

Terms and Conditions

Last Updated, January 11, 2021

MojoPay Terms of Service – United States

These Terms of Service are a legal agreement (this “**Agreement**” or “**Terms**”) between you (“**User**,” “**You**,” “**Your**,” or “**Yourself**”) and MojoPay, Inc., a Nevada corporation (“**MojoPay**,” “**We**,” “**Our**” or “**Us**”). As used in this Agreement, “**Service**” refers to MojoPay’s payment processing services, as well as Our website, any software, programs, documentation, tools, hardware, internet-based services, components, and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases) thereto provided to You by MojoPay, directly or indirectly. To use the Service, You must agree to all the terms of this Agreement.

MojoPay offers the Service exclusively through integrations with third-party websites (“**Platform**”). The Platform through which You access the Service might have its own terms of service and privacy policy that apply to You. This Agreement further incorporates by reference all policies, notices, and other content that appear on Our website at www.MojoPay.com as well as policies, notices, and other content concerning the Service that appear on the Platform’s website (collectively, the “**Website**”).

1. User Relationship with MojoPay and Others

The Service offered by MojoPay permits Users to receive payments by card and bank transfer from persons (“**Purchasers**”) who pay them in exchange for goods and/or services (the “**Transactions**”). Neither MojoPay, nor any bank, is a party to the Transactions.

For payments by card, MojoPay initiates the payment process by providing information to a processor that sends it to a bank that is a member of Visa U.S.A., Inc., Visa International (“**Visa**”), MasterCard International Incorporated (“**MasterCard**”), American Express Travel Related Services Company Inc. (“**American Express**”), or other payment card networks, association, or companies (collectively, the “**Networks**”). The processor and member bank are referred to collectively as the “**Bank**”. The Bank is obligated to pay Users under both: (a) the provisions of its agreement with MojoPay; and (b) the by-laws, operating regulations and all other rules, policies and procedures of the Networks as in effect from time to time (the “**Operating Regulations**”) that make the Bank responsible for settling with You as a User. For payments by

bank transfer, MojoPay initiates the payment process by providing information to the Bank through the National Automated Clearing House (“**ACH**”).

Users must register with MojoPay. To register, a User provides information, including email address and a self-selected password, in order to create an account with MojoPay (“**Account**”). You are responsible for maintaining the secrecy and security of Your Account access credentials and for any use of or action taken under them. You are solely responsible for safeguarding and maintaining the confidentiality of Your username and password. You authorize MojoPay to assume that any person using the Service with Your username and password is You. You agree to notify Us immediately if You suspect or become aware of any unauthorized use of Your account or any unauthorized access to Your password.

MojoPay asks Users for additional information, such as street address, telephone number, tax identification number (such as Social Security Number), and date of birth. You agree to provide supplemental documentation upon request (including but not limited to: articles of incorporation, passports, driver’s license, or a business license). You authorize MojoPay, directly or through third parties, to make inquiries or verify that this information is accurate (for example, through social media or third-party databases). You specifically authorize MojoPay to request a consumer report that contains Your name and address.

You must provide accurate and complete information. If We cannot verify that this information is complete and accurate, We may deny Your use of Our Service, or close Your Account.

MojoPay allows individuals, businesses, and non-profit organizations to register for MojoPay if they are located in one of the 50 United States or the District of Columbia. Residents of Puerto Rico, U.S. territories (such as Guam), and U.S. military bases are not supported. A User must be either a United States citizen, a legal permanent resident of the United States, or a United States business or nonprofit organization having a physical presence in the United States and authorized to conduct business by the state in which it operates. A User who opens an Account must be eighteen (18) years of age or older. You may open an Account for a business or nonprofit organization only if it is legitimate and You have the authority to enter into this Agreement on its behalf. Your acceptance of this Agreement constitutes acceptance by the business or nonprofit organization.

Each Account must be linked to a verified U.S. bank account.

2. Purchaser Relationship with MojoPay and Others

Purchasers may register with MojoPay. Whether Purchasers register, however, their use of the Service is governed by the terms of this Agreement. In particular, Section 9 of this Agreement applies to Purchasers paying by bank transfer.

3. Limitations on MojoPay's and Others' Responsibility

Neither MojoPay nor any other third party makes any representations or guarantees regarding Users or Purchasers utilizing the Service. Use of Our Service in no way represents any endorsement by MojoPay or any Network, of a User's existence, legitimacy, ability, policies, practices, or beliefs. MojoPay does not have control of, or liability for, goods or services that are paid for with the Service. User acknowledges and agrees that receipt of Purchaser information via the Service does not indicate that the Purchaser's payment instrument has sufficient available funds, that a transaction will be authorized or processed, or that the transaction will not later result in a Chargeback or reversal.

A charitable organization may use MojoPay to accept payments as a User. Not all charitable organizations are tax-exempt, and not all contributions to charitable organizations are tax-deductible. Charitable organizations are responsible for correctly classifying themselves and their Transactions, issuing any required reports and receipts, and making any required tax or other filings. Contributors are responsible for verifying the status of organizations to which they donate and reporting their donations correctly for tax and other purposes. MojoPay specifically disclaims any liability in this regard.

4. Our Fees

MojoPay charges transaction processing fees for the use of the Service ("**Processing Fees**"):

\$9.95 per month, plus

2.90% of the gross sale amount of applicable Transactions, plus

\$.30 per applicable transaction

MojoPay also may charge Users the following fees for exceptions processing: \$15.00 per Chargeback (in addition to the amount of the Chargeback); \$15.00 per ACH return (in addition to the amount of the return); and \$25.00 research

fee (if an Account is deemed abandoned under Section 23 below) (collectively referred to as the “**Administrative Fees**,” and together with the Processing Fees, the “**Fees**”). These foregoing Fees, if applicable, are netted against other funds due to User or debited from the User’s bank account or other payment instrument associated with the User’s Account.

MojoPay may increase the Processing Fees by sending You electronic notice of the same. Your continued use of the Service after receiving the electronic notice of any fee increase shall constitute Your consent to the change in such fees. MojoPay may increase the Administrative Fees, as set forth herein, should User’s Chargeback ratios or negative reporting become a risk to MojoPay’s continued business operations or banking relationships, to be determined in MojoPay’s sole discretion.

Users may increase their prices to include the cost of the Fees and disclose these increases to their Purchasers as a “**Service Fee**,” provided that said increases are in compliance with the Operating Regulations.

5. E-Sign Disclosure and Consent

Electronic Delivery

By accepting this Agreement, You agree and consent to receive all communications, agreements, documents, notices and disclosures (collectively, “**Communications**”) that We provide about Your MojoPay Account and Your use of the Service electronically. Communications include but are not limited to:

1. agreements and policies, such as this Agreement and Our Privacy Policy, including updates thereto;
2. annual disclosures;
3. transaction receipts or confirmations;
4. communication in relation to delinquent Accounts (which may also be by phone, and may be made by MojoPay or by anyone on its behalf, including a third-party collection agent);
5. Account statements and history; and
6. federal and state tax statements.

We will provide these Communications to You by emailing them to You at the primary email address listed in Your MojoPay Account registration, by emailing You a link or instructions how to access them on a website, or (if permitted by law) by posting them on the Website. Communications are considered received

by You within twenty-four (24) hours of the time they are emailed to You or posted to the Website. You further agree that Your electronic signature has the same effect as Your manual, physical signature.

Hardware and Software Requirements

To access and retain electronic Communications, You will need the following computer hardware and software:

1. a computer with an Internet connection;
2. a modern web browser that includes 128-bit encryption, such as the current version of Chrome (www.google.com/chrome), Internet Explorer (www.microsoft.com/ie), Mozilla Firefox (www.mozilla.com), or Apple Safari (www.apple.com/safari);
3. Adobe Acrobat Reader version 8.0 and above to open documents in PDF format;
4. a valid email address (Your primary email address registered with MojoPay); and
5. sufficient storage space to save past Communications or an installed printer to print them.

By giving Your consent, You are confirming that You have access to the necessary equipment and can receive, open, and print or download a copy of any Communications for Your records. It is important for You to retain copies of Communications because they may not be accessible in Your MojoPay Account at a later date.

It is Your responsibility to keep Your e-mail address, as provided to Us, functional and up to date so that We can communicate with You electronically. You understand and agree that if We send You an electronic communication that You do not receive because Your e-mail address on file is incorrect, blocked, or otherwise not functioning properly, We will be deemed to have properly provided You with the electronic communication as of the day it is sent.

