

# **OUTSERVED TERMS OF USE**

## **I. ABOUT THESE TERMS**

## **II. ABOUT THE SITE**

## **III. ACCOUNTS**

## **IV. TRANSACTIONS**

## **V. GENERAL USER CONDUCT**

## **VI. INTELLECTUAL PROPERTY**

## **VII. NO ENDORSEMENT**

## **VIII. THIRD PARTY TERMS**

## **IX. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION**

## **X. DISPUTES & DISPUTE RESOLUTION**

## **XI. MISCELLANEOUS**

## **I. ABOUT THESE TERMS OF USE**

### **Introduction**

Outserved provides an online marketplace for coupons and news to end users for products and services that they wish to procure, and sellers who wish to display mobile coupons for the same or related products and services.

### **Key Terms**

As used in these Terms of Use:

- **"Outserved," "we," or "us"** means Outserved, our affiliates, service providers, licensors and our and their respective officers, directors, employees, contractors and agents.
- **"App"** means any and all downloadable applications (including, mobile applications) made available by Outserved, through which access to Outserved's online marketplace and/or related features, functionality, tools and content is available. References to the "App" include any and all features, functionality, tools and content available on or through each such application.
- **"Buyer"** means any person or entity that uses the Platform to obtain coupons.
- **"Platform"** means, collectively, the Services, the Website and the App.
- **"Platform Content"** means any and all information and content, including graphics, buttons, images, data compilations, software, HTML code, artwork, text, video clips, audio clips, trademarks, service marks, logos, slogans, trade names and trade dress, that is posted, uploaded, published, submitted, transmitted, communicated or otherwise made available on or through the Platform, excluding a User's own User Content.
- **"Seller"** means any person or entity that is provided access to submit coupons on or through the Platform and operates from a traditional brick and mortar business site.
- **"Services"** means any and all services and promotions provided by Outserved and its service providers in connection with Outserved's online marketplace, including, referral services, payment processing services and support services.
- **"Transaction"** means any proposed or completed purchase or sale of products or services between a Buyer and Seller initiated on or through the Platform. References to Transactions "conducted on the Platform" will include all of the foregoing.

- **"User Content"** means any and all information and content that is (1) posted, uploaded, published, submitted, transmitted, communicated or otherwise made available by a User on or through the Platform, including any and all requests for quotes and quotes, or (2) communicated by a User outside of the Platform in connection with any Transaction. References to User Content that is "shared" or "submitted" (or any variation thereof) will include all of the foregoing.
- **"Users"** means any and all persons or entities that access or use the Platform, including Buyers and Sellers. References to "access" and/or "use" of the Platform (and any variations thereof) include the acts of accessing or browsing the Website or App, and accessing or using the Services.
- **"Website"** means any and all websites owned or operated by Outserved (including the website currently located at [www.OutservedApp.com](http://www.OutservedApp.com)), through which access to Outserved's online marketplace and/or related features, functionality, tools or content is available. References to the "Website" include any and all features, functionality, tools and content available on or through each such website.

### **Applicable Terms**

Use of the Platform is governed by the terms and conditions of these Terms of Use, our Privacy Policy located at [www.Outserved.com/#/privacy](http://www.Outserved.com/#/privacy), which describes how we collect and use information about Users, and any and all other policies and rules referenced herein, posted on the Website, App or otherwise communicated to Users (the **"Platform Rules"**), all of which are hereby incorporated and made part of these Terms of Use.

Certain of the features, functionality, tools, content and promotions available on or through the Platform may be subject to additional or supplemental terms and conditions (**"Supplemental Terms"**). If you choose to access or use those features, functionality, tools or content or participate in those promotions, the applicable Supplemental Terms are also incorporated and deemed part of these Terms of Use. If there is a conflict between these Terms of Use and the Supplemental Terms, the Supplemental Terms will govern and control with respect to the applicable features, functionality, tools, content and promotions.

PLEASE READ THESE TERMS OF USE, OUR PRIVACY POLICY, PLATFORM RULES AND ALL APPLICABLE SUPPLEMENTAL TERMS (COLLECTIVELY, THE **"TERMS"**) CAREFULLY, AS THEY CONTAIN TERMS AND CONDITIONS THAT IMPACT YOUR RIGHTS, OBLIGATIONS AND REMEDIES IN CONNECTION WITH YOUR USE OF THE PLATFORM. FOR EXAMPLE, THE TERMS INCLUDE:

- YOUR OBLIGATION TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS
- LIMITATIONS OF OUR LIABILITY TO YOU
- A REQUIREMENT THAT YOU SUBMIT CLAIMS AGAINST US TO FINAL AND BINDING ARBITRATION
- A REQUIREMENT THAT YOU PURSUE CLAIMS OR SEEK RELIEF AGAINST US (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, RATHER THAN AS A PARTICIPANT IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING

### **Your Agreement**

BY ACCESSING OR USING THE PLATFORM YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND THE TERMS, AND THAT YOU AGREE TO COMPLY WITH AND BE LEGALLY BOUND BY THE TERMS.

