

# TERMS AND CONDITIONS

## External Transfer Service

Revised Date: May 2017

**1. Introduction.** This Terms and Conditions document (hereinafter "Agreement") is a contract between Central Bank & Trust, Co. (hereinafter "we" "us" the "Bank") and you (hereinafter "you") in connection with the External Transfer Service (the "Service") offered through Central**NET** (the "Site"). This Agreement applies to your use of the Service and the portion of the Site through which the Service is offered and supplements the Central**NET** Terms & Conditions. By accessing the Service, you acknowledge that you have read and agree to this Agreement. Please read this Agreement carefully. This Agreement outlines the legally binding terms and conditions for your use of the Service.

### **2. Definitions.**

"Account" means a checking, money market or savings account.

"Affiliates" mean companies related by common ownership or control.

"Business Day" is every Monday through Friday, excluding Federal Reserve holidays or other days that banks are legally closed.

"Recipient Account" is the Account to which your funds will be credited.

"Sender" means the Transaction Account holder initiating a transfer through the Service.

"Service Provider" means any agent, licensor, independent contractor, or subcontractor that we may have engaged to render some or all of the Service to you on our behalf.

"Site" means the Central**NET** website through which the Service is offered.

"Transaction Account" is the Account from which your funds will be debited, your External Transfer Service fees will be automatically debited, or to which funds will be returned.

"Transfer Instruction" is the information provided by you to the Service for a transfer of funds to a Recipient Account.

**3. Service Providers.** We are offering you the Service through one or more "Service Providers". You agree that we have the right under this Agreement to delegate to Service Providers all of the rights and performance obligations that we have under this Agreement, and that the Service Providers will be intended third party beneficiaries of this Agreement and will be entitled to all the rights and protections that this Agreement provides to us.

**4. Amendments.** We may amend this Agreement and any applicable fees and charges for the Service at any time by posting a revised version on the Site. The revised version will be effective at the time it is posted unless a delayed effective date is expressly stated in the revision. Any use of the Service after a notice of change will constitute your agreement to such changes. Further, we may, from time to time, revise or update the Service and/or related applications or material, which may render all such prior versions obsolete. Consequently, we reserve the right to terminate this Agreement as to all such prior versions of the Service, and/or related applications and material and limit access to only the Service's more recent revisions and updates. We also reserve the right to terminate the Service in its entirety.

**5. Our Relationship With You.** We are an independent contractor for all purposes, except that we act as your agent with respect to the custody of your funds for the Service. We do not have control of, or

liability for, any products or services that are paid for with the Service. We do not guarantee the identity of any user of the Service (including but not limited to Accounts to which you send payments).

**6. Assignment.** You may not transfer or assign any rights or obligations you have under this Agreement without our prior written consent, which we may withhold in our sole discretion. We reserve the right to transfer or assign this Agreement or any right or obligation under this Agreement at any time to any party. We may also assign or delegate certain of our rights and responsibilities under this Agreement to independent contractors or other third parties.

**7. Notices to You.** You agree that we may provide notice to you by posting it on the Site, sending you an in-product message within the Service, emailing it to an email address that you have provided us, or by mailing it to any postal address that you have provided us unless otherwise required by applicable law. For example, users of the Service may receive certain notices (such as notice and receipt of transfers) as text messages on their mobile device. All notices by any of these methods shall be deemed received by you no later than twenty-four (24) hours after they are sent or posted, except for notice by postal mail, which shall be deemed received by you no later than three (3) business days after it is mailed. You may request a paper copy of any legally required disclosures and you may terminate your consent to receive required disclosures through electronic communications by contacting us as described in section 28 below. We reserve the right to terminate your use of the Service if you withdraw your consent to receive electronic communications.

**8. Calls to You.** By providing us with a telephone number (including a mobile number), you consent to receiving autodialed and prerecorded message calls from us at that number for non-marketing purposes. For example, we or our Service Provider may contact you in connection with validating or processing a transaction that you've requested through the Service.