How to Withdraw Your Consent

You may withdraw Your consent to receive Communications electronically by contacting Us through Customer Support, including by writing to Us at:

MojoPay/Total-Apps
23986 Aliso Creek Road #707
Laguna Niguel, CA 92677

If You withdraw Your consent to receive Communications electronically, MojoPay may deny Your registration for an Account, restrict or close your Account, or charge You additional fees for paper copies.

Requesting Paper Copies of Electronic Communications

If, after You consent to receive Communications electronically, You would like a paper copy of a Communication We previously sent You, You may request a copy within one hundred and eighty (180) days of the date We provided the Communication to You by contacting Us as described above. We will send Your paper copy to You by U.S. mail. For Us to send You paper copies, You must have a current street address on file in Your Account. You understand and agree that MojoPay may charge You an exceptions fee for each paper copy of a Communication.

Updating Your Contact Information

It is Your responsibility to keep Your primary email address up to date. You understand and agree that if MojoPay sends You an electronic Communication but You do not receive it because Your primary email address on file is incorrect, out of date, blocked by Your service provider, or You are otherwise unable to receive electronic Communications, MojoPay will be deemed to have provided the Communication to You. Please note that if You use a spam filter that blocks or re-routes emails from senders not listed in Your email address book, You must add MojoPay to Your email address book so that You will be able to receive the Communications We send to You.

You can update Your primary email address or street address at any time by logging into Your Account, selecting "**My Profile**" from the dropdown menu that appears when You click the down arrow next to Your name at the top right of the screen, and entering Your new primary email address. If Your email address becomes invalid such that electronic Communications sent to You by MojoPay are returned, MojoPay may close Your Account, and You will not be able to transact any activity using Your MojoPay Account until We receive a valid, functioning primary email address from You.

6. Prohibited Activities

By registering for MojoPay as a User, You also confirm that You will not accept payments or use the Service in connection with the activities, items or services set forth below. Please contact support@MojoPay.com if You have questions about whether these categories apply to You.

- **MCC Codes 5967, 7273, & 7841**– Adult entertainment, and/or adult content websites including Electronic Commerce adult content (videotext)
- Buyer Clubs/Membership Clubs
- **MCC Codes 5968 & 5969**– Direct Marketing: Continuity or Subscription services
- **MCC Code 5962**– Direct Marketing: Travel Related Arrangement Services
- **MCC Code 5967**– Direct Marketing: Inbound Telemarketing including videotext services
- **MCC Code 7995**– Gambling Activities and Establishments, including lotteries, internet gaming, contests, sweepstakes, or offering of prizes as an inducement to purchase goods or services
- Infomercial Users
- Internet Pharmacies
- Multi-Level Marketing Businesses
- **MCC Codes 4814, 4816, & 5966**– Outbound Telemarketers and Telecom Users
- Up-Selling Users
- Any User that accepts a card at a scrip-dispensing terminal
- Airlines including Charter Airlines
- Bidding Fee Auctions including Penny Auctions

In addition, You may not use the Service for:

- Impersonating any person or entity or falsely claiming an affiliation with any person or entity;
- Collecting, or attempting to collect, personal information about Users or third parties without their consent, or using such information except as necessary to use the Service;
- Defaming, harassing, abusing, threatening, or defrauding others;
- Posting, transmitting, or distributing content that is false, misleading, unlawful, obscene, indecent, lewd, pornographic, hateful, abusive, inflammatory, or that violates the rights of others (including rights of publicity or privacy);

- Damaging, disabling, overburdening, or impairing MojoPay, including without limitation, using the Service in an automated manner;
- Interfering with another User’s enjoyment of the Service, by any means, including by uploading or otherwise disseminating viruses, adware, spyware, worms or other malicious code; and
- Creating an Account that is linked to another Account that has engaged in any of the foregoing activities. MojoPay may use evidence other than Your Account information to determine whether You control an Account in someone else’s name, including but not limited to Internet Protocol addresses, common business names, phone numbers, and mailing addresses.

If MojoPay determines that You have received funds resulting from fraud or a prohibited activity, those funds may be frozen, returned to the Purchaser, or seized.

In addition, if We reasonably suspect that Your Account has been used for an unauthorized, illegal, or criminal purpose, You give Us express authorization to share information about You, Your Account, Your access to the MojoPay Services, and any of Your Transactions with law enforcement.

7. Our Role and Your Responsibilities

MojoPay provides hosting and data processing services for Users. MojoPay is a Payment Service Provider (“**PSP**”), not a bank, money transmitter, or Money Services Business (“**MSB**”), and We do not offer banking or MSB services as defined by the United States Department of Treasury.

As a PSP, MojoPay collects, analyzes and relays information generated in connection with payments between Purchasers and Users. You authorize MojoPay to provide this information to the Bank in order for the Bank to facilitate payments from Purchasers to Users through the Networks, or the ACH, as applicable. As a result, the Bank – and not MojoPay – actually conducts the settlement of card transactions and ACH transactions to Users. MojoPay does not at any point hold, own or control funds in connection with the Services, nor does MojoPay transmit money or monetary value. In connection with the Services, MojoPay does not actually or constructively receive, take possession of or hold any money or monetary value for transmission, and does not advertise, solicit or hold itself out as receiving money for transmission. The Bank is the party with sole responsibility for conducting the settlement of funds between Purchasers and Users.

In order to act as a PSP, MojoPay must enter into agreements with the Networks, processors and the Bank ("**Processing Agreements**"), the applicable terms of which are incorporated herein by reference. You are not a third-party beneficiary of the Processing Agreements, but You shall be required to abide by any terms and conditions set forth in the Processing Agreements. Each of the Networks is a third-party beneficiary of this Agreement and has beneficiary rights, but not obligations, and may enforce this Agreement against You. Some of these third parties may require a direct agreement with You. If You are required to enter into such an agreement and decline to do so, We may suspend or terminate Your Account.

You acknowledge that, if You receive payments from American Express exceeding the threshold specified by American Express, You will be converted to a direct card acceptance relationship with American Express and, upon conversion, You will be bound by the then-current American Express Card acceptance agreement and American Express will set the discount and other fees payable by You for American Express Card acceptance.

You agree to be bound by the User Services Agreement set forth in Exhibit A to this Agreement if it applies to You. The User Services Agreement applies to You if, for example, You receive payments from any Network exceeding the threshold specified by that Network. By agreeing to this Agreement (by "**click through**" or otherwise), You also agree to the terms and conditions of the User Services Agreement, which constitutes a legal binding contract between You, on the one hand, and VANTIV, LLC and its designated member bank, on the other hand, effective as of the date You receive the specified amount of payments from the Network.

Furthermore, You must abide by the applicable Operating Regulations and ACH Rules. For example, where You accept payment cards on Your website, You will display each card's logo with equal size and prominence, and You shall not display a preference for, or discriminate against, one card brand over another. If You are using the MojoPay subscriptions feature, You agree that it is Your responsibility to comply with applicable laws, including the Electronic Funds Transfer Act (Regulation E), including by capturing Your customers' agreement to be billed on a recurring basis. You may not resell any hardware provided to You by MojoPay or a third party for use with the Service.

Notwithstanding MojoPay's assistance in understanding the Operating Regulations, and ACH Rules, You expressly acknowledge and agree that You are assuming the risk of compliance with all provisions of the Operating

Regulations and ACH Rules, regardless of whether You have possession of those provisions. The Networks make excerpts of their respective Operating Regulations available on their websites (including usa.visa.com, www.mastercard.com, www.americanexpress.com and www.discover.com). Exhibit B to this Agreement sets forth certain specific requirements of the American Express User Regulations, US. We can provide You with excerpted provisions of the ACH Rules upon Your request.

8. Your ACH Payment Authorization

If You are a User or if You are a Purchaser paying by bank transfer, You authorize the Bank to initiate electronic ACH entries to each bank account that You set up on the Website and to initiate adjustments for any Transactions credited or debited in error. You agree to be bound by the ACH Rules, and You agree that all ACH transactions that You initiate will comply with all applicable laws. Your authorization will remain in full force and effect until You notify Us that You revoke it by contacting Customer Support at support@MojoPay.com or by closing Your Account. You understand that MojoPay requires a reasonable time to act on Your revocation, not to exceed five (5) business days.

If You are a User, You authorize the Bank to hold, receive, disburse and settle funds on Your behalf. Your authorization permits the Bank to generate a paper draft or electronic funds transfer to process each payment transaction that You authorize. Subject to this Agreement, You also authorize the Bank to debit or credit any payment card or other payment method We accept that You link to Your Account, to initiate adjustments for any Transactions credited or debited in error, as well as for Chargebacks, reversals, or claims in accordance with this Agreement and the Operating Regulations.