IF YOU DO NOT AGREE TO THE TERMS, YOU MAY NOT ACCESS OR USE THE PLATFORM.

### **Amendment of Terms**

Outserved reserves the right, in its sole discretion, to amend the Terms, at any time and without prior notice, including to modify, add to, or remove terms and conditions. If we choose to amend the Terms, we will update the "Last Updated" date at the top of the Terms and post the updated version. We may also, at our option, choose to notify you by e-mail or another means.

If the modified Terms are not acceptable to you, your only recourse is to stop using the Platform. By continuing to use the Platform after we have posted an updated version of the Terms or otherwise notified you of an update, you are affirming that you agree to be bound by the amended Terms.

No other modification, amendment, supplement of or to the Terms will be binding on Outserved unless it is in writing and signed by an authorized representative of Outserved.

### **Authority**

If you accept or agree to the Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to act on behalf of and bind that entity to the Terms. Any account that you create on behalf of that entity will be owned and controlled by the entity, and the terms "**Buyer**," "**Seller**," "**User**," and "**you**" (as applicable) will refer and apply to that entity.

### **Consequences of Non-Compliance**

Your failure to comply with the Terms may result in the suspension or termination of your account and/or access to the Platform, and may subject you to civil and criminal penalties.

### **International Users**

The Platform is controlled and operated within the United States and is not intended for use outside of the United States. You are hereby prohibited from accessing or using the Platform from any territory where the Services, Website, App, or any of the features, functionality, tools, content thereof, is illegal. If you choose to access the Platform from a location outside the United States, you do so at your own risk and you are solely responsible for compliance with applicable laws, rules and regulations, including U.S. export laws and any regulations and local laws regarding online conduct and content.

## **II. ABOUT THE PLATFORM**

### **Role of the Platform in Transactions**

The online marketplace provided by Outserved is intended to facilitate the procurement process for digital coupons, as further described in the "Transactions" section below. Any and all Transactions conducted on the Platform are strictly between the Buyer and Seller. Outserved is not a party to any such Transaction, or to any contract between a Buyer and Seller.

You hereby acknowledge and agree that:

- Outserved's role in the Transactions conducted on the Platform is limited to acting providing referral services and serving as a limited payment collection agent for Sellers for the purpose of accepting payments from Buyers on their behalf
- Outserved is not a distributor, seller or reseller of any of the products or services provided by any Seller or its affiliates, including as the term "seller" is used in the uniform commercial code in any applicable jurisdiction
- Outserved is not a broker, contracting agent or insurer
- Outserved has no control over the appropriateness of the content of any requests for quotes issued by Buyers, quotes submitted by Sellers, or any other User Content
- Outserved make no representation or warranty as to the timeliness, relevance, truth or accuracy of any User Content
- Outserved has no control over the existence, quality, safety, condition, legality or suitability of any products or services provided by a Seller or its affiliates
- Outserved does not hold title to any of the products in a Transaction, which title will pass directly between the Seller and the Buyer
- Outserved does not take possession or control of any products in a Transaction
- Outserved does not coordinate the shipping, delivery, or other transfer of the products in a Transaction
- Outserved does not verify the identity or creditworthiness of Buyers or Sellers or otherwise vet their credentials or backgrounds, including the ability of Sellers to deliver or the ability of Buyers to pay for any products or services in a Transaction
- Outserved has no control over the conduct of Buyers, Sellers or other Users of the Platform, and cannot

cause them to deliver or pay for products or services

Buyers and Sellers conduct Transactions on or through the Platform at their own risk. Outserved disclaims all liability in regard to such Transactions to the maximum extent permitted by law.

You hereby release Outserved from any and claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected any dispute you may have with one or more other Users. You expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.

You agree that any legal remedy or liability that you seek to obtain for acts or omissions of other Users or other third parties will be limited to a claim against the particular User or third parties who caused you harm. You agree not to attempt to impose liability on or seek any legal remedy from Outserved with respect to such acts or omissions.

This limitation will not apply to any claim by a Seller against Outserved regarding the remittance of payments received from a Buyer by Outserved on behalf of a Seller, which instead shall be subject to the limitations described in the subsection entitled "Limitation of Liability" in Section IX (Warranties, Disclaimers, Limitation of Liability & Indemnification) below.