**9. Receipts and Transaction History.** You may view at least six months of your transaction history with the applicable Service Provider by logging into your Account and looking at your Account transaction history. You agree to review your transactions by this method instead of receiving receipts by mail.

**10. Your Privacy.** Protecting your privacy is very important to us. Please review our [Privacy Policy](#) in order to better understand our commitment to maintaining your privacy, as well as our use and disclosure of your information. Our privacy policy can be viewed here: <https://www.centralbank.com/about-us/privacy-policy/>.

**11. Eligibility.** The Service is offered only to individual residents of, or small businesses located in, the United States who / that can form legally binding contracts under applicable law. Without limiting the foregoing, the Service is not offered to minors unless the minor is using an eligible Transaction Account in the name of the minor with a parent or guardian as a joint owner of the Account. Use of the Service is deemed an authorization by the non-minor owner of a Transaction Account to the use of the Service by any minor owner of a Transaction Account. By using the Service, you represent that you meet these requirements and that you agree to be bound by this Agreement.

**12. Acceptable Use.** You may use the Service to transfer funds as described in section 13 below. You agree that you are independently responsible for complying with all applicable laws in all of your activities related to your use of the Service, regardless of the purpose of the use. In addition, you are prohibited from using the Service for activities that: (a) violate any law, statute, ordinance or regulation; (b) payments related to illegal gambling, illegal gaming and/or any other illegal activity with an entry fee or a prize, including, but not limited to casino games, sports betting, horse or greyhound racing, lottery tickets, other ventures that facilitate gambling, games of skill and sweepstakes; (c) violate any property or proprietary right of any third party, including any copyright, trademark, or right of publicity or privacy under the laws of any jurisdiction; (d) impose an unreasonable or disproportionately large load on our infrastructure; (e) facilitate any viruses, trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; (f) constitute use of any robot, spider, other automatic device, or manual process to monitor or copy the Service or the portion of the Site through which the Service is offered without our prior written permission;

(g) constitute use of any device, software or routine to bypass technology protecting the Site or Service, or interfere or attempt to interfere, with the Site or the Service; or (h) may cause us or our Service Providers to lose any of the services from our internet service providers, payment processors, or other vendors. We encourage you to provide notice to us by the methods described in section 28 below of any violations of this section or this Agreement generally. In no event shall we or our Service Providers be liable for any claims or damages resulting from or related to your violation of the acceptable uses of the Service or this Agreement. We and our Service Providers reserve the right to monitor and remove any comments you post or submit through the Service.

### **13. Transfer Authorization and Processing.**

(a) The Service enables you to transfer funds between your Account(s) that you maintain with us on the one hand, and your Account(s) that are maintained by other financial institutions, on the other hand. You represent and warrant that you are an owner of the Transaction Account and the Recipient Account and that you have all necessary legal right, power and authority to transfer funds from the Transaction Account to the Recipient Account. Further, you represent and warrant that the Recipient Account is located in the United States.

(b) When we receive a Transfer Instruction from you, you authorize us to debit your Transaction Account and remit funds on your behalf to the Recipient Account designated by you and to debit one of your Accounts as described below in section 19 (Service Fees and Additional Charges). You also authorize us to reverse a transfer from your Recipient Account if the debit is returned from the Transaction Account for any reason, including but not limited to nonsufficient funds.

(c) We will use reasonable efforts to make all your transfers properly. However, we shall incur no liability if we are unable to complete any transfers initiated by you because of the existence of any one or more of the following circumstances:

1. If, through no fault of ours, the Transaction Account does not contain sufficient funds to complete the transfer or the transfer would exceed your overdraft limit or any of your Accounts with us is not in good standing within the prior three (3) calendar months;
2. The Service is not working properly and you know or have been advised by us about the malfunction before you execute the transaction;
3. The transfer is refused as described in section 15 below;
4. You as a Sender have not provided us with the correct information, including but not limited to the correct Transaction Account or Recipient Account information; and/or,
5. Circumstances beyond our control (such as, but not limited to, fire, flood, network or system down time, issues with the financial institution(s), or interference from an outside force) prevent the proper execution of the transfer and we have taken reasonable precautions to avoid those circumstances.
6. You have had a prior Transfer Instruction cancelled, revoked, or uncompleted due to insufficient funds, revoked authorization, stopped payments, frozen accounts, or any similar reason.