If You are a Purchaser paying by credit card and Your credit card account number changes or Your credit card expiration date changes, We may acquire that information from Our financial services partner and update Your Account.

The Service integrates ACH authorization services provided by Istream. When You set up a bank account on the Website and input Your online banking credentials for instant verification, You are granting Istream the right, power and authority to access and transmit Your personal and financial information (such as from third party banks) as reasonably necessary to provide the ACH authorization services.

9. Accepted Forms of Payment

The Service supports most domestic credit, debit, prepaid or gift cards with a Visa, MasterCard, American Express or Discover logo. In addition, the Service supports most international cards with these logos. We may add or remove support for certain payment cards at any time without prior notice. We may elect only to process cards that receive an authorization from the applicable issuer. You agree to accept all cards issued by Networks that the Service supports in accordance with the terms of this Agreement.

The Service also supports payments via ACH from U.S.-based Purchasers with a U.S. bank account to U.S.-based Users, if supported by the Platform. We may conduct verification checks on Purchasers to ensure account ownership and sufficient balance, and We may refuse to process payments from Purchasers at Our discretion.

10. Underwriting and Sharing Information

We may share some or all of the information about You and Your Transactions with Our processor, the Networks, and Our other partners (and their respective affiliates, agents, subcontractors, and employees), who may use this information to perform their obligations under their agreements with MojoPay, to operate and promote their respective networks, to perform analytics and create reports, to prevent fraud, and for any other lawful purpose. American Express and other Networks may use Your name, address, and website address (URL) in any media from time to time. At any time, MojoPay, its processor or its other partners may conclude that You will not be permitted to use MojoPay.

You agree that MojoPay is permitted to contact and share information about You and Your Account with Banks and other financial institutions. This includes sharing information: (a) about Your Transactions for regulatory or compliance purposes; (b) for use in connection with the management and maintenance of the Service; (c) to create and update their customer records about You and to assist them in better serving You; and (d) to conduct MojoPay's risk management process.

11. Transactions

Transactions are indicated as Pending, Complete, Failed or Cancelled.

“Pending” indicates that a Transaction is currently undergoing review by the Bank and may not be completed or settled, at the Bank’s sole discretion. Pending may also indicate that the Transaction is awaiting Account confirmation or settlement from a third party.

“Completed” indicates that a Transaction has cleared and the funds are available in the User’s designated bank account. If MojoPay determines that the Transaction is related to a restricted or prohibited business or activity or that the Transaction is the result of fraudulent activity, MojoPay may reverse or refund the Transaction at any time.

“Cancelled” indicates that a Transaction has been stopped or reversed. This could be due to inaccurate or incomplete information about Your Account, Our inability to validate the legitimacy of a payment, Purchaser, or User, or another proprietary reason. You may contact MojoPay Support for more information. Although payments are cancelled, the removal of an authorization on a Purchaser credit card or a return of funds to a Purchaser bank account may not be immediate, and MojoPay cannot guarantee availability within a specific timeframe.

“Failed” indicates that a Transaction could not be processed due to inaccurate Account information, insufficient funds, or another transaction-related reason.

Upon the release of Transaction information by MojoPay, a Purchaser will be debited or charged by the Bank. The User agrees that the Purchaser’s obligation to the User is treated as paid at the time of: (i) the release of this Transaction information when a Transaction enters the Completed state; and (ii) the related initiation of processing by the Bank. After the initiation of processing by the Bank, User agrees not to attempt to collect or otherwise seek payment from the Purchaser, because User agrees Purchaser’s obligation to the User has been conclusively discharged. User agrees that the Purchaser is a third-party beneficiary of the preceding two sentences. Transactions may stay in a Pending state before Completed if MojoPay is reviewing a Transaction for risk purposes. Transactions in this state should not be treated as paid until they are Completed.

Transactions may be disputed at any time up to ninety (90) days from the date of Transaction, regardless of state, by the Purchaser. Disputes resolved in favor of the Purchaser may result in reversal of the disputed Transaction, regardless of state.

MojoPay reserves the right to limit or restrict Transaction size or volume at any time. If You would like to increase Your limits, please contact Customer Support. Upon receiving this request, MojoPay will conduct a review of Your Account, and decide whether to lift or remove these limits. MojoPay will consider a variety of factors in making this decision and will make this determination at its sole discretion.

12. **Payout Schedule**

The Bank will disburse funds to the User's bank account according to the schedule the User selects (daily, weekly, or monthly). Users may request ad-hoc settlement at any time, by ACH transfer or by paper check. Regardless of the disbursement schedule selected by the User, the Bank will transfer funds to the User's bank account no more than thirty (30) days after funds settle to the Bank, subject to any Reserve, as defined below, imposed under Section 14 below. If the Bank cannot transfer the funds to the User's bank account (due to inaccurate or obsolete bank account information entered by the User, or for any other reason), MojoPay may refund the funds to the Purchaser or escheat them pursuant to Section 23 below. Neither the Bank, MojoPay, nor the Purchaser will have any liability to User for funds so refunded or escheated.

Settlements to a bank account may be limited or delayed based on Your perceived risk and history with MojoPay. If You would like to request an increase to Your settlement limit, please contact MojoPay Support. Upon receiving this request, MojoPay will conduct a review of Your account. MojoPay will consider a variety of factors in making this decision and will make this determination at its sole discretion.

Should MojoPay need to investigate or resolve any pending dispute related to Your Account, the Bank may defer payout or restrict access to Your funds for the entire time it takes Us to do so. The Bank may also defer payout or restrict access to Your funds as required by law or court order, or if otherwise requested by law enforcement or governmental entity.

Furthermore, if MojoPay or the Bank suspects future Chargebacks or disputes because of Transactions to Your Account, the Bank may defer payout and/or restrict access to Your funds until MojoPay or the Bank reasonably believes, in their sole discretion, that the risk of receiving a Chargeback or dispute has passed.

All settlements to Users are subject to review for risk and compliance purposes and can be delayed or postponed at MojoPay's sole discretion.

13. Reserve

At any time and from time to time, the Bank may suspend or delay payments to You and/or designate an amount of funds that must be maintained in Your Account ("**Reserve**") to secure the performance of Your payment obligations under this Agreement. MojoPay may also require a Reserve for any reason, including high Chargeback risk or indications of performance problems related to Your use of the Service.

The Reserve will be in an amount as reasonably determined by Us to cover anticipated Chargebacks, returns, unshipped merchandise and/or unfulfilled services or credit risk based on Your processing history or such amount designated by Our processor. The Reserve may be raised, reduced or removed at any time by MojoPay, and the time that MojoPay holds the Reserve can be changed at any time by MojoPay, in its sole discretion, based on Your payment history, negative reporting, excessive Chargeback ratios, a credit review, the amount of any arbitration award or court judgment against You in MojoPay's favor, or otherwise as MojoPay or its processor or the Bank may determine or require. If You do not have sufficient funds in Your Reserve, the Bank may fund the Reserve from any funding source associated with Your Account, or from any other Account under Your control or any funding source associated with such other Account, including but not limited to any funds: (a) credited to Your Account; (b) due to You under this Agreement; or (c) available in Your bank account, or other payment instrument registered with Us.

You grant MojoPay a security interest in and lien on any and all funds held in any Reserve or any other funds held in the Account, and also authorize Us to make any withdrawals or debits from the Reserve, without prior notice to You, to collect amounts that You owe Us under this Agreement, including without limitation for any reversals of deposits or transfers made to Your Account. In furtherance of that security interest, You hereby assign all right, title, and interest in and to the funds in Your Account or the Reserve, to Us for the duration of this Agreement, or until such time as We are paid all monies owed under this Agreement, whichever occurs later. You will execute any additional documentation required for Us to perfect Our security interest in any funds in the Reserve. This security interest survives for as long as We hold funds in Your Reserve; however, it does not apply to any funds for which the grant of a security interest would be prohibited by law. You irrevocably assign to Us all rights and legal interests to any interest or other earnings that accrue or are attributable to the funds in Your Account or Your Reserve. You hereby acknowledge and agree that if Your Account exceeds a one and a half percent

(1.5%) Chargeback ratio by dollar amount or Transaction count in any thirty (30) day period, You shall forfeit the remaining Reserve balance to Us.