### **Product Information and Other Platform Content**

The product information available on the Platform (including information displayed in search results), and all other Platform Content, is provided "AS IS," without warranty express or implied, and for information purposes only. Although we endeavor to present complete, accurate and up-to-date information, the information that we make available is created and maintained by a variety of external sources that themselves may not be complete, accurate or up-to-date. Such information may contain technical inaccuracies or typographical errors. We do not control, monitor, independently verify or guarantee the information provided by such external sources. Nor do we endorse any claims or opinions expressed in Platform Content.

It is your responsibility to review the official manufacturer product label information, applicable regulations, and otherwise research and determine the completeness, accuracy, timeliness and usefulness of the Platform Content for yourself using your professional judgment.

In no event will we or our data providers be responsible or liable, directly or indirectly, for any damage or loss caused, or alleged to be caused, by or in connection with the use of or reliance on any Platform Content, including information that is incomplete, incorrect, outdated, deceptive or fraudulent.

The Platform Content, including product information is made available is provided under a limited non-exclusive, revocable, nontransferable license, and may not be redistributed or used to develop a stand-alone database. Further, the Platform Content may include materials covered by registered copyrights and trademarks. All rights not expressly granted herein are reserved by the intellectual property owners.

Sellers are responsible for creating Seller's own locations (or geofences) on Seller's property.

### **Modifications and Updates to the Platform**

Outserved reserves the right, in its sole discretion, to modify or discontinue offering the Platform, in whole or in part, including any of the Services, Website or App, or any features, functionality, tools or content thereof, at any time, for any reason or no reason, with or without notice to you.

We may from time to time develop and provide updates for the App, which may include upgrades, bug fixes, patches and other error corrections and/or new features, functionality, tools or content (collectively, "Updates"). Updates may also modify or delete features, functionality, tools or content in their entirety. Based on your mobile device settings, when your mobile device is connected to the Internet either: (a) the Updates will automatically download and install; or (b) you may receive notice of or be prompted to download and install available Updates. Please promptly download and install all Updates. If you do not, portions of the App may not properly operate. All Updates will be deemed part of the App and be subject to all terms and conditions of the Terms.

You agree that Outserved has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or content, and will not be liable with respect to any such modifications, discontinuance or deletions.

## **Eligibility**

The Platform is intended for use by persons who are 18 years of age or older. If you are between 13-18 years of age, you may browse the Website or App with the express consent of your parent(s) or guardian(s), but you may not register for an account or submit any personally identifiable information about yourself, including your name, address or e-mail address. If we discover that we have collected any personally identifiable information from a child under the age of 18, we will suspend the associated account and remove that information from our database as soon as possible. By registering for an account or submitting any personally identifiable information to us, you represent and warrant that you are 18 years of age or older. Use of the Platform by anyone under 13 is expressly prohibited. By using the Platform, you represent and warrant that you are at least 13 years of age or older.

## **III. ACCOUNTS**

### **Account Registration**

In order to access certain features, functionality, tools and content of the Platform, you must register to create an account. You may register to create an account directly on the App, or through certain third-party social networking websites, as further described in this section.

You may not register for an account on behalf of any person (other than yourself) or any entity on behalf of which you are not authorized to act.

No person or entity may have more than one active account at any given time.

### **Account Set-Up**

Your account and account profile page will be created based upon the information you provide to us or that we obtain via a third-party professional or social networking website (a "**social media site**"), as described below.

You agree to provide complete, accurate and up-to-date information during the registration process and to update such information as necessary to ensure that it remains complete, accurate and up-to-date. Please note that the company name and any individual contact names and information that you submit when you register for an account may be shared with other Users, for example (i) with Sellers when you request coupons as a Buyer, and (ii) with Buyers when you submit coupons as a Seller.

Outserved reserves the right to suspend or terminate your account or your access to the Platform if you create more than one account, or if any information provided during the registration process or thereafter is determined to be incomplete, inaccurate, out dated, deceptive or fraudulent.

When you create your account, you will be asked to create a username and password, which you will be solely responsible for safeguarding. You agree not to disclose your username or password to any third party, and you agree to immediately notify Outserved of any unauthorized use of your account. You further acknowledge and agree that you will be solely responsible for any activities or actions on or through your account, whether or not you have authorized such activities or actions.