(d) It is your responsibility to ensure the accuracy of any information that you enter into the Service, and for informing us as soon as possible if you become aware that this information is inaccurate. We will make a reasonable effort to stop or recover a transfer made to the wrong Recipient Account once informed, but we do not guarantee such recovery and will bear no responsibility or liability for damages resulting from incorrect information entered by you.

**14. Transfer Methods and Amounts.** We may, at our sole discretion, impose limits on the amount of money you can transfer through our Service. Please refer to our Electronic Funds Transfer Disclosure for details, which can be located at <https://www.centralbank.com/customer-service/terms-conditions/ebanking-terms-conditions/>. We also reserve the right to select the method in which to transfer funds on your behalf, and the method to return funds to you in the event that the Recipient Account is closed or otherwise unavailable to us.

**15. Transfer Cancellation Requests and Refused Transfers.** You may cancel a transfer at any time until it begins processing (as shown in the Service). We will, to the extent permitted by law, make reasonable attempts to return any unclaimed, refused, refunded, prohibited, or denied transfer to your Transaction Account. If this is unsuccessful (for example, the Transaction Account has been closed) we will make reasonable attempts to mail you a paper check. If after ninety (90) days (or longer, depending on our then-current standard for unclaimed checks) that check has not been cashed, we will stop payment on it and transfer funds to an "unclaimed funds" account, and will subsequently handle the unclaimed funds as required or otherwise permitted by applicable law.

**16. Stop Payment Requests.** If you as a Sender desire to stop any transfer that has already been processed, you must contact Client Services pursuant to section 28. Although we will make a reasonable effort to accommodate your request, we will have no liability for failing to do so. We may also require you to present your request in writing within fourteen (14) days. The charge for each request will be the current charge for such service as set out in the applicable fee schedule.

**17. Taxes.** It is your responsibility to determine what, if any, taxes apply to transfers you make or receive, and it is your responsibility to collect, report and remit the correct tax to the appropriate tax authority. We are not responsible for determining whether taxes apply to your transfers, or for collecting, reporting or remitting any taxes arising from any transfer.

**18. Service Fees and Additional Charges.** Applicable fees will be disclosed in the user interface for the Service. Any applicable fees will be charged regardless of whether the Service was used, except for fees that are specifically use-based. There may be a charge for additional transactions and other optional services. You agree to pay such charges and authorize us to deduct the calculated amount from the applicable Account you hold with us, whether a Transaction Account or Recipient Account, for these amounts and any additional charges that may be incurred by you. If we hold both the Transaction Account and the Recipient Account, then you authorize us to deduct such amounts and charges from the Transaction Account. Any financial fees associated with your standard deposit accounts will continue to apply. You are responsible for any and all telephone access fees and/or Internet service fees that may be assessed by your telephone and/or Internet service provider.

**19. Failed Or Returned Transfers.** In using the Service, you are requesting us to make transfers for you from your Transaction Account. If we are unable to complete the transfer for any reason associated with your Transaction Account (for example, there are insufficient funds in your Transaction Account to cover the transaction), the transfer may not be completed. In some instances, you will receive a return notice from us. In each such case, you agree that:

- (a) You will reimburse us immediately upon demand the transfer amount that has been returned to us;
- (b) For any amount not reimbursed by you within fifteen (15) days of the initial notification, our Service Provider may impose a late charge equal to one and a half percent (1.5%) monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts;
- (c) You may be assessed a fee by our Service Provider and by us if the transfer is returned because you have insufficient funds in your Transaction Account to cover the requested transfer or if we cannot otherwise collect the funds from you; the fee amount will be as set forth in your fee schedule from us or your Account agreement with us. You hereby authorize us to deduct these amounts from your designated Transaction Account by ACH debit;

(d) You will reimburse us and our Service Provider for any fees or costs we or they incur in attempting to collect the amount of the return from you; and,

(e) We and our Service Provider are authorized to report the facts concerning the return to any credit reporting agency.

