

Terms of Use

Updated: October 2020

Optimize Financial Technology, Inc. (OptimizeFT) mobile applications and websites (the “App”) provide Debit, Credit or Prepaid Card (“**Card**”) management tools that enable you to track the use of your Card products for Cards issued through sponsoring bank partners and managed within the OptimizeFT systems and services. Card management tools may be offered directly by OptimizeFT and OptimizeFT provides oversight to Channel Partners, Affiliates or Agents utilizing OptimizeFT systems and services to offer branded Card management tools.

These Terms of Use (“**TOU**”) and the Optimize Financial Technology, Inc. Privacy Policy (the “**Privacy Policy**”) and, together with these TOU, these “**Terms**”) are a legal agreement between you and OptimizeFT. BY REGISTERING FOR THE APP, WHICH INCLUDES CLICKING TO ACCEPT THESE TERMS AND/OR INSTALLING THE APP ON YOUR MOBILE DEVICE, OR UTILIZING THE WEBSITE YOU AGREE TO ALL OF THE TERMS AND CONDITIONS IN THESE TERMS, AND ALL OTHER RULES, POLICIES, AND PROCEDURES RELATING TO THE APP THAT OPTIMIZEFT MAY PROVIDE YOU FROM TIME TO TIME.

“You” (and all of its derivations) means you individually and any person acting as your agent, under your authority, or with your permission, and, if you are accepting these Terms on behalf of a company or other legal entity, then that legal entity. You represent and warrant that you are: (a) at least 18 years of age (or the minimum age in your jurisdiction for entering into a binding contract), (b) capable of entering into a legally binding agreement, and (c) a legal resident of the United States. If you are entering into these Terms on behalf of a company or other legal entity, you further represent and warrant that: (i) you have the authority to bind the legal entity, (ii) such legal entity is authorized to conduct business in the jurisdiction(s) in which you operate, and (iii) all employees, officers, agents, and other representatives of the legal entity who use the App are duly authorized to access and use it. IF YOU DO NOT AGREE TO THESE TERMS, YOU MUST NOT REGISTER TO USE THE APP AND MAY NOT USE THE APP.

These Terms provide that all disputes between you and OptimizeFT will be resolved by BINDING ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract, except for matters that may be taken to small claims court. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury, and your claims cannot be brought as a class action (if class action claims can be filed in your jurisdiction). Please review Section 24 “**Dispute Resolution and Arbitration**” for the details regarding your agreement to arbitrate any disputes with OptimizeFT.

1. Privacy

To access the App, you may be asked to provide certain personal and non-personal information. The Privacy Policy explains how we collect, store, share, or otherwise use your personal information and non-personal information, and you consent to all actions we take with respect to your information consistent with these Terms.

2. Registration; Accounts; Use of Card Information

As a condition of using certain aspects of the App, you may be required to register for an account (“**Account**”) with OptimizeFT in addition to any account that you may have with the issuer of your Card(s) or referring Channel Partners, Affiliates or Agents. To register for an Account, you

will: (a) provide true, accurate, and complete information about yourself in the registration form; (b) maintain and promptly update such information; and (c) establish a username and password which you will keep secure. You are responsible for keeping your Account password secure and for all activities that occur through or by use of your Account, including the activities of others (whether or not you have authorized those activities). You agree not to provide access to your Account, your username, or password to others. You are solely responsible for protecting the security of your Account on your devices. You must immediately notify OptimizeFT of unauthorized access to or use of your Account. OptimizeFT reserves the right to require you to change your passwords if OptimizeFT believes they are no longer secure. OptimizeFT will have no liability associated with or arising from your failure to maintain accurate Account information. Neither OptimizeFT nor its agents will be liable for any loss or damages of any kind that may arise as a result of the unauthorized access to or use of your Account (with or without your knowledge), except to the extent the foregoing limitation is prohibited by applicable law. You are responsible for all use of your Account and for ensuring that use of or access to your Account complies fully with these Terms. By using the App, you authorize OptimizeFT to receive information from the Card issuer regarding your Card transactions.