14. **Accounts**

You are not required to have a credit in Your Account to use the Service. When You have a credit, Your funds will be co-mingled and held by the Bank with other Users' funds in one or more pooled accounts at the Bank that are established in the Bank's name for the benefit of You and other Users. The Bank has sole discretion over the establishment and maintenance of any pooled account. MojoPay has no ownership or control, and no right, title or interest in any account in which User funds are held.

The Bank will hold any funds associated with Your Account in an account separate from any account used for MojoPay's corporate funds. MojoPay will not and cannot use Your funds for Our corporate purposes (including the granting of any security or similar interest), will not voluntarily make funds available to Our creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit Our creditors to attach the funds. You will not receive interest or any other earnings on any funds that the Bank holds for You. As consideration for using the Service, You irrevocably assign to Us or the Bank all rights and legal interests to any interest and/or other earnings or benefits that may accrue or are attributable to the Bank holding Your funds in a pooled account.

If Your Account is negative for an extended period (as defined by MojoPay in its sole discretion), the Bank may close Your Account and We may pursue legal action or other collection efforts.

15. **Cardholder Data Security**

"Cardholder Data" is information associated with a payment card, such as account number, expiration date, and CVV2. MojoPay is a validated PCI Level 2 Service Provider and so is qualified to handle Cardholder Data in connection with the Service. MojoPay will maintain all applicable PCI DSS requirements to the extent MojoPay possesses or otherwise stores, processes, or transmits Cardholder Data on Your behalf, or to the extent MojoPay could impact the security of Your Cardholder Data environment.

If You handle, transmit, or store any Cardholder Data in connection with Your use of the MojoPay Service or the MojoPay API, You agree to comply at all times with the Payment Card Industry Data Security Standards ("**PCI DSS**").

Further, You agree to certify such compliance and provide documentation in accordance with Operating Regulations, or when asked by MojoPay to do so. You also agree that You will use only PCI DSS compliant service providers in connection with the storage, processing, or transmission of Cardholder Data. You will remove Cardholder Data from Your systems, and any other place where You store it, as soon as practicable and in no event more than twenty-four (24) hours after You receive an authorization decision.

You are fully responsible for the security of data (including but not limited to Cardholder Data) on Your website or otherwise in Your possession or control. You agree to comply with all applicable laws, Operating Regulations, and rules in connection with Your collection, security and dissemination of any personal, financial, or Transaction information.

Unless You receive the express consent of Your customer, You may not retain, track, monitor, store, disclose or otherwise use data (e.g. to send any marketing or promotional materials to Purchaser) except for the Transaction for which it was given and any post-transaction activities in connection with such immediate Transaction (e.g. Chargeback).

16. **Taxes**

You are responsible for determining any and all taxes assessed, incurred, or required to be collected, paid, or withheld, in connection with Your use of the Service or Your processing of any Transactions. You are solely responsible for collecting, withholding, reporting and remitting any taxes to the appropriate tax authority. MojoPay is not obligated to, and will not, determine whether taxes apply, or calculate, collect, report or remit any taxes to any tax authority arising from Your use of the Service.

MojoPay or the Bank may have tax reporting responsibilities in connection with the Service. For example, MojoPay or the Bank will report to the Internal Revenue Service ("**IRS**") on Form 1099-K as required by law, Your name, address, Tax Identification Number (such as Employment Identification Number or Social Security Number), the total dollar amount of the payments You receive in a calendar year, and the total dollar amount of the payments You receive for each month in a calendar year.

17. **Customer Service Provided by Users**

You are solely responsible for all customer service issues relating to Your goods or services, including pricing, order fulfillment, order cancellation by You or the

customer, returns, refunds and adjustments, rebates, functionality and warranty, technical support and feedback concerning experiences with Your personnel, policies or processes. In performing customer service, You will always present Yourself as a separate entity from MojoPay. You will cooperate with MojoPay and Your API application to assure that Purchasers have access to clear customer service information, including an active customer service email address and telephone number.

We reserve the right, but not the obligation, to directly, or by way of assignment to third parties: (1) monitor Users and the Platform for violations of these Terms; (2) take appropriate legal action against anyone who, in Our sole discretion, violates the law or these Terms, including without limitation, reporting such User to law enforcement authorities; (3) in Our sole discretion and without limitation, refuse, restrict access to, limit the availability of, or disable (to the extent that is technologically feasible) any of Your Accounts, the Platform, the Services or any portion thereof; and (4) otherwise manage the Service in a manner designed to protect Our rights and property and to facilitate the proper functioning of the Service.

18. Refunds and Returns Provided by Users

You agree to process returns of, and provide refunds and adjustments for, goods or services through Your MojoPay Account in accordance with this Agreement and the Operating Regulations and ACH Rules. The Operating Regulations require that You will: (a) maintain a fair return, cancellation or adjustment policy; (b) disclose Your return or cancellation policy to Purchasers at the time of purchase; (c) not give cash refunds to a Purchaser in connection with a payment card sale, unless required by law; and (d) not accept cash or any other item of value for preparing a payment card sale refund. Your refund policies must be the same for all payment methods. If Your Purchaser is dissatisfied with Your refund policy, the Purchaser may Chargeback the payment. You may not bill or collect from any Purchaser for any purchase or payment by means of a card unless the Purchaser has exercised Chargeback, You have fully paid for the charge, and You otherwise have the right to do so.

19. User's Liability for Chargebacks

The amount of a payment may be charged back to You if: (a) it is disputed by a Purchaser; (b) it is reversed for any reason; (c) it was not authorized or We have any reason to believe that the Transaction was not authorized; or (d) it is unlawful, suspicious, or in violation of the terms of this Agreement (a

“**Chargeback**”). You are responsible for all Chargebacks, whether or not the Chargeback complies with the Operating Regulations.

20. **How MojoPay Handles Chargebacks**

You owe Us and will immediately pay Us the amount of any Chargeback and any associated Fees, fines, or penalties assessed by the Bank, Our processor or the Networks. If You do not have sufficient funds in Your Account, We will have the remedies set forth in “**Our Set-off and Collection Rights**” below. If You have pending Chargebacks, the Bank may delay payouts to You.

Further, if We reasonably believe that a Chargeback is likely with respect to any transaction, the Bank may withhold the amount of the potential Chargeback from payments otherwise due to You under this Agreement until such time that: (a) a Chargeback is assessed due to a Purchaser’s complaint, in which case the Bank will retain and refund the funds; (b) the period of time under applicable law or regulation by which the Purchaser may dispute that the Transaction has expired; or (c) We determine that a Chargeback on the Transaction will not occur.

If We determine that You are incurring an excessive number of Chargebacks, which shall be determined in MojoPay’s sole discretion, or Your Chargeback Ratio exceeds one percent (1%) at any time (“**Excessive Chargebacks**”), MojoPay or the Bank may establish controls or conditions governing Your Account, including without limitation, by: (a) assessing additional Fees; (b) increasing the Reserve in an amount determined by Us to cover anticipated Chargebacks and related fees; (c) increasing the time that We hold the Reserve; (d) delaying payouts; and (e) terminating or suspending the Service or closing Your Account. If You have Excessive Chargebacks, in addition to any other remedies, fees, and penalties identified herein, You will be charged an Excessive Chargeback fee in the amount of One Hundred Dollars (\$100.00) per Chargeback until there are no longer Excessive Chargebacks. As used herein, “**Chargeback Ratio**” shall mean the percentage determined by dividing the total dollar amount of Chargebacks by the total dollar amount of Transactions.

You agree to assist Us when requested, at Your expense, to investigate any of Your Transactions processed through the Service. To that end, You permit Us to share information about a Chargeback with the Purchaser, the Purchaser’s financial institution, and Your financial institution in order to investigate and/or mediate a Chargeback. We will request necessary information from You to

contest the Chargeback. If the Chargeback is contested successfully, We will release the reserved funds to You. If a Chargeback dispute is not resolved in Your favor by the Networks or issuing Bank or You choose not to contest the Chargeback, We may recover the Chargeback amount and any associated fees as described in this Agreement. You acknowledge that Your failure to assist Us in a timely manner when investigating a Transaction, including providing necessary documentation within seven (7) days of Our request, may result in an irreversible Chargeback. We reserve the right, upon notice to You, to charge a fee for mediating and/or investigating Chargeback disputes.