**20. Address or Banking Changes.** It is your sole responsibility and you agree to ensure that the contact information in your user profile is current and accurate. This includes, but is not limited to, name, address, phone numbers and email addresses. Changes can be made either within the application or by contacting Client Services. Any changes in your Transaction Account or Recipient Account should also be made in accordance with the procedures outlined within the Service's help files. All changes made are effective immediately. We are not responsible for any transfer processing errors or fees incurred if you do not provide accurate Transaction Account, Recipient Account, or contact information.

**21. Refused Transfers.** We reserve the right to refuse any transfer to a Recipient Account. We will notify you if we decide to refuse to transfer funds to a Recipient Account. This notification is not required if you attempt to make a transfer prohibited under this Agreement.

**22. Returned Transfers.** In using the Service, you understand transfers may be returned for various reasons such as, but not limited to, Recipient Account number is not valid. We will use reasonable efforts to research and correct the transfer to the intended Recipient Account or void the transfer and credit your Transaction Account. You may receive notification from us.

**23. Information Authorization.** Your enrollment in the Service may not be fulfilled if we cannot verify your identity or other necessary information. Through your enrollment in the Service, you agree that we and our Service Providers reserve the right to request a review of your credit rating at our own expense through an authorized bureau.

**24. Service Cancellation by You.** In the event you wish to cancel the Service, you may contact us via one of the below methods. Any transfer(s) we have already processed before the requested cancellation date will be completed by us.

Telephone:  
800-637-6884

Email:  
[centralnet@centralbank.com](mailto:centralnet@centralbank.com)

Or write to:  
Central Bank  
Attention: Central**NET** Client Services  
PO Box 1360  
Lexington, KY 40588-1360

**25. Service Cancellation, Termination, or Suspension by Us, and Other Remedies for Breach.** If we have reason to believe that you have engaged in any of the prohibited activities described in this Agreement or have otherwise breached your obligations under this Agreement, we may terminate, suspend or limit your access to or use of the Site or the Service; notify law enforcement, regulatory authorities, impacted third parties, and others as we deem appropriate; refuse to provide our services to you in the future; and/or take legal action against you. In addition, we, in our sole discretion, reserve the right to terminate this Agreement, access to the Site, and/or use of the Service for any reason and at any time. Neither termination nor suspension shall affect your liability or obligations under this Agreement.

**26. Disputes.** In the event of a dispute regarding the Service, you and we agree to resolve the dispute by looking to this Agreement. You and we agree that this Agreement combined with the Central**NET** Terms and Conditions, and the Electronic Funds Transfer Disclosures is the complete and exclusive statement of the agreement between you and us concerning the Service, which supersedes any proposal or prior agreement, oral or written, and any other communications between you and us relating to the subject matter of this Agreement. If there is a conflict between the terms of this Agreement and something stated by an employee or contractor of ours, the terms of this Agreement will prevail. If there is a conflict between the terms of this Agreement and the Central**NET** Terms and Conditions, this Agreement will control. If there is a conflict between the terms of this Agreement and the Electronic Funds Transfer Disclosures, the Electronic Funds Transfer Disclosures will control.

**27. Your Liability for Unauthorized Transfers.** Immediately following your discovery of an unauthorized transaction, you shall communicate with Client Services in the manner set forth in section 28 below. You acknowledge and agree that time is of the essence in such situations.

**Consumer Accounts:** For more information concerning your rights and obligations concerning unauthorized transfers on Consumer accounts, you should refer to the Electronic Funds Transfer Disclosures and Agreement, which can be located at <https://www.centralbank.com/customer-service/terms-conditions/ebanking-terms-conditions/>.

**Business Accounts:** For more information concerning your rights and obligations concerning unauthorized transfers on Business accounts, you should refer to the Central**NET** Terms and Conditions.