3. OptimizeFT Not a Bank

OptimizeFT is not a bank or a money services business as defined by the United States Department of Treasury and does not offer those services. OptimizeFT does not issue payment cards (including Debit, Credit or Prepaid Cards) of any kind. The App may allow you to access certain financial services, such as remote check deposit, check writing and bill payment. These services and others may be provided by third party service providers, not OptimizeFT, and you must enter into a separate agreement with the third party service provider in order to use these services. OPTIMIZEFT MAKES NO REPRESENTATIONS THAT YOUR CARDS ARE VALID OR IN GOOD STANDING OR WITH RESPECT TO THE USE, ACCURACY, OR OPERATION OF SUCH FINANCIAL SERVICES.

If you have any concerns with respect to any transaction made using your Card, you must contact the merchant with which you entered into that transaction. You may also have certain rights and protections under your agreement with the bank or financial institution that issued your Card or under applicable law with respect to the charges for transactions made to your Cards. Consult your agreement with your Card issuer for details.

4. Licenses

So long as you comply with these Terms,

(a) OptimizeFT grants you a limited, non-exclusive, as-is, revocable, non-transferable license, without right of sublicense, to use the App solely for the purpose of managing your Cards. You may download information from the App and print out hard copies for your personal use, so long as you do not remove any copyright or other notice as may be contained in such information, as downloaded; and

(b) OptimizeFT grants you a limited, non-exclusive, as-is, revocable, non-transferable license, without right of sublicense, to use the App downloaded directly from an OptimizeFT Website or from a legitimate marketplace (such as the Apple Store or Google Play), solely in object code format, for your personal use for lawful purposes, on a single compatible mobile device you own

or control, and to access and use the App in accordance with these Terms. You may not reproduce, distribute, publicly display, or publicly perform the App. You may not use the App for any purpose other than a purpose for which the App is expressly designed. The term App, as used in these Terms, includes any update or modification to the App made available to you by OptimizeFT (unless provided with separate terms). If you are prohibited under applicable law from using the App, you may not use it.

5. Ownership

As between you and OptimizeFT, OptimizeFT owns and retains all right, title, and interest, including all intellectual property rights, in and to (a) the App and all content contained therein and (b) an OptimizeFT systems and services (collectively, the “**OptimizeFT Property**”). OptimizeFT, its licensors, or third-party partners own and retain all right, title, and interest in all names, trade names, trademarks, service marks, slogans, logos, domain names, or other indicia of OptimizeFT or its licensors or third party partners used in connection with the App (collectively, the “**OptimizeFT Trademarks**”). You have no right to use any OptimizeFT Trademark in any manner without the advance written permission of the owner of that OptimizeFT Trademark. OptimizeFT reserves all rights in the OptimizeFT Property and OptimizeFT Trademarks not expressly granted to you in these Terms.

6. Your Conduct

You may not use the App for any purpose other than as set forth in these Terms. Without limitation of the foregoing, you will not: (a) use the App or any of the content contained therein in connection with any fraudulent or illegal conduct, transaction, or business, as determined by OptimizeFT in its sole discretion; (b) “spam” others or “phish” for others’ personal information; (c) register for an Account by automated means or under false or fraudulent pretenses or create or use a false identity; (d) disrupt, interfere with, circumvent, or interfere with any security mechanism used by or on behalf of OptimizeFT, including in the App; (e) disrupt or interfere with any other user’s enjoyment of the App; (f) use, frame, or use framing techniques to enclose any OptimizeFT Trademarks or other proprietary information; (g) use meta tags or any other “hidden text” using OptimizeFT Trademarks; (h) use the App in a manner that is defamatory, inaccurate, profane, threatening, invasive of a person’s privacy, violative of any third party proprietary rights, or in violation of any law or regulation; (i) transmit any viruses, worms, defects, Trojan horses, or any programming of a destructive nature; (j) use or launch any automated system, including “robots,” “spiders,” or “offline readers,” to access the App; (k) act as an intermediary, aggregator, or service bureau yourself or on behalf of any third party; (l) rent, lease, loan, trade, sell, re-sell, or otherwise charge any party for access to the App; (m) decompile, reverse engineer, or otherwise access or attempt to access the source code for the App or otherwise relating to the App, or make or attempt to make any modification to the App (except to the extent the foregoing prohibition is not permitted under applicable law); (n) gain access to or use any OptimizeFT services or systems or the App other than as permitted under these Terms, or damage, disrupt, or impede the operation of any OptimizeFT services or systems; or (o) attempt to do any of the foregoing acts, or assist or permit any person in engaging in any of the foregoing acts.