### **Social Media Registration**

In addition to registering directly through our Website or App, you may also be able to register for an account through certain social media sites (including, for example, LinkedIn) by linking your account with the social media site account (or, "**social media account**"). You can do this by either (i) providing your social media account login information to Outserved or (ii) allowing Outserved to access your social media account, as permitted under the applicable terms and conditions that govern your use of the social media account. You represent that you are entitled to disclose your social media account login information to Outserved and/or grant Outserved access to your social media account for the purposes described herein, without breach by you of the terms and conditions that govern your use of the applicable social media site and without obligating Outserved to pay any fees or making Outserved subject to any usage limitations imposed by such social media site providers.

By granting Outserved access to any social media accounts, you authorize Outserved to access, make available and store any information and content, including profile photos, stored in your social media account, to be made available on your account profile page on the Platform. Depending on the social media account you choose and subject to the privacy settings that you have set in such social media account, personally identifiable information that you post to

your social media account may become available on and through your account with Outserved. All such information and content, if any, will be considered to be your User Content for purposes of the Terms. Outserved makes no effort to review any of your information or content accessed from such social media sites for any purpose, including for accuracy, legality or non-infringement and Outserved is not responsible for any such information or content.

Please note that if a social media account or associated service becomes unavailable or Outserved's access to such social media account is terminated by the social media site provider, the information and content accessed from your social media account may no longer be available on or through your account with us.

You have the ability to disable the connection between your account with us and your social media accounts, at any time, by accessing the "Settings" section of the Website and App. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE SOCIAL MEDIA SITE PROVIDER ASSOCIATED WITH YOUR SOCIAL MEDIA ACCOUNT IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH SOCIAL MEDIA SITE PROVIDER.

### **Account Suspension and Cancellation**

We reserve the right to cancel unconfirmed accounts or accounts that have been inactive for a prolonged period of time. We also reserve the right to cancel accounts of Users who fail to comply with the Terms, including the terms and conditions regarding User conduct, as set forth in the "Transactions" and "General User Conduct" sections below and elsewhere in the Terms.

## **IV. TRANSACTIONS**

### **Overview**

As described above, the Platform is an online marketplace designed to facilitate the procurement of digital coupons for goods and related services. Users that are interested in buying or selling products or services through the Platform must first register for an account. Once you register to become a Buyer, you may obtain coupons from Sellers for their products. Once you register to become a Seller, you will be provided access to quote requests that are within the service or delivery area that you have specified.

### **Buyer Conditions**

As a Buyer, you agree that:

- you will use coupons only with a bona fide intent to purchase the products or services solicited
- Outserved may withhold or withdraw any coupons at any time, in its sole discretion
- *if a Seller or Outserved has questions about a coupon, we have the right, but not the duty, to contact you for further information*
- you will provide timely responses to requests for additional information
- you are responsible for carefully reviewing and considering coupons
- for payments to Sellers that are not processed through the Platform, you will pay all amounts due in a timely manner in accordance with the terms that you have accepted
- Outserved may use a third-party payment processing service and that Outserved will not be liable for the acts or omissions of such service
- Outserved never takes ownership or possession of products from Sellers, and, hence, does not transfer legal ownership of products from the Seller to the Buyer
- you are responsible for redeeming the coupon(s) for products and/or services directly with the Seller
- you are responsible for complying with all laws, rules and regulations applicable to the sale, purchase, and use of all coupons obtained through the Platform
- you will comply with all other Platform rules, policies and procedures, as updated from time to time
- Outserved has the right to suspend or terminate your account as a result of your breach of this section
- your obligations under the Terms apply to your affiliates, owners, employees, agents, contractors and other intermediaries, and you will ensure the compliance of such persons and entities with the terms hereof

## **Seller Conditions**

As a Seller, you agree that:

- only requests that are within the service or delivery area specified by you will be presented to you
- Outserved may submit your coupons to Buyers on your behalf
- your coupons, descriptions of products and services and other information and content provided by you in connection with a Transaction will be complete, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date
- your coupons may not be immediately transmitted to Buyers (and may take up to 24 hours to be transmitted in some circumstances)
- Outserved may withhold or withdraw a coupon submitted by you at any time, in its sole discretion, including, for example, coupons that are not relevant or responsive to a request, or are otherwise deemed inappropriate
- if a Buyer or Outserved has questions about a coupon, or about any of your products or services, we have the right, but not the duty, to contact you for further information
- you will provide timely responses to requests for additional information
- coupons may include the exact products requested in the quantities requested or may substitute products and/or quantities
- you will fulfill coupons obtained by a Buyer in a timely manner and in accordance with the Buyer's acceptance
- your products and services will:
  - be provided in a first-class and professional manner by qualified personnel
  - comply with all applicable laws, rules and regulations
  - not infringe the rights of any third party, including, intellectual property rights
  - be safe and free from defect and provided in a professional manner by qualified personnel
  - be merchantable and fit for their intended purposes
- Outserved may use a third-party payment processing service and that Outserved will not be liable for the acts or omissions of such service
- all referral fees and other amounts owed to Outserved will be paid in a timely manner, which, except as otherwise specified herein, will be not more than 30 days from invoice
- referral fees are due in connection with all Transactions on the Platform, regardless of whether payment has been collected from the Buyer
- referral fees are non-refundable, regardless of any cancellation, return or refund to the Seller
- interference with the coupons or Transactions of other Sellers is strictly prohibited
- you will resolve all Buyer complaints in a timely manner
- you will provide such additional reporting as may be reasonably requested by Outserved
- you are responsible for complying with all laws, rules and regulations applicable to the sale, purchase and shipment of all products and services purchased through the Platform
- you will comply with all other Platform rules, policies and procedures, as updated from time to time
- Outserved has the right to suspend or terminate your account as a result of your breach of this section
- your obligations with respect to quotes submitted prior to the suspension or termination of your account will survive such suspension or termination