**28. Errors and Questions about Transactions Using the Service.** In case of errors or questions about your Service transactions, you should as soon as possible notify us via one of the following:

1. Telephone us at 800-637-6884 during customer service hours; M-F 8am ET – 6pm ET, Sat 9am ET – 1pm ET or
2. Contact us by using the application’s messaging feature within Central**NET** or externally to centralnet@centralbank.com; and/or,
3. Write us at:  
Central Bank  
Attn: Central**NET** Client Services  
P.O. Box 1360  
Lexington, KY 40588-1360

We will act on your emails and telephone calls as described in this section 29, but otherwise, such emails and telephone calls will not constitute legal notices under this Agreement.

If you think your periodic statement for your Account is incorrect or you need more information about a Service transaction listed on the statement, we must hear from you no later than sixty (60) days after the FIRST statement was sent to you on which the problem or error appears. You must:

1. Tell us your name and bank account number;
2. Describe the error or the transaction in question, and explain as clearly as possible why you believe it is an error or why you need more information; and,
3. Tell us the dollar amount of the suspected error.

**Consumer Accounts:** For more information concerning errors and questions about transactions on Consumer accounts, you should refer to the Electronic Funds Transfer Disclosures and Agreement, which can be located at <https://www.centralbank.com/customer-service/terms-conditions/ebanking-terms-conditions/>.

**Business Accounts:** For more information concerning errors and questions about transactions on Business accounts, you should refer to the Central**NET** Terms and Conditions.

**29. Waiver of Jury Trial.** Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim between the parties or any of their respective Affiliates or any intended third party beneficiary arising under or relating to this Agreement.

**30. Waiver of Class Action Claims.** Both parties agree to waive any right to assert any dispute or claim against the other party or any intended third party beneficiary arising under or relating to this Agreement as a class action.

**31. Arbitration.** Both parties agree to resolve any dispute or claim between the parties or any of their respective Affiliates or any Service Provider or other intended third party beneficiary arising under or relating to this Agreement through binding arbitration. Both parties stipulate and agree that this Agreement evidences a transaction in interstate commerce, and that the Federal Arbitration Act applies. The arbitration award shall be final and binding and judgment thereon may be entered by any court of competent jurisdiction. The only exceptions to this arbitration agreement are as follows:

- a. We and you expressly agree that under no circumstances shall any dispute or claim arising under or relating to this Agreement be subject to arbitration on a classwide or collective basis. Only the disputes or claims of individual parties may be arbitrated.
- b. We or you may, at the option of the claiming party, pursue any claim in small claims court instead of arbitration, provided that the claim must not exceed \$5,000 or the jurisdictional limit of the small claims court, whichever is less; and the small claims court must otherwise have jurisdiction of the claim and the parties.

**32. Arbitration Procedure.** You or we may commence arbitration, at the claiming party's election, administered either by JAMS (formerly known as "Judicial Arbitration and Mediation Services"), or the American Arbitration Association ("AAA"). The arbitration shall take place before a single arbitrator, selected pursuant to the selection procedures in the applicable commercial or consumer arbitration rules of the administrator (JAMS or AAA). The JAMS or AAA rules, shall apply subject only to the following exceptions and modifications.

- a. You may, if you wish, commence arbitration pursuant either to (i) the AAA Consumer Arbitration Procedures, or (ii) the JAMS "minimum standards" for consumer arbitration. In all such consumer arbitrations we will pay the balance of the applicable arbitration administrative fee to the extent required by the JAMS or AAA procedures or standards you have chosen.
- b. You or we (whoever is the party commencing the arbitration) may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. If the claiming party selects non-appearance-based arbitration, the parties agree that the following rules shall apply: (i) the arbitration may be conducted telephonically, and/or online, or be based solely on written submissions, at the election of the party commencing the arbitration; (ii) the arbitration shall not require any travel or personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) discovery shall not be permitted.
- c. When we or you (whoever is the party commencing arbitration) do not select non-appearance-based procedures, the parties agree that there shall be no discovery except whatever discovery the arbitrator determines is necessary for fair resolution of the claim or dispute.
- d. Neither we nor you shall seek any award of attorney's fees, including an award of fees from any Service Provider or other intended third party beneficiary of this Agreement, in any

arbitration claim arising under or relating to this Agreement, except that the arbitrator may award attorney's fees when (and only to the extent that) the applicable law requires an award of attorney's fees to the prevailing party.

