS ACTIONS BY THIS AGREEMENT, BOTH YOU AND WE ARE WAIVING CERTAIN RIGHTS TO LITIGATE DISPUTES IN COURT. IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, YOU AND WE BOTH WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY CLAIMS TO RECOVER PUNITIVE OR EXEMPLARY DAMAGES AND ANY RIGHT TO PURSUE ANY CLAIMS ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY.**

#### **XXI. Miscellaneous and Additional Terms**

**A. Votes:** You may have the opportunity to vote in connection with certain events by using or accessing the Services. By casting a vote, you signify your agreement to the voting terms set forth in this Section. By casting your vote, you hereby grant The Company and its licensees a

perpetual, worldwide, royalty-free, non-exclusive right and license to use, reproduce, publicly display, publicly perform, modify, sublicense, and distribute the content you provide, in connection with the Services or the products promoted via the Services, and incorporate it in other works, in whole or in part, in any manner.

The Company is not responsible for votes not received due to lost, failed, delayed or interrupted connections, including Internet/Webserver/network/phone-line connections or miscommunications, or other electronic malfunctions, computer or telephone hardware or software failures, malfunctions, or garbled or jumbled transmissions. The Company reserves the right, in its sole discretion, to cancel or suspend voting at any time and for any reason.

**B. Changes to the Terms:** The Company may modify these Terms from time to time. If we decide to change our Terms, we will post those changes on this page so that you are always aware of what information we collect, how we use it, and under what circumstances we disclose it. The most current version of these Terms will govern our use of your information and will be located at [www.birracibo.com/terms](http://www.birracibo.com/terms). We will notify you of material changes to this policy by posting a notice at the Services or by e-mailing you if The Company has an address for you. You understand and agree that if you use or access the Services after the date on which the changes take effect, you are bound by any such revisions and we will treat your use as acceptance of the updated Terms.

**C. Modification and Discontinuation:** We reserve the right to modify, edit, delete, suspend or discontinue, temporarily or permanently, the Services (or any portion thereof) and/or the information, materials, products and/or services available through the Services (or any part thereof) with or without notice. You agree that we shall not be liable to you or to any third party for any such modification, editing, deletion, suspension or discontinuance of the Services.

**D. Entire Understanding:** These Terms (together with our Privacy Policy, which is expressly incorporated herein) contain the entire understanding between you and us with respect to use of the Services and no representation, statement, inducement oral or written, not contained herein shall bind any party to this agreement.

**E. Transfer & Assignment:** This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by you without the written consent of The Company. The Company may assign this Agreement upon ten (10) days prior written notice to you provided via e-mail (if available) and by posting notice to the Services. This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

**F. No Independent Contractor or Joint Venture:** The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

**G. Severability And Non-Waiver:** Failure to enforce any provision of these Terms shall not be deemed a waiver of such provision nor of the right to enforce such provision, and a waiver by us of any right under these Terms on any occasion will not in any way constitute a waiver of such right or any other right on any other occasion. In the event any provision of these Terms is determined to be invalid, such invalidity will not affect the validity of the remaining portions of these Terms, and the parties will substitute for the invalid provision a provision which most closely approximates the intent and economic effect of the invalid provision. These Terms will apply in

lieu of and notwithstanding any specific legend or statement associated with any particular document or information exchanged.

**H. Law & Jurisdiction:** These Terms shall be subject to, governed by and construed under the laws of the state of Maryland in the United States of America, without regard to conflict of law principles. Your access to, or use of, the Services or information, materials, products and/or services through the Services may be prohibited by law in certain countries or jurisdictions. You are responsible for compliance with any applicable laws of the country from which you are accessing the Services. You hereby consent and waive all objections to the exclusive jurisdiction of the federal and state courts in the state of Maryland and venue therein to resolve any controversy or claim of whatever nature arising out of or relating to use and access of the Services. However, we retain the right to bring legal proceedings in any jurisdiction where we believe that infringement of this agreement is taking place or originating.

**I. Contacting Us:** If you have any comments or questions, you may send an e-mail to [privacy@fourthstreetlive.com](mailto:privacy@fourthstreetlive.com) or write to us at:

Birracibo  
445 S Fourth Street  
Louisville, KY 40202  
Attn: Marketing/Privacy Feedback

*This Policy was updated as of 02/23/2018.*