- your obligations under the Terms apply to your affiliates, owners, employees, agents, contractors and other intermediaries, and you will ensure the compliance of such persons and entities with the terms hereof

### **Taxes**

Sellers are solely responsible for all sales taxes, or other taxes.

### **Cancellations, Returns & Refunds**

Outserved reserves the right, but has no obligation, to permit cancellations and refunds, which will be permitted under limited circumstances only. When an order is cancelled or an item returned, Outserved will refund the Buyer any amounts charged in connection with such order or item.

### **Late Payments**

If your account is past due, you will be subject to late fees equal to the lesser of 1.5% per month or the maximum amount permitted by law. In addition, for accounts over 180 days past due, we may retain collection agencies and legal counsel. You agree to pay any such costs of collection. You hereby authorize Outserved to charge your credit card or other payment method on file in the amount of any amount past due or collection costs.

Outserved, or the collection agencies we retain, may also report information about your account to credit bureaus, and as a result, late payments, missed payments, or other defaults on your account may be reflected in your credit report. If you wish to dispute the information Outserved reported to a credit bureau (i.e., Experian, Equifax or TransUnion) please contact us at Credit Inquiries, Outserved, LLC, 121 South Sixth Street, Brownfield, Texas 79316. If you wish to dispute the information a collection agency reported to a credit bureau regarding your account, you must contact the collection agency directly.

### **Liquidated Damages**

The Parties agree that damages resulting from any breach of this agreement would be difficult to determine. Accordingly, the Parties agree to liquidated damages of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00) for any breach of this Agreement.

## **V. GENERAL USER CONDUCT**

In addition to the restrictions and obligations required of Buyers and Sellers in connection with transactions conducted on the Platform, any time you access or use the Platform, you are required to adhere to certain additional restrictions and obligations.

You agree that you will comply with any and all applicable local, state, federal and other laws, rules and regulations, including any and all rulings and orders of any court or administrative body.

You agree that you will not access or use the Platform:

- if you are not able to form legally binding contracts (for example, if you are under 18)
- as a service bureau or otherwise for any purpose other than for your internal, business use
- to obtain, collect or store any information from or about any User other than for purposes of evaluating or executing a Transaction
- to impersonate any person or entity, or falsify or otherwise misrepresent your identity, credentials, affiliations or intentions
- to post, upload, publish, transmit, distribute or otherwise communicate information, opinions or content on or through the Platform, or otherwise act in a manner that:
- violates, breaches or circumvents any local, state, federal or other law, rule or regulation, including any ruling or order of a court or administrative body
- violates, breaches or circumvents the rights of any person or entity, including infringing or misappropriating such party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy
- is fraudulent, false, inaccurate, misleading or deceptive

- is defamatory, obscene, pornographic, vulgar, lewd, offensive or unlawful
- promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group
- is inflammatory, abusive, violent or threatening or promotes violence or actions that are threatening to any other person
- promotes illegal or harmful activities or substances
- is harmful to children
- to "stalk" or harass any other User
- to distribute unsolicited commercial or bulk electronic communications (or, "spam"), chain letters or "pyramid" schemes
- for political campaigning, recruiting votes or soliciting donations or other support for legislative or other initiatives
- to systematically retrieve information or content to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise
- for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, or nuclear, chemical or biological weapons
- for any other purposes that are not expressly permitted by the Terms.