21. Our Set-off and Collection Rights

To the extent permitted by law, the Bank may set off any obligation You owe Us under this Agreement (including Chargebacks) against any credit in Your Account or against any amounts due to You. All Fees are deducted first from the transferred or collected funds and thereafter from Your Account. If You do not have sufficient funds, the Bank may collect from any funding source associated with Your Account, or from any other Account under Your control, or from any funding source associated with such other Account, including but not limited to any funds: (a) deposited by You; (b) due to You under this Agreement; or (c) available in Your bank account, or other payment instrument registered with the Bank. Your failure to pay in full amounts that You owe Us on demand will be a breach of this Agreement. You will be liable for Our costs associated with collection in addition to the amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and interest at the lesser of one-and-one-half percent (1.5%) per month or the highest rate permitted by law. In its discretion, MojoPay may make appropriate reports to credit reporting agencies and law enforcement authorities and cooperate with them in any resulting investigation or prosecution. You hereby expressly agree that all Communication in relation to delinquent Accounts will be made by electronic mail or by phone, as provided by You to MojoPay. Such Communication may be made by MojoPay or by anyone on its behalf, including but not limited to a third-party collection agent.

22. Dormant Accounts

If there is no activity in Your Account (such as a login or disbursement) for the period set forth in the applicable unclaimed property laws, and You have a balance, We may notify You by sending an email to Your registered email address. We may also notify You by U.S. mail. We will give You the option of keeping Your Account open, withdrawing the funds, or requesting a check. If You do not respond to Our notice within the period specified in the notice, We

may close Your Account and escheat Your funds (less a processing fee) in accordance with applicable law.

23. Receipts and Account Reconciliation

When You receive a payment, We will update Your Account and provide a Transaction confirmation on Our Website. This confirmation will serve as Your receipt. Summaries of Your Account activity are available on Our Website. You should make archival copies of Your MojoPay Account data regularly. Except as required by law, You are solely responsible for: (a) compiling and retaining permanent records of all Transactions and other data; and (b) reconciling all Transaction information that is associated with Your MojoPay Account. If You believe that there is an error or unauthorized Transaction activity associated with Your MojoPay Account, please contact Customer Support immediately.

If You make a subscription payment, You will receive an email confirmation with a link that enables You to terminate future payments, if You wish. Alternatively, if You have an Account, You may log in at any time to terminate subscription payments.

We will attempt to correct processing errors that We discover by instructing the Bank to debit or credit Your Account. MojoPay will only correct Transactions that are processed incorrectly if and when You notify Us of such an error in a timely fashion.

24. Security

We have implemented technical and organizational measures designed to secure Your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, We cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Your personal information for improper purposes. You acknowledge that You provide Your personal information at Your own risk.

If You discover a security-related issue, You agree to inform Us of the issue immediately by contacting the MojoPay Security Team at security@MojoPay.com. You also agree not to disclose the issue until MojoPay has addressed it.

25. **Termination**

WITHOUT LIMITING ANY OTHER PROVISION OF THESE TERMS, WE RESERVE THE RIGHT TO, IN OUR SOLE DISCRETION AND WITHOUT NOTICE TO YOU OR CREDITOR, AND WITHOUT ANY LIABILITY, DENY, RESTRICT, SUSPEND, OR TERMINATE YOUR ACCESS TO OR USE OF THE SERVICE, FOR ANY REASON OR FOR NO REASON, INCLUDING WITHOUT LIMITATION FOR BREACH OF THESE TERMS, ANY REPRESENTATION, WARRANTY, OR COVENANT CONTAINED IN THIS AGREEMENT OR OF ANY APPLICABLE LAW OR REGULATION.

If Your Account is terminated for any reason or no reason, You agree: (a) to continue to be bound by this Agreement; (b) to immediately stop using the Service, the Platforms, and to remove all card logos from Your website and wherever else they are displayed; (c) that any license to utilize any part of the Service or any software associated with the Service, shall be immediately revoked; (d) that We reserve the right (but have no obligation) to delete all of Your information and Account data stored on Our servers; and (e) that MojoPay shall not be liable to You or any third party for termination of access to the Service, deletion of Your information or Account data, or export of Your information or Account data.

26. **Your Right to Terminate**

You may terminate this Agreement by closing Your MojoPay Account at any time. When You close Your MojoPay Account, any pending Transactions will be Cancelled. Any funds that the Bank holding in custody for You at the time of closure, less any applicable Fees, will be paid out to You according to Your payout schedule, assuming all payout-related authentication requirements have been fulfilled (for example, You may not close Your MojoPay Account as a means of evading Your payout schedule). If an investigation is pending at the time You close Your MojoPay Account, MojoPay or the Bank may hold Your funds as described herein. If You are later determined to be entitled to some or all funds in dispute, the Bank will release those funds to You.

27. **Our Right to Terminate**

We may terminate this Agreement and close Your Account for any reason or no reason at any time upon notice to You. We may also suspend the Service and instruct the Bank to suspend access to Your Account (including the funds in Your Account) if You: (a) have violated the terms of MojoPay's policies or this Agreement; (b) pose an unacceptable credit or fraud risk to Us; or (c) provide

any false, incomplete, inaccurate, or misleading information or otherwise engage in fraudulent or illegal conduct. In lieu of terminating Your Account, We may elect to suspend Your Account and any Transactions, whether Completed or Pending, associated with Your Account.

28. **Effect of Termination**

Upon termination of this Agreement, You will no longer have any right to access or use the Service or Your Account. We will not be liable to You for compensation, reimbursement, or damages in connection with any termination or suspension of the Service. Any termination of this Agreement does not relieve You of any obligations to pay any Fees or costs accrued prior to the termination and any other amounts owed by You to Us as provided in this Agreement.

29. **Your License**

MojoPay grants You a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense, to electronically access and use software that has been developed and utilized to facilitate the Service ("**Platform**") solely to accept and receive payments and to manage the funds You so receive. You will be entitled to download updates to the Platform, subject to any additional terms made known to You at that time, when MojoPay makes these updates available.

You shall have access, through the Service, to third-party software, products, applications, or services, and information pertaining to each ("**Third-Party Applications**") which may be integrated into, or used in connection with, the Service. Your access to and use of the Third-Party Applications, and any exchange of data between You and the third-party, shall not be warranted or otherwise supported by the Service. You hereby authorize MojoPay to permit the Third-Party Applications access to the Platform and any content You are permitted to access or view on the Platform. You acknowledge and agree that MojoPay shall have no responsibility or liability arising from: (i) actions or omissions associated with the Third-Party Applications; or (ii) Your use of the Third-Party Applications. You further agree that You shall abide by any and all terms, conditions, policies, and/or procedures that are distributed by the Third-Party Applications, which are incorporated herein by reference.

You may not, nor may You permit any third party to, do any of the following: (i) access or monitor any material or information on the Platform using any manual process or robot, spider, scraper, or other automated means unless You have

separately executed a written agreement with MojoPay referencing this section that expressly grants You an exception to this prohibition; (ii) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell or distribute in any way material or information from MojoPay; (iii) permit any third party to use and benefit from the Platform or the Service via a rental, lease, timesharing, service bureau or other arrangement; (iv) transfer any rights granted to You under this Agreement; (v) violate the restrictions in any robot exclusion headers on the Platform, work around, bypass, or circumvent any of the technical limitations of the Platform, use any tool to enable features or functionalities that are otherwise disabled in the Platform, or decompile, disassemble or otherwise reverse engineer the Platform, except to the extent that such restriction is expressly prohibited by law; (vi) perform or attempt to perform any actions that would interfere with the proper working of the Platform, prevent access to or use of the Platform by Our other Users, or impose an unreasonable or disproportionately large load on Our infrastructure; or (vii) otherwise use the Platform except as expressly allowed under this section. You may not use the Platform on a mobile device that is “**jail broken**” or otherwise modified contrary to the manufacturer’s software or hardware guidelines. Your use of the Platform may be subject to the terms of Your agreements with Your mobile device manufacturer and Your carrier.

30. Intellectual Property Rights

Intellectual Property

The Platform is licensed and not sold. MojoPay reserves all rights not expressly granted to You in this Agreement. The Platform is protected by copyright, trade secret and other intellectual property laws. MojoPay owns the title, copyright and other worldwide intellectual property rights in the Platform and all copies of the Platform. This Agreement does not grant You any rights to MojoPay’s trademarks or service marks, nor may You remove, obscure, or alter any of MojoPay’s trademarks or service marks included in the Platform or in any way related to the Service.

You may choose to, or We may invite You to, submit comments or ideas about the Service or the Platform, including without limitation about how to improve the Service, the Platform, Our products, or Our Services (“**Feedback**”). By submitting Feedback, You agree that Your disclosure is gratuitous, unsolicited and without restriction and will not place MojoPay under any fiduciary or other obligation, and that We are free to use the Feedback without any additional compensation to You, and/or to disclose the Feedback on a non-confidential

basis or otherwise to anyone. You further acknowledge that, by acceptance of Your submission, MojoPay does not waive any rights to use similar or related ideas previously known to MojoPay, or developed by its employees, or obtained from sources other than You.