7. Text Messages and Carrier Fees

(a) *Text Messages*. If you have a mobile carrier that supports App text messages, when you register for the App, you may elect to receive various notices in the form of text messages sent to your mobile device. By making that election, you expressly agree and consent to receive those text

messages. Your standard messaging, airtime, and data rates will apply. The number of messages you will receive each month will vary according to the number of transactions in which you engage and the preferences you select during the registration process. You may change your preferences at any time by logging into your Account and editing your preferences in your Account settings.

(b) *Messages May be Delayed.* If your mobile device is off, out of range, or subject to a variety of other conditions, you may not receive all messages or messages may be delayed. Cellular and other wireless transmission *services* and networks are inherently insecure and subject to service disruptions, weak or dropped signals, and other failures over which OptimizeFT has no control. OPTIMIZEFT ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY DELAYS OR FAILURE TO RECEIVE TEXT MESSAGES OR OTHER MOBILE-BASED INFORMATION OR ANY SECURITY BREACHES RELATED TO ANY OF THE FOREGOING.

(c) *Carrier Fees.* You are responsible for any fees and penalties charged by your telecommunications provider or any other third party in connection with your use of the App on your mobile device.

8. Modifications to the App

(a) *Information.* The information displayed on the App may include technical inaccuracies or typographical errors. OptimizeFT may, from time to time, amend, change, add, delete, update or alter the information contained on the App without notice.

(b) *Fees and Charges.* While OptimizeFT currently makes the App available free of charge, OptimizeFT may in the future charge for the App (or additional features or functionality) at any time, in its sole discretion, and will notify you in advance of such future charges to the extent required under applicable laws. OptimizeFT may also discontinue, modify, or change the App or any OptimizeFT services and systems at any time and will notify you in advance of such discontinuance, modification, or change to the extent required under applicable laws. These changes may require you to update your Account information in order to continue using the App. OptimizeFT will not have any liability or obligation to you with regard to any modifications or changes it makes to the App or any OptimizeFT services or systems.

(c) *Modifications to these Terms.* OptimizeFT may, at any time and from time-to-time, change the terms of these Terms or provide other disclosures or notices regarding the App by posting them on an OptimizeFT Website or App, delivering them to you through the App, or emailing them to you at the email address associated with your Account. You will be deemed to have received those disclosures and notices within twenty-four (24) hours after OptimizeFT posts or delivers them or emails them to you. If you do not accept those revisions to these Terms or other disclosures or notices regarding the App, your only recourse is to stop using the App and terminate your account. Your continued use of an OptimizeFT Website or the App after such effective date will constitute your acceptance of the revisions that apply to that service.

9. Feedback

From time to time, OptimizeFT may ask you for (or you may independently provide OptimizeFT with) your feedback, suggestions, comments, or ideas (collectively “**Feedback**”) on the App or other OptimizeFT products or services, but you are not required to provide any such Feedback. You agree that OptimizeFT may use and exploit all Feedback you provide for any purpose without

obligation of any kind and without any obligation of confidentiality, attribution, accounting, compensation, or other duty to account to you.

10. Your Representations

You represent and covenant that (a) the information you provide to OptimizeFT in connection with your registration for an Account is true and correct and you will keep it accurate and up-to-date at all times and (b) you will comply with these Terms and all applicable local, state, federal, and international laws, rules, and regulations in connection with your use of the App.

11. Your Content

An “**Interactive Forum**” means any group, club, discussion area, upload functionality, message board, chat room, or similar interactive service appearing on the App. You must comply with the instructions on the App in order to contribute to any Interactive Forum. OptimizeFT is not responsible for material appearing in any Interactive Forum and does not screen such material in any way. However, OptimizeFT retains the right to modify or remove such material for any reason or for no reason.

You are solely responsible for all material you contribute to an Interactive Forum, including the concepts, ideas, documents, texts, photographs, audiovisual footage and other material contained therein (“**Your Content**”). You may not use any Interactive Forum for commercial purposes. You may not post material known or reasonably suspected to be false. By contributing Your Content to the App, you understand, represent, and agree that: (a) Your Content complies with these Terms; (b) Your Content is your original and sole creation; (c) Your Content does not infringe upon any third party rights, including but not limited to patent, copyright, trademark, trade dress, design right, rights of publicity or privacy or other proprietary right; (d) Your Content is not obscene, abusive, defamatory, slanderous or libelous and does not depict any person, entity or product in a false light or otherwise violate any law and (e) you have obtained any consents necessary to grant OptimizeFT the license granted in this section. OptimizeFT is not subject to any obligation of confidentiality with respect to Your Content except as specifically agreed in writing by OptimizeFT or as required by law. You hereby grant OptimizeFT an irrevocable, fully paid-up, royalty-free, perpetual, transferable, sub-licensable, non-exclusive, worldwide license to use, copy, publish, distribute, adapt, create derivative works from, and modify Your Content in any and all media now known or hereafter devised, for any purpose. Although you retain ownership of original, unmodified content, you waive and agree not to assert any intellectual property rights against OptimizeFT resulting from its alteration of Your Content.