Further, you will not:

- recruit or otherwise solicit any person or entity to join a third-party service or website that is competitive to Outserved or complete any transaction independently of the Platform, in order to circumvent the obligation to pay any fees related to the Platform or for any other reason.
- access, copy, distribute, share, publish, use or store any Platform Content for purposes that are inconsistent with our Privacy Policy, or otherwise violate the privacy rights or any other rights of other Users or any other third party, including by disclosing, selling, renting, distributing or exposing any Platform Content to a third party, using it for marketing purposes, or otherwise using it for any purposes unrelated to the Platform.
- access, copy, distribute, share, publish, use or store, or prepare derivative works from any Platform Content that belongs Outserved, another User or to a third party, including works covered by any copyrights, trademark, patent, or other intellectual property right, except with prior express permission of the person or entity party holding the rights to license such use
- share your user ID or transfer your account to another party without our consent
- circumvent our systems, policies, determinations as to your account status, including by attempting to access or use the Platform if your account has been suspended or cancelled or you have otherwise been temporarily or permanently prohibited or blocked from using the Platform
- use manual or automated software, devices, scripts, robots, backdoors or other means or processes to access, "scrape," "crawl" or "spider" or otherwise collect information from or interact with the Platform
- use, display, mirror or frame the Platform, or any feature, functionality, tool or content of the Platform, Outserved's name, any Outserved trademark, logo or other proprietary information, without Outserved's express written consent;
- interfere with, damage or compromise the Platform or our systems in any way, including through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, backdoors, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology or by imposing an unreasonable or disproportionately large load on our infrastructure
- access or use non-public areas of any of the Platform, Outserved's computer systems, or the technical delivery systems of Outserved's providers
- attempt to probe, scan, or test the vulnerability of any system or network of Outserved or its providers, or breach

any security or authentication measures of such system or network

- avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Outserved or any of Outserved's providers or any other third party to protect the Platform
- forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Platform to send altered, deceptive or false source-identifying information
- attempt to decipher, decompile, disassemble or reverse engineer any of the code or software used to provide the Platform
- export or re-export the Platform, except in compliance with the export control laws and regulations of any relevant jurisdictions
- otherwise abuse the Platform or breach the Terms
- advocate, encourage, or assist any third party in doing any of the foregoing.

### **Reporting Misconduct**

If you feel that another User has violated the Terms, abused the Platform or otherwise acted inappropriately, you may report the User to Outserved at [Support@OutservedApp.com](mailto:Support@OutservedApp.com). Outserved reserves the right, but assumes no obligation, to investigate and take appropriate action in response to such reports. Regardless of its action or inaction, in no event will Outserved be liable for the acts or omissions of any User or any other third party.

### **Investigations**

Outserved has the right to investigate and prosecute violations of any and all reports, complaints and claims, or otherwise suspected misconduct or violations of the law to the fullest extent of the law.

We may access, preserve and disclose your User Content if we are required to do so by law, or if we believe in good faith that it is reasonably necessary to (i) respond to claims asserted against Outserved or to comply with legal process (for example, subpoenas or warrants), (ii) enforce or administer our agreements with users, including the Terms, (iii) for fraud prevention, risk assessment and investigation, or (iv) protect the rights, property or safety of Outserved, its Users or members of the public. You acknowledge that Outserved has no obligation to monitor your access to or use of the Platform or to review or edit any User Content, but has the right to do so for the purpose of operating and improving the Platform (including without limitation for fraud prevention, risk assessment, investigation and customer support purposes), to ensure your compliance with the Terms, to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body, to respond to User Content that it determines is otherwise objectionable or as set forth in the Terms. Outserved reserves the right, at any time and without prior notice, to remove or disable access to any User Content that Outserved, in its sole discretion, considers to be objectionable for any reason, in violation of the Terms or otherwise harmful to the Platform or any of its Users.

### **User Cooperation**

You agree to cooperate with and assist Outserved or its representative in good faith, in any such investigations, including by providing us with such information as we may reasonably request.

### **Account Suspension and Cancellation**

You may cancel your account at any time.

We may, in our discretion, without liability to you and without limiting our other remedies, with or without cause, with or without prior notice and at any time, decide to (a) limit, suspend, deactivate or cancel your account and take technical and legal steps to prevent you from using our Platform, (b) remove any special status associated with your account, (c) review, screen or delay in posting or delivering your requests, quotes and other User Content, (d) withdraw and delete delivered requests and quotes, (e) terminate any pending or accepted Transactions, (f) communicate to other Users that a Transaction has been cancelled, (g) direct Buyers that have accepted quotes from you to consider quotes from other Sellers, (h) refund your Buyers in full for any and all Transactions for which products or services have not yet been delivered or accepted. You will not be entitled to any compensation for any Transactions that were cancelled as a result of a suspension, deactivation or termination of your account or access to the Platform. Please note that if your account is cancelled, we have no obligation to delete any of your User Content.