Confidential Information

You acknowledge that, during the course of Your use of the Service, You may have access to certain confidential information in the form of know-how, trade secrets, or proprietary information belonging to MojoPay, including but not limited to proprietary content (“**Confidential Information**”). Confidential Information shall include, without limitation, case management policies and procedures, quality assurance policies and procedures, documentation of processes and software, designs, devices, compilations of information, operational techniques, operating manuals, symbols, service marks, logos, other intellectual property, marketing plans and strategies, research and development, contracts and licenses, licensing techniques and practices, models and strategies, computer software and other computer-related materials, copyrightable material, security controls, including computer system passwords, and other legally-protected information owned by or used by MojoPay which are confidential in nature and may include confidential or proprietary information received from third parties.

You acknowledge and agree that maintaining the confidentiality of the Confidential Information is integral to the ongoing operation of MojoPay, and that the Confidential Information itself is of significant value to MojoPay. In view of the foregoing, You agree to maintain the confidentiality of all Confidential Information and to not, directly or indirectly, disclose, divulge, exploit, or use the Confidential Information in any manner inconsistent with these Terms, for Your own benefit or the benefit of another person, to the exclusion of MojoPay. You will additionally take all reasonable precautions to prevent the inadvertent or accidental exposure of the Confidential Information.

User shall not in any manner whatsoever, directly or indirectly, without the prior written authorization of MojoPay, circumvent or attempt to circumvent MojoPay’s relationship with any third person, including, without limitation, the Bank, any other Users, supplier, vendor, consultant, contractor or printing broker of MojoPay, and further shall not undertake or enter into a specific transaction, the existence of or opportunity for which was first disclosed by MojoPay to User as Confidential Information, with any third person except through and with the involvement of MojoPay.

31. Indemnity

You will indemnify, defend and hold Us and Our processors and partners harmless (and Our and their respective employees, directors, agents, affiliates and representatives) from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a third party person or entity that arises out of or relates to: (a) any actual or alleged breach of Your representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of Our policies or the Operating Regulations; (b) Your use of the Platform or the Service; (c) any Transaction submitted by You through MojoPay (including without limitation the accuracy of any product information that You provide or any claim or dispute arising out of products or services offered or sold by You); (d) Your violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (e) Your violation of any law, rule or regulation of the United States or any other country; and (f) any other party's access and/or use of the Service with Your unique username, password or other appropriate security code.

32. Representations and Warranties

You represent and warrant to Us that: (a) You have the legal capacity, and are eligible, to register and use the Service and have the right, power, and ability to enter into and perform under this Agreement; (b) You have read and understood this Agreement and agree to comply with its terms; (c) the name identified by You when You registered is Your name or business name under which You sell goods and services; (d) any sales Transaction submitted by You will represent a bona fide sale by You; (e) any sales Transactions submitted by You will accurately describe the goods and/or services sold and delivered to a Purchaser; (f) You will fulfill all of Your obligations to each Purchaser for which You submit a Transaction and will resolve any consumer dispute or complaint directly with the Purchaser; (g) You, and all Transactions initiated by You, will comply with all federal, state, and local laws, rules, and regulations applicable to Your business, including any applicable tax laws and regulations; (h) except in the ordinary course of business, no Transaction submitted by You through the Service will represent a sale to any principal, partner, proprietor, or owner of Your entity; (i) You will not use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service; (j) Your use of the Service will be in compliance with this Agreement;

and (k) You will not access the Service through automated or non-human means, whether through a bot, script or otherwise.

33. **Disclaimer of Warranties by MojoPay**

THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF USABILITY, FITNESS FOR A PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM MOJOPAY OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, MOJOPAY, ITS PROCESSORS, ITS PROVIDERS, ITS LICENSORS AND THE BANK (AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) SHALL NOT BE RESPONSIBLE OR LIABLE FOR, AND SHALL NOT BE REGARDED AS HAVING MADE ANY REPRESENTATION OR WARRANTY CONCERNING: (I) THE ACCURACY, RELIABILITY, OR CORRECTNESS OF THE CONTENT OF THE SERVICES; (II) THE FAILURE OF THE SERVICE TO MEET YOUR REQUIREMENTS; (III) THE UNAVAILABILITY OF THE SERVICE AT ANY PARTICULAR TIME OR LOCATION; (IV) ANY DEFECTS OR ERRORS, AND THE CORRECTION OF THOSE DEFECTS OR ERRORS; (V) VIRUSES OR OTHER HARMFUL COMPONENTS; (VI) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SERVICE; (VII) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; AND/OR (VIII) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, AND SPECIFICALLY THE PLATFORM.

MOJOPAY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND MOJOPAY WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

All third-party hardware and other products included or sold with the Service are provided solely according to the warranty and other terms specified by the manufacturer, who is solely responsible for service and support for its product. For service, support, or warranty assistance, You should contact the manufacturer or distributor directly. MOJOPAY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF USABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

34. Limitation of Liabilities and Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MOJOPAY, ITS PROCESSORS, SUPPLIERS, LICENSORS, NETWORKS, OR THE BANK (OR THEIR RESPECTIVE AFFILIATES, AGENTS, OWNERS, OFFICERS, DIRECTORS AND EMPLOYEES) BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF THE SERVICE. UNDER NO CIRCUMSTANCES WILL MOJOPAY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN. IN NO EVENT WILL MOJOPAY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR COVER DAMAGES ARISING OUT OF YOUR USE OF OR INABILITY TO USE THIRD PARTY PRODUCTS OR ANY AMOUNT IN EXCESS OF THE AMOUNT PAID BY YOU FOR THE PRODUCT THAT GIVES RISE TO ANY CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MOJOPAY, ITS PROCESSORS, THE NETWORKS, AND THE BANK (AND THEIR RESPECTIVE AFFILIATES, AGENTS, OWNERS, OFFICERS, DIRECTORS, AND EMPLOYEES) ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY: (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF THE SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF

TRANSMISSION TO OR FROM THE SERVICE, OR ANY DELAY IN PERFORMING OUR OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF WHETHER THE FAILURE OR DELAY IS CAUSED BY AN EVENT OR CONDITION BEYOND OUR CONTROL; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL MOJOPAY, ITS PROCESSORS, AGENTS, SUPPLIERS, LICENSORS, NETWORKS, OR THE BANK (OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT OF FEES EARNED BY US IN CONNECTION WITH YOUR USE OF THE SERVICE DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF MOJOPAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

The Service is controlled and operated from facilities in the United States. MojoPay makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if You are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

35. Disputes

If a dispute of any kind arises, We want to understand and address Your concerns quickly and to Your satisfaction. Please contact MojoPay Support with any dispute. If We cannot resolve Your concerns, You shall be required to resolve Your dispute with MojoPay by way of binding resolution, as set forth herein.

36. Binding Individual Arbitration

YOU AND MOJOPAY AGREE TO SUBMIT TO FINAL AND BINDING ARBITRATION ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES (WHETHER INVOLVING CONTRACT, TORT, EQUITABLE, STATUTORY OR ANY OTHER LEGAL THEORY, AND WHETHER ARISING BEFORE OR AFTER ENTERING INTO THIS AGREEMENT), BETWEEN YOU AND MOJOPAY (AND THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING ITS BREACH, TERMINATION AND INTERPRETATION), ANY OTHER ASPECT OF OUR RELATIONSHIP, MOJOPAY'S ADVERTISING, AND/OR ANY USE OF MOJOPAY SOFTWARE OR SERVICES (A "DISPUTE"). ARBITRATION IS MORE INFORMAL THAN A LAWSUIT IN COURT AND SEEKS TO RESOLVE DISPUTES MORE QUICKLY. INSTEAD OF A JUDGE OR A JURY, THE CASE WILL BE DECIDED BY A NEUTRAL ARBITRATOR WHO HAS THE POWER TO AWARD THE SAME DAMAGES AND RELIEF THAT A COURT CAN.