12. Third Party Sites

The App may contain third party content and links to third party sites or popups served by or on behalf of third parties that are independent of the App and not owned or controlled by OptimizeFT (“**Third-Party Sites**”). Links to Third Party Sites are included, and popups served by or on behalf of third parties are facilitated, solely for your convenience and do not constitute any approval, endorsement, or warranty by OptimizeFT. Moreover, OptimizeFT is not responsible for the content, security, operation, or use of any Third Party Sites, the products or services that may be offered or obtained through them, or for the accuracy, completeness, or reliability of any information obtained from a Third Party Site. When you click on a link to or in a pop-up of a Third-Party Site, you will leave the services controlled by OptimizeFT. Any personal information you submit after you leave the App will not be collected or controlled by OptimizeFT. It will be

subject to the privacy notice and terms of use applicable to that Third-Party Site. It is your responsibility to review those policies before submitting your information to the Third-Party Site and you provide your information at your own risk. YOU EXPRESSLY RELIEVE OPTIMIZEFT FROM ANY AND ALL LOSS, DAMAGES OR OTHER LIABILITIES YOU INCUR AS A RESULT OF YOUR ACCESS TO OR USE OF ANY THIRD-PARTY SITE.

13. Indemnity

You hereby indemnify and hold harmless OptimizeFT and its business partners, and its and their officers, directors, employees, representatives, and affiliates (the “**Indemnified Parties**”) from and against any and all claims, liabilities, damages (actual and consequential), losses, fines, and expenses (including legal and other professional fees and costs of investigation) arising from or in any way related to: (a) your use of the App; (b) your (or anyone using your Account’s) breach of these Terms or applicable law; (c) your negligence or willful misconduct; (d) any dispute between you and a third party, including any financial institution that has issued you a Card; or (e) your violation of any third party’s rights, including any intellectual property rights. You will cooperate fully as reasonably required in the defense of any claim.

14. Limitation of Liabilities and Warranties

THE APP, INCLUDING THE INFORMATION CONTAINED THEREIN, IS PROVIDED “AS IS,” “AS AVAILABLE,” AND WITH ALL FAULTS. OPTIMIZEFT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. OPTIMIZEFT DOES NOT WARRANT THAT THE APP OR THE INFORMATION CONTAINED THEREIN WILL BE ACCURATE OR COMPLETE, OR THAT THE USE OF THE APP WILL BE ERROR FREE, UNINTERRUPTED, FREE FROM SPYWARE, MALWARE, ADWARE, VIRUSES, WORMS, OR OTHER MALICIOUS CODE, OR WILL FUNCTION TO MEET YOUR REQUIREMENTS. OPTIMIZEFT DOES NOT WARRANT THAT THE APP WILL WORK ON YOUR HARDWARE, WITH YOUR OPERATING SYSTEMS, OR WITH ANY OTHER SOFTWARE INSTALLED ON YOUR COMPUTERS OR MOBILE DEVICES. INFORMATION OBTAINED BY YOU FROM OPTIMIZEFT WILL NOT CREATE ANY WARRANTIES. YOU ASSUME ALL RISKS ASSOCIATED WITH YOUR USE OF THE APP. IT IS YOUR SOLE RESPONSIBILITY TO DETERMINE WHETHER THE APP IS SUITABLE AND ADEQUATE FOR YOUR NEEDS.