Without limiting the foregoing, Outserved reserves the right to do any of the foregoing, if Outserved has knowledge

of or suspects in good faith that such User has breached the Terms, including by failing to maintain all federal, state, local and other licenses and registrations required to operate its business, sell its products and services and otherwise fulfill its obligations hereunder. With respect to Sellers, such a breach may include instances where (i) customer complaints regarding a Seller's products or services are excessive in number or severity, or have been inadequately addressed by the Seller, or (ii) a Seller's products or services are unsafe or defective. Any such suspension shall continue until the suspected breach or other concern is cured or otherwise resolved to Outserved's reasonable satisfaction.

Notwithstanding any suspension or cancellation of a User's account or access to the Platform, Users will fulfill any obligations that have accrued prior to the date of such suspension or termination, including obligations to make payments due to Outserved or other Users and delivery of any products and services, as applicable pursuant to any accepted quotes.

### **Policy Enforcement**

When an issue arises, we may consider such User's performance history and the specific circumstances in applying our policies. We reserve the right to choose to be more lenient with policy enforcement in an effort to achieve a fair outcome for all parties involved.

## **VI. INTELLECTUAL PROPERTY RIGHTS AND LICENSES**

### **The Platform**

The Platform, including the Services, Website and App, and all features, functionality, tools and content thereof, is protected by copyright, trademark, patent and other laws of the United States and foreign countries. You acknowledge and agree that the Platform and all intellectual property rights therein are the exclusive property of Outserved. You will not remove, alter or obscure any copyright, trademark, service mark, patent marking, or other proprietary rights notices incorporated in or accompanying the Platform.

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, tag lines, and other trademarks and service marks associated with Outserved or the Platform (the "**Outserved Marks**") are the property of Outserved, and that you are not permitted to use the Outserved Marks without our prior written consent.

Subject to your compliance with the Terms, Outserved grants you a limited non-exclusive, non-transferable license to access and use the Platform, including the right to download and install a copy of the App on each mobile device or computer that you own or control, for your own internal business purposes only, and not for use as a service bureau or other commercial activity.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or content of the Platform in any form or by any means, or sublicense the rights granted in the Terms, except as expressly permitted herein, without the prior written permission of Outserved or the intellectual property owner, as applicable.

This foregoing license is subject to modification or revocation at any time at Outserved's sole discretion.

No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Outserved or its licensors, except for the licenses and rights expressly granted in the Terms. All rights not expressly granted to you by the Terms are hereby reserved.

### **User Content**

In the event that you submit any User Content on or through the Platform, you hereby grant Outserved a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free right and license to use, copy, distribute, publish and display your User Content as necessary for us to provide the Services to you, including, customer support services, and otherwise operate the Platform, including, for product development and de-bugging purposes. You further grant us the right to use, copy, distribute, publish and display your name, city, state and other information in connection with your User Content.

Outserved does not claim any ownership rights in any User Content and nothing in the Terms will be deemed to restrict any rights that you may have to use and exploit any such User Content.

You acknowledge and agree that you are solely responsible for all of your User Content. Accordingly, you represent

and warrant that neither the User Content nor your submission or transmittal of the User Content or Outserved's use of the User Content (or any portion thereof) on or through the Platform will infringe, misappropriate or violate the rights of any person or entity, including patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, rights of publicity or privacy, or result in the violation of any applicable law or regulation.

### **Seller Trademarks**

Without limiting the foregoing, Sellers hereby expressly grant Outserved a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free right and license to (i) include your trade names, logos, tag lines, and other trademarks and service marks (the "**Seller Marks**") in its lists of sellers, both on the Website and App and in marketing and promotional materials for the Platform, and (ii) to make other factual references to your participation as a seller in connection with the Platform. In the event that Seller notifies Outserved of any incorrect or improper usage of any Seller Mark, Outserved agrees to correct such usage in a commercially timely manner.

You further authorize Outserved to include the Seller Marks in other marketing and promotional materials for the Platform; provided that such materials will be subject to your approval, which will not be unreasonably withheld or delayed. Any materials that you fail to disapprove within five (5) business days from the date submitted by Outserved for approval will be deemed approved.

You hereby grant Outserved a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free, sub-licensable (through multiple tiers) right and license to use Seller's Marks as set forth herein.

Outserved acknowledges that (i) except for the limited license set forth herein, the Terms do not transfer any rights in or to any of the Seller Marks, and (ii) any and all goodwill generated through our use of the Seller Marks shall adhere to the benefit of Seller.