THE ARBITRATION SHALL BE CONDUCTED BEFORE JAMS ADR SERVICES ("JAMS") OR ITS SUCCESSOR IN ORANGE COUNTY, CALIFORNIA, PURSUANT TO THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES IN EFFECT AT THE TIME OF THE FILING OF THE DEMAND FOR ARBITRATION (WHICH CAN BE FOUND AT THE FOLLOWING WEBSITE [HTTPS://WWW.JAMSADR.COM/RULES-COMPREHENSIVE-ARBITRATION/](https://www.jamsadr.com/rules-comprehensive-arbitration/)). THE ARBITRATION SHALL BE ADJUDICATED BY A SINGLE ARBITRATOR, WHO SHALL BE A RETIRED JUDGE AND SHALL CONDUCT THE ARBITRATION HEARING AND RENDER HIS OR HER FINAL DECISION IN ACCORDANCE WITH CALIFORNIA LAW. THE ARBITRATOR SHALL NOT HAVE THE DISCRETION TO COMMIT ERRORS OF LAW OR LEGAL REASONING, AND ANY ARBITRATION AWARD MAY BE VACATED ON APPEAL TO A COURT OF COMPETENT JURISDICTION, WHICH THE PARTIES ACKNOWLEDGE AND AGREE WILL PROVIDE THE

RIGHT OF APPELLATE REVIEW OUTSIDE THE FORUM OF ARBITRATION.

EACH SIDE (I.E, CLAIMANT(S) ON THE ONE HAND AND RESPONDENT(S) ON THE OTHER) WILL SHARE EQUALLY IN ALL ARBITRATION ORGANIZATION ADMINISTRATIVE AND ARBITRATOR FEE COSTS. EACH PARTY TO THE ARBITRATION SHALL BE RESPONSIBLE FOR THEIR OWN ARBITRATION FEES, ATTORNEY'S FEES, AND COSTS AND THE ARBITRATOR SHALL NOT HAVE DISCRETION TO AWARD THE PREVAILING PARTY IN ANY SUCH ARBITRATION THEIR ATTORNEY'S FEES, COSTS, OR PORTION OF ARBITRATION FEES.

YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. YOU AGREE TO BRING ANY DISPUTE IN ARBITRATION ON AN INDIVIDUAL BASIS ONLY, AND NOT ON A CLASS, COLLECTIVE, OR PRIVATE ATTORNEY GENERAL REPRESENTATIVE BASIS ON BEHALF OF OTHERS. THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT, HEARD OR ARBITRATED AS A CLASS, COLLECTIVE, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION, OR AS A MEMBER IN ANY SUCH CLASS, COLLECTIVE, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL PROCEEDING. THE ARBITRATOR SHALL NOT CONDUCT ANY FORM OF CLASS OR COLLECTIVE ARBITRATION NOR JOIN OR CONSOLIDATE CLAIMS.

YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THE ABOVE ALTERNATIVE DISPUTE RESOLUTION PROVISION, AND THAT BY AGREEING TO THESE TERMS OF USE, YOU ARE WAIVING A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH YOU AND MOJOPAY MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO YOUR USE OF THE SERVICE. YOUR WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY MADE AND YOU REPRESENT AND WARRANT THAT NO REPRESENTATION OF FACT OR OPINION HAS BEEN MADE TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

YOU MAY OPT OUT OF THE FOREGOING ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISIONS OF THIS AGREEMENT BY NOTIFYING MOJOPAY IN WRITING OF YOUR ELECTION TO OPT OUT

WITHIN FIVE (5) DAYS OF THE DATE YOU AGREE TO THESE TERMS. TO OPT OUT, YOU MUST SEND A WRITTEN NOTIFICATION TO MOJOPAY AT _____ THAT INCLUDES: (A) YOUR ACCOUNT USERNAME; (B) YOUR LEGAL NAME; (C) YOUR MAILING ADDRESS; (D) YOUR TELEPHONE NUMBER; (E) YOUR EMAIL ADDRESS; AND (F) A CLEAR STATEMENT INDICATING THAT YOU DO NOT WISH TO RESOLVE CLAIMS THROUGH ARBITRATION AND DEMONSTRATING COMPLIANCE WITH THE FIVE (5)-DAY TIME LIMIT TO OPT OUT OF THE ABOVE ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISIONS. WE RESERVE THE RIGHT TO RESTRICT OR OTHERWISE REFUSE TO PERMIT YOU ACCESS TO THE SERVICE BASED UPON YOUR DECISION TO OPT OUT OF THE ABOVE ARBITRATION AGREEMENT.

THIS AGREEMENT TO ARBITRATE SHALL BE ENFORCED PURSUANT TO THE FEDERAL ARBITRATION ACT. IF ANY PROVISION OF THIS ARBITRATION AGREEMENT IS FOUND UNENFORCEABLE, THE UNENFORCEABLE PROVISION SHALL BE SEVERED, AND THE REMAINING ARBITRATION TERMS SHALL BE ENFORCED (BUT IN NO CASE, SHALL THERE BE A CLASS ARBITRATION). FOR PURPOSES OF THIS ARBITRATION PROVISION, REFERENCES TO YOU AND MOJOPAY ALSO INCLUDE RESPECTIVE SUBSIDIARIES, AFFILIATES, AGENTS, EMPLOYEES, PREDECESSORS, SUCCESSORS AND ASSIGNS AS WELL AS AUTHORIZED USERS OR BENEFICIARIES OF THE SERVICE. SUBJECT TO AND WITHOUT WAIVER OF THE ARBITRATION PROVISIONS ABOVE, YOU AGREE THAT ANY JUDICIAL PROCEEDINGS (OTHER THAN SMALL CLAIMS ACTIONS IN CONSUMER CASES) WILL BE BROUGHT IN AND YOU HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION AND VENUE IN THE STATE COURTS IN THE COUNTY OF ORANGE, CALIFORNIA.

IN THE EVENT THAT YOU OR MOJOPAY ARE NOT ABLE TO RESOLVE A DISPUTE WITH AMERICAN EXPRESS, OR A CLAIM AGAINST MOJOPAY OR ANY OTHER ENTITY THAT AMERICAN EXPRESS HAS A RIGHT TO JOIN, YOU AGREE THAT THE ARBITRATION AGREEMENT SET FORTH IN EXHIBIT B WILL APPLY TO THE PARTIES.

37. Governing Law

This Agreement and any Dispute will be governed by California law and/or applicable federal law (including the Federal Arbitration Act) as applied to

agreements entered into and to be performed entirely within California, without regard to its choice of law or conflicts of law principles that would require application of law of a different jurisdiction.

38. Limitation on Time to Initiate a Dispute

Unless otherwise required by law, an action or proceeding by You relating to any Dispute must commence within one (1) year after the cause of action accrues.

39. Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by You, but may be assigned by MojoPay without restriction. Notwithstanding the restriction on assignment, these Terms shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, successors, representatives, and assigns.

40. Third Party Services and Links to Other Web Sites

You may be offered services, products and promotions provided by third parties and not by MojoPay. If You decide to use these third-party services, You will be responsible for reviewing and understanding the terms and conditions associated with them. You agree that MojoPay is not responsible for the performance of these services. The Website may contain links to third party websites. The inclusion of any website link does not imply an approval, endorsement, or recommendation by MojoPay. You agree that You access any such website at Your own risk, and that the site is not governed by the terms and conditions contained in this Agreement. MojoPay expressly disclaims any liability for these websites. Please remember that when You use a link to go from Our Website to another website, Our Privacy Policy is no longer in effect. Your browsing and interaction on any other website, including those that have a link on Our Website, is subject to that website's own rules and policies.

41. Amendment of Agreement

We have the right to change or add to the terms of this Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Platform or Service with notice that We in Our sole discretion deem to be reasonable in the circumstances, including notice on Our Website or any other website maintained or owned by Us and identified to You. Any use of Our Platform or Service after Our publication of any such changes shall

constitute Your acceptance of this Agreement as modified. No modification or amendment to this Agreement shall be binding upon MojoPay unless in a written instrument signed by a duly authorized representative of MojoPay. For the purposes of this Section 41, a written instrument shall expressly exclude electronic Communications such as email and electronic notices, but shall include facsimiles.

42. **Entire Agreement.**

Except as expressly provided in this Agreement, these Terms are a complete statement of the agreement between You and MojoPay, and they describe the entire liability of MojoPay and its vendors and suppliers (including processors) and Your exclusive remedy with respect to Your access and use of the Service. In the event of a conflict between this Agreement and any other MojoPay agreement or policy, this Agreement shall prevail on the subject matter of this Agreement. These Terms and other documents, including but not limited to, any policies or procedures currently or subsequently published, referenced in or linked to this Agreement, which are hereby incorporated herein and made a part hereof by this reference, contain Your and Our entire agreement regarding Your use of the Service, and supersedes any prior or contemporaneous discussions, agreements, representations, warranties, and other communications between You and Us, written or oral, to the extent they relate in any way to the subject matter hereof.