REGARDLESS OF WHETHER ANY REMEDY IN THESE TERMS FAILS ITS ESSENTIAL PURPOSE, THE INDEMNIFIED PARTIES ARE NOT AND WILL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING PUNITIVE, SPECIAL, DIRECT, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES ARISING FROM ANY PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF USE, LOSS OF BUSINESS, ECONOMIC LOSS, OR LOSS OF USE, DATA, OR PROFITS, WITHOUT REGARD TO THE FORM OF ANY ACTION, INCLUDING BUT NOT LIMITED TO, CONTRACT, NEGLIGENCE, OR TORT (INCLUDING NEGLIGENCE), ARISING OUT OF OR IN CONNECTION WITH: (A) THESE TERMS; (B) THE USE, COPYING, OR DISPLAY OF, OR THE INTERACTION OR ANY OTHER FORM OF COMMUNICATION WITH, THE APP AND THE INFORMATION CONTAINED THEREIN; (C) ANY INTERRUPTION OF SERVICE RELATED TO THE APP; (D) YOUR USE OF YOUR MOBILE DEVICE,

INCLUDING ANY LACK OF ATTENTION TO YOUR SURROUNDINGS RESULTING FROM SUCH USE; OR (E) THE UNAUTHORIZED ACCESS BY ANY PARTY TO ANY OPTIMIZEFT SERVICES AND SYSTEMS, INCLUDING PERSONAL INFORMATION, EVEN IF ANY OF THE INDEMNIFIED PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST THE INDEMNIFIED PARTIES ARISING OUT OF YOUR USE OF THE APP, YOUR MOBILE DEVICE, OR THESE TERMS. WITHOUT LIMITING THE FOREGOING, OPTIMIZEFT IS NOT RESPONSIBLE FOR ANY MOBILE CARRIER FEES OR PENALTIES THAT YOU INCUR AS A RESULT OF YOUR USE OF THE APP.

NOTWITHSTANDING THE FOREGOING, THE INDEMNIFIED PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE WILL NOT, UNDER ANY CIRCUMSTANCES, EXCEED ONE HUNDRED U.S. DOLLARS (US \$100). THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY EXCEPT TO THE EXTENT EXPRESSLY PRECLUDED BY APPLICABLE LAW. IN THOSE JURISDICTIONS, ALL OR A PORTION OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU AND THE SCOPE AND DURATION OF THE INDEMNIFIED PARTIES' WARRANTIES AND THE EXTENT OF THEIR LIABILITY WILL BE THE MINIMUM PERMITTED UNDER APPLICABLE LAW.

15. Assignment

You may not assign or transfer your rights or obligations under these Terms. Any purported transfer or assignment in violation of the foregoing is invalid.

16. Waiver; Invalidity

An OptimizeFT failure or delay to exercise or enforce any right or provision of these Terms or any rights under applicable laws will not constitute a waiver of any of those provisions or rights. If any provision of these Terms is found by an arbitrator or a court of competent jurisdiction to be invalid, the parties agree that the arbitrator or court will endeavor to give effect to the parties' intentions as reflected in the provision and the other provisions of these Terms will remain in full force and effect.

17. Entire Agreement

These Terms constitute the entire agreement between OptimizeFT and you with respect to the App and supersede all prior or contemporaneous communications, agreements, and understandings between OptimizeFT and you with respect to the subject matter hereof.

18. Termination

These Terms are effective until terminated as provided in herein. OptimizeFT may suspend or terminate your use of the App at any time, with or without cause and without notice, including in the event OptimizeFT believes: (a) your contact information is not up-to-date or you do not respond to communications directed to you; (b) the information you have provided to obtain your Account is false, inaccurate, not current, or incomplete; (c) you are engaged in illegal activity; (d) you have breached any of these Terms; or (e) your Account has been inactive for more than thirteen (13) months. You may terminate these Terms for any reason or no reason at all, at your

convenience, by ceasing all use of the App. Upon termination of these Terms for any reason, the rights and licenses granted to you with respect to the App will immediately terminate and you will have to immediately cease all use of the App. The terms, conditions, and warranties contained in these Terms that by their nature and context are intended to survive the termination of these Terms will survive, including the following Sections: 5 (Ownership), 6 (Your Conduct), 9 (Feedback), 11 (Your Content), 12 (Third Party Sites), 13 (Indemnity), 14 (Limitations of Liabilities and Warranties), and 15 (Assignment) through 25 (Interpretation). OptimizeFT will have no liability to you for any damages or other claims arising from the termination or suspension of your access to the App.

19. Force Majeure

OptimizeFT will not be liable for any delay or failure to perform its obligations hereunder resulting from any cause beyond its reasonable control, including telecommunications, power, or utility failures.

20. Relationship of the Parties

These Terms do not create and will not be construed as creating a joint venture, co-ownership, partnership, or agency relationship between you and OptimizeFT.