**33. Arbitrability Issues to Be Decided By Arbitrator.** The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable.

**34. Law and Forum for Disputes.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws provisions. To the extent that the terms of this Agreement conflict with applicable state or federal law, such state or federal law shall replace such conflicting terms only to the extent required by law. Unless expressly stated otherwise, all other terms of this Agreement shall remain in full force and effect. You agree that any claim or dispute you may have against us (other than those which are arbitrated under section 31 above) must be resolved by a court located in Fayette County, Kentucky. You agree to submit to the personal jurisdiction of such courts for the purpose of litigating all such claims or disputes. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**35. Indemnification.** You agree to defend, indemnify and hold harmless us and our Affiliates and Service Providers and the officers, directors, agents, employees, representatives, and contractors of each of these, from any loss, damage, claim or demand (including attorneys fees) made or incurred by any third party due to or arising out of your breach of this Agreement and/or your use of the Site or the Service.

**36. Release.** If you have a dispute with one or more other users of the Site or the Service, you release us and our Affiliates and Service Providers and the employees and contractors of each of these, from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes. In addition, you waive and release any and all provisions, rights and benefits conferred either (i) by § 1542 of the California Civil Code, which reads: "Section 1542. General release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;" or (ii) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code.

**37. No Waiver.** We shall not be deemed to have waived any of our rights or remedies hereunder unless such waiver is in writing and signed by one of our authorized representatives. No delay or omission on our part in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

**38. Intellectual Property.** All marks and logos related to the Service are either trademarks or registered trademarks of us or our licensors. In addition, all page headers, custom graphics, button icons, and scripts are our service marks, trademarks, and/or trade dress or those of our licensors. You may not copy, imitate, or use any of the above without our prior written consent, which we may withhold in our sole discretion, and you may not use them in a manner that is disparaging to us or the Service or display them in any manner that implies our sponsorship or endorsement. All right, title and interest in and to the Service, the portion of the Site through which the Service is offered, the technology related to the Site and Service, and any and all technology and any content created or derived from any of the foregoing, is our exclusive property or that of our licensors. Moreover, any suggestions, ideas, notes, drawings, concepts, or other information you may send to us through or regarding the Site or Service shall be considered an uncompensated contribution of intellectual property to us, shall also be deemed our exclusive intellectual property, and shall not be subject to any obligation of confidentiality on our part. By submitting any such materials to us, you automatically grant (or warrant that the owner of such materials has expressly granted) to us a perpetual, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, publicly perform and display, create derivative works from and distribute



such materials or incorporate such materials into any form, medium, or technology now known or later developed, and you warrant that all so-called "moral rights" in those materials have been waived, and you warrant that you have the right to make these warranties and transfers of rights.

**39. Links and Frames.** Links to other sites may be provided on the portion of the Site through which the Service is offered for your convenience. By providing these links, we are not endorsing, sponsoring or recommending such sites or the materials disseminated by or services provided by them, and are not responsible for the materials, services or other situations at or related to or from any other site, and make no representations concerning the content of sites listed in any of the Service web pages. Consequently, we cannot be held responsible for the accuracy, relevancy, copyright compliance, legality or decency of material contained in sites listed in any search results or otherwise linked to the Site. For example, if you "click" on a banner advertisement or a search result, your "click" may take you off the Site. This may include links from advertisers, sponsors, and content partners that may use our logo(s) as part of a co-branding agreement. These other sites may send their own cookies to users, collect data, solicit personal information, or contain information that you may find inappropriate or offensive. In addition, advertisers on the Site may send cookies to users that we do not control. You may link to the home page of our Site. However, you may not link to other pages of our Site without our express written permission. You also may not "frame" material on our Site without our express written permission. We reserve the right to disable links from any third party sites to the Site.