43. **Force Majeure.**

In the event that the performance of the obligations under these Terms are prevented or hindered in consequence of any act of God (including fires, explosions, earthquakes, drought, tidal waves, and floods), war, invasion, rebellion, riot, or acts or threats of terrorism (each, a "***Force Majeure Event***"), then such performance or obligations shall wholly or partially be suspended during the period and no liability shall accrue or be incurred during such period owing to such circumstances.

44. **Severability/Waiver.**

In the event that one or more of the provisions, or portions thereof, of these Terms is determined to be illegal or unenforceable, the remainder of these Terms shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the

fullest extent permitted by law. If any part of these Terms or any part of any provision hereof, is adjudicated to be invalid or void, then the remaining provisions shall be executed insofar as the remaining provisions are capable of execution. The waiver by Your breach of these Terms do not constitute a waiver of any subsequent breach by User.

45. **Genders/Headings.**

Headings and summaries are included for convenience only, and shall not be considered in interpreting this Agreement. The Agreement does not limit any rights that MojoPay may have under trade secret, copyright, patent or other laws. MojoPay's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term.

46. **Interpretation.**

To the maximum extent allowed under applicable state or federal law, You waive the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party and shall not be employed in the interpretation of these Terms. You understand and agree that these Terms shall be construed fairly as to all parties and not in favor of or against any of the parties, regardless of which party prepared these Terms, such that the application of California Civil Code Section 1654, providing "[i]n cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist," (or other comparable law in other jurisdictions) is hereby waived.

47. **Consent to Terms/Digital Signature.**

You will be prompted to read these Terms and asked to click a box that prompts You to "Agree and Continue" with the registration process. By clicking the "Agree and Continue" You are acknowledging that You read and understood these Terms, and You are agreeing to be irrevocably bound by these Terms. In any case, by using the Service, You are deemed to have read, understood, and agreed to these Terms electronically, effective on the date You first log in to Your Account with Your unique username and password.

In the event that one or more of the provisions, or portions thereof, of these Terms is determined to be illegal or unenforceable, the remainder of these Terms shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law. Any provision that is reasonably necessary to accomplish or enforce the purpose of this Agreement shall survive and remain in effect in accordance with its terms upon the termination of this Agreement.

Exhibit A

[American Express Card Acceptance and Brand Requirements]

1. Defined Terms. As used in this Exhibit B, the following capitalized terms have the following respective meanings:
 - “**Cardmember**” means an individual or entity that has entered into an agreement establishing an American Express Card account, or whose name appears on the American Express Card.
 - “**Cardmember Information**” means any information about Cardmembers and Transactions, including, but not limited to, transaction data, and Cardmember name, addresses, American Express Card numbers, and American Express Card Identification Numbers.
 - “**Establishments**” means any or all of Your and Your affiliates’ locations, outlets, websites, online networks, and all other methods for selling goods and services including methods that You adopt in the future.
 - “**Marks**” means names, logos service marks, trademarks, trade names, taglines, or other proprietary designs or designations.
 - “**Other Payment Products**” means any charge, credit, debit, stored value, prepaid, or smart cards, account access devices, or other payment cards, services, or products other than the American Express Card.
2. American Express Card Acceptance. User must accept the American Express Card as payment for goods and services (other than those goods and services prohibited under Section 7 of the Agreement) sold, or (if applicable) for charitable contributions made, at all of User’s Establishments, except as expressly permitted by state statute. User is jointly and severally liable for the obligations of User’s Establishments under this Agreement.
3. Treatment of the American Express Brand. Except as expressly permitted by applicable law, User must not:
 - indicate or imply that User prefers, directly or indirectly, any Other Payment Products over the American Express Card,
 - try to dissuade Cardmembers from using the American Express Card,
 - criticize or mischaracterize the American Express Card or any American Express services or programs,
 - try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (e.g., payment by check),

- impose any restrictions, conditions, disadvantages or fees when the American Express Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check,
 - suggest or require Cardmembers to waive their right to dispute any transaction,
 - engage in activities that harm Our business or the American Express brand (or both),
 - promote any Other Payment Products (except User's own private label card that User issues for use solely at User's Establishments) more actively than User promotes the American Express Card, or
 - convert the currency of the original sale transaction to another currency when requesting authorization or submitting Transactions (or both).
4. Treatment of the American Express Brand (US). User may offer discounts or in-kind incentives from User's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by applicable law): (i) User clearly and conspicuously discloses the terms of the discount or in-kind incentive to User's customers; (ii) the discount or in-kind incentive is offered to all of User's prospective customers; and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, Network. The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above in the paragraph titled, "Treatment of the American Express Brand".
5. Treatment of the American Express Marks. Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, User must indicate User's acceptance of the American Express Card and display the American Express Marks as prominently and in the same manner as any Other Payment Products. User must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor in any way (without the prior written consent of American Express) indicate that American Express endorses User's goods or services. User shall only use the American Express Marks as permitted by the Agreement and shall cease using the American Express Marks upon termination of the Agreement.

6. Treatment of American Express Cardmember Information. Any and all Cardmember Information is confidential and the sole property of the American Express Card issuer, American Express or its affiliates. Except as otherwise specified, User must not disclose Cardmember Information, nor use nor store it, other than to facilitate Transactions at User's Establishments in accordance with the Agreement.

Exhibit B

[Arbitration Agreement as to Disputes involving American Express (U.S.)]

In the event that User or MojoPay is not able to resolve a "**Claim**" (as defined Section 11 below) against American Express, or a claim against MojoPay or any other entity that American Express has a right to join, this Exhibit B (this "**Arbitration Agreement**") explains how Claims may be resolved through arbitration. User or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator. If arbitration is elected by any party, neither User nor MojoPay nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, User, MojoPay, and American Express will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Arbitration Agreement. Arbitration procedures are generally simpler than the rules in court. An arbitrator's decisions are final and binding, and the arbitrator's final decision on a Claim generally is enforceable as a court order with very limited review by a court. Other rights User, MojoPay, or American Express would have in court may also not be available in arbitration.

1. Initiation of Arbitration. Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Arbitration Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if American Express selects the organization and User selects the other within thirty (30) days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. 1-16 (FAA). Any arbitration hearing will take place in the federal judicial district where User's headquarters is located or New York, NY, at User's election.

2. **Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between User, MojoPay, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by User, MojoPay or American Express and cannot be used in any other case except to enforce the award as between User, MojoPay and American Express. This prohibition is intended to, and does, preclude User from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Arbitration Agreement, if any portion of these Limitations on Arbitration is found invalid or unenforceable, then the entire Arbitration Agreement (other than this sentence) will not apply, except that User, MojoPay, and American Express do not waive the right to appeal that decision.
3. **Previously Filed Claims/No Waiver.** User, MojoPay, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. User, MojoPay, or American Express may choose to delay enforcing or to not exercise rights under this Arbitration Agreement, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express User Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the Effective Date of the Arbitration Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between User and American Express.
4. **Arbitrator's Authority.** The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under this Arbitration Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Arbitration Agreement.
5. **Split Proceedings for Equitable Relief.** User, MojoPay, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits, if necessary, to preserve the status quo pending completion of the arbitration. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement is entitled to seek an

award of reasonable attorneys' fees and costs to be paid by the party against whom enforcement is ordered.

6. **Small Claims.** American Express will not elect arbitration for any Claim User properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.
7. **Governing Law/Arbitration Procedures/Entry of Judgment.** This Arbitration Agreement is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, if any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have fifteen (15) days to respond before the arbitrator rules on the request. If User's Claim is for \$10,000 or less, User may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where User's headquarters or User's assets are located.
8. **Confidentiality.** The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed Confidential Information not to be disclosed to any person not a party to the arbitration. All Communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.
9. **Costs of Arbitration Proceedings.** User will be responsible for paying User's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees User would have incurred if User had brought a claim in court. American Express will be responsible for any additional arbitration fees. At User's written request, American Express will consider in good faith making a

temporary advance of User's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

10. Additional Arbitration Awards. If the arbitrator rules in User's favor against American Express for an amount greater than any final settlement offer American Express made before arbitration, the arbitrator's award will include: (1) any money to which User is entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by User.

11. Definitions. For purposes of this Exhibit B, "Arbitration Agreement (as to Claims involving American Express) (U.S.)" only: (i) American Express includes its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing; (ii) User includes User's affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing; and (iii) Claim means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or against MojoPay or any other entity that American Express has the right to join, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.