21. OptimizeFT Third-Party Beneficiaries

There are no third-party beneficiaries to these Terms.

22. Notifications

Unless provided otherwise by OptimizeFT in connection with the App, all notices required from you under these Terms must be sent to the addresses set forth below or otherwise specified by OptimizeFT from time-to-time, in its sole discretion. You consent to receiving certain electronic communications from OptimizeFT as further described in our Privacy Policy. Please read the Privacy Policy to learn more about all OptimizeFT electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that OptimizeFT sends to you electronically will satisfy any legal communication requirements, including that those communications be in writing.

OptimizeFT address for notice:

Optimize Financial Technology, Inc.
Attention: Chief Compliance Officer
113 West G Street; Unit 803
San Diego, CA 92101

23. Governing Law

These Terms are governed by the laws of the State of California without regard to conflict of law principles. If [Section 24](#) is declared null and void in its entirety, then you and OptimizeFT agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within San Diego County, California for the purpose of litigating any dispute. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may have arising out of or related to these Terms must be filed within one (1) year after the claim or cause of action arose.

24. Dispute Resolution and Arbitration

(a) *Generally.* In the interest of resolving disputes between you and OptimizeFT in the most expedient and cost-effective manner, you and OptimizeFT agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in *court*. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND OPTIMIZEFT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

(b) *Exceptions.* Despite the provisions of Section 24(a), nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (i) bring an individual action in small claims court; (ii) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (iii) seek injunctive relief in a court of law; or (iv) to file suit in a court of law *to* address an intellectual property infringement claim.

(c) *Arbitration.* Any arbitration between you and OptimizeFT will be settled under the U.S. Federal Arbitration Act and governed by the Commercial Dispute Resolution Procedures and the Supplementary *Procedures* for Consumer Related Disputes (collectively, “**AAA Rules**”) of the American Arbitration Association (“**AAA**”), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879.

(d) *Notice; Process.* A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if such other party has not provided a current physical address, then by electronic mail (“**Notice**”). OptimizeFT address for Notice under this Section 24 is: Optimize Financial Technology, Inc., 113 West G Street, Unit 803, San Diego, CA 92101, Attention: Chief Compliance Officer. The Notice must: (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within thirty (30) days after the Notice is received, you or OptimizeFT may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or OptimizeFT must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in your favor, OptimizeFT will pay you the highest of the following: (A) the amount awarded by the arbitrator, if any; (B) the last written settlement amount offered by OptimizeFT in settlement of the dispute prior to the arbitrator’s award; or (C) one thousand U.S. dollars (US \$1,000).

(e) *Fees.* If you commence arbitration in accordance with these Terms, OptimizeFT will reimburse you for your payment of the filing fee, unless your claim is for more than ten thousand U.S. dollars (US \$10,000), in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in San Diego County,

California, but if the claim is for ten thousand U.S. dollars (US \$10,000) or less, you may choose whether the *arbitration* will be conducted: (i) solely on the basis of documents submitted to the arbitrator; (ii) through a non-appearance based telephone hearing; or (iii) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in U.S. Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse OptimizeFT for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator's ruling on the merits.

(f) *No Class Actions.* YOU AND OPTIMIZEFT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A *PLAINTIFF* OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and OptimizeFT agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

(g) *Modifications to this Arbitration Provision.* If OptimizeFT makes any future change to this arbitration *provision*, other than a change to the OptimizeFT address for Notice, you may reject the change by sending us written notice within thirty (30) days of the change to the OptimizeFT address for Notice, in which case your Account will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

(h) *Enforceability.* If Section 24(f) is found to be unenforceable or if the entirety of this Section 24 is found to be unenforceable, then the entirety of this Section 24 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 23 will govern any action arising out of or related to these Terms.

25. Interpretation

The section headings in these Terms are for convenience only and have no legal or contractual effect. For purposes of these Terms: (a) the words "include," "includes" and "including" will be deemed to be followed by the words "without limitation"; (b) the words "such as", "for example" "e.g." and any derivatives of those words will mean by way of example and the items that follow these words will not be deemed an exhaustive list; (c) the word "or" is used in the inclusive sense of "and/or" and the terms "or," "any," and "either" are not exclusive; and (d) the singular includes the plural and the plural includes the singular. No ambiguity will be construed against any party based on a claim that the party drafted the language.