**40. Password and Security.** If you are issued or create any password or other credentials to access the Service or the portion of the Site through which the Service is offered, you agree not to give or make available your password or credentials to any unauthorized individuals, and you agree to be responsible for all actions taken by anyone to whom you have provided such credentials, whether intentionally or inadvertently. If you believe that your credentials have been lost or stolen or that someone may attempt to use them to access the Site or Service without your consent, you must inform us at once at the telephone number provided in section 27 above. See also section 16 above regarding how the timeliness of your notice impacts your liability for unauthorized transfers.

**41. Exclusions of Warranties.** THE SITE AND SERVICE AND RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, WE DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO ANY PART OF OUR SERVICE, AND OPERATION OF OUR SITE MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF OUR CONTROL. SOME STATES DO NOT ALLOW THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU. THIS PARAGRAPH GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

**42. Limitation of Liability.** YOU ACKNOWLEDGE AND AGREE THAT FROM TIME TO TIME, THE SERVICE OR SITE MAY BE DELAYED, INTERRUPTED OR DISRUPTED PERIODICALLY FOR AN INDETERMINATE AMOUNT OF TIME DUE TO CIRCUMSTANCES BEYOND OUR REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO ANY INTERRUPTION, DISRUPTION OR FAILURE IN THE PROVISION OF THE SERVICE, WHETHER CAUSED BY STRIKES, POWER FAILURES, EQUIPMENT MALFUNCTIONS OR OTHER REASONS. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS OF EACH OF THESE, BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE SERVICE CAUSED BY OR ARISING OUT OF ANY SUCH DELAY, INTERRUPTION, DISRUPTION OR SIMILAR FAILURE. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS OF EACH OF THESE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOSS OF GOODWILL OR LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE SERVICE OR THE PORTION OF THE SITE THROUGH WHICH THE SERVICE IS OFFERED, EVEN IF SUCH DAMAGES

WERE REASONABLY FORESEEABLE AND NOTICE WAS GIVEN REGARDING THEM. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS OF EACH OF THESE BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE SERVICE OR THE PORTION OF THE SITE THROUGH WHICH THE SERVICE IS OFFERED THAT YOU DO NOT STATE IN WRITING IN A COMPLAINT FILED IN A COURT OR ARBITRATION PROCEEDING AS DESCRIBED IN SECTIONS 31, 32 AND 33 ABOVE WITHIN TWO (2) YEARS OF THE DATE THAT THE EVENT GIVING RISE TO THE CLAIM OCCURRED. THESE LIMITATIONS WILL APPLY TO ALL CAUSES OF ACTION, WHETHER ARISING FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. THE AGGREGATE LIABILITY OF US AND OUR AFFILIATES AND SERVICE PROVIDERS AND THE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS OF EACH OF THESE, TO YOU AND ANY THIRD PARTY FOR ANY AND ALL CLAIMS OR OBLIGATIONS RELATING TO THE SERVICE AND THE PORTION OF THE SITE THROUGH WHICH THE SERVICE IS OFFERED AND THIS AGREEMENT SHALL BE LIMITED TO DIRECT OUT OF POCKET DAMAGES UP TO A MAXIMUM OF \$500 (FIVE HUNDRED DOLLARS). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THE FOREGOING SHALL CONSTITUTE YOUR EXCLUSIVE REMEDIES AND THE ENTIRE LIABILITY OF US AND OUR AFFILIATES AND SERVICE PROVIDERS AND THE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS OF EACH OF THESE, FOR THE SERVICE AND THE PORTION OF THE SITE THROUGH WHICH THE SERVICE IS OFFERED.

**43. Complete Agreement, Severability, Captions, and Survival.** This Agreement sets forth the entire understanding between us and you with respect to the Services and the portion of the Site through which the Services are offered. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. Sections 7, 8, 26, 28-38, and 41-43, as well as any other terms which by their nature should survive, will survive the termination of this Agreement.