### **Feedback**

We welcome and encourage you to provide feedback, comments, ideas and suggestions for improvements, enhancements and modifications to the Platform ("**Feedback**"). You may submit Feedback by e-mailing us, at [Support@OutservedApp.com](mailto:Support@OutservedApp.com). You acknowledge and agree that all Feedback you give us (i) will be treated as non-confidential, and (ii) will be the sole and exclusive property of Outserved. Without limiting the foregoing, you acknowledge that your Feedback may be disseminated or used by Outserved or its affiliates for any purpose whatsoever, including developing, improving and marketing products. You hereby irrevocably transfer and assign to Outserved all of your right, title, and interest in and to all Feedback, including all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein, and waive any moral rights you may have in such Feedback.

You agree to sign and deliver such documents, and otherwise provide such assistance, as may reasonably be required from time to time to perfect Outserved's rights in such improvements, enhancements and modifications.

### **Copyright Policy**

Outserved respects copyright law, and we expect our Users to do the same. It is our policy to terminate in appropriate circumstances the accounts of Users who repeatedly infringe or are believed to be repeatedly infringing the rights of copyright owners.

If you believe that your proprietary work has been copied in a way that constitutes copyright infringement by any content or material on our Platform, please e-mail our registered agent for notification of claims of infringement pursuant to Section 512(c) of the Copyright Act at [DMCA@OutservedApp.com](mailto:DMCA@OutservedApp.com). In your notice, please provide the following information:

1. a physical or electronic signature of a person authorized to act on behalf of the owner of the copyright.
2. a description of the copyrighted work that you claim has been infringed.
3. a description of the material that you claim to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information sufficient to permit us to locate the material.
4. information so that we can contact you, such as address, telephone number and e-mail address.
5. a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

6. a statement that the information in the notification is accurate and, under penalty of perjury, that you are the copyright owner or are authorized to act on behalf of the owner of a copyright that is allegedly infringed.

If you believe that any of your User Content was subsequently removed from the Platform, or to which access was disabled, were improperly removed or disabled, please provide the following Counter-Notification to our Copyright Agent (see 17 U.S.C. Section 512(g) for further detail):

1. your physical or electronic signature.
2. a description of the materials that have been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
3. a statement, under penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
4. your name, address and telephone number, and a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which the address is located, and that you will accept service of process from the person who provided notification of the alleged infringement.

(See 17 U.S.C. Section 512(c)(3) for further detail about the Digital Millenium Copyright Act).

Only DMCA notices should be sent to our registered copyright agent. For other comments or questions regarding the Platform, please contact us at [DMCA@OutservedApp.com](mailto:DMCA@OutservedApp.com).

## **VII. NO ENDORSEMENT**

### **Users; Products and Services of Users**

Outserved does not endorse any Buyer, Seller or other User. Users are required by the Terms to provide accurate information and, although Outserved may conduct certain limited checks and/or institute certain processes designed to help verify information provided by Users, we do not guarantee the completeness or accuracy of any information provided by any User, including the User's purported identity, creditworthiness, credentials or background.

Likewise, Outserved does not endorse the products or services provided by any User. Certain features and functionality of the Platform may enable you to search for and identify products that meet criteria that are specified by you. The results of such searches are generated based on product information provided by third parties, including the product manufacturers. Thus, we do not guarantee that any search results are complete, accurate or up-to-date. Outserved recommends consulting with the manufacturer for proper product label and usage information. Further, the appearance of any product within any search results does not imply Outserved's endorsement of that product, its merchantability or its fitness for any particular purpose. Outserved makes no endorsement or warranty of any kind with respect to the products or services for which information is made available on or through the Platform, or that such information is complete, accurate or up-to-date.

We therefore recommend that you exercise due diligence when deciding to enter into a Transaction with another User, and we will not be responsible or liable for any damage or harm resulting from your interactions with other Users or their products or services.

### **Links to Third Party Websites and Services**

The Platform may also provide links to third-party websites or services. You acknowledge and agree that Outserved is not responsible or liable for (i) the availability, terms or practices of such websites or services, or (ii) the content, products or services available on or through such websites or services, including that any information provided is complete, accurate or up-to-date. Links to such websites or services do not imply any endorsement by Outserved of such websites or services or the content, products or services available on or through such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or services or the content, products or services available on or through such websites or services.

We will not be responsible or liable for any damage or harm resulting from your interactions with such websites or services, or the content, products or services available on or through such websites or services.

## **VIII. THIRD PARTY TERMS**

### **Google Maps**

Some portions of the Platform may implement or utilize Google Maps mapping services, including Google Maps API(s). Your use of Google Maps is subject to [Google's Terms of Use](#). You agree that the proper functioning and operation of the mapping services and the accuracy of guidance information by Google Maps is provided solely by Google, and that Outserved has no liability whatsoever for the mapping services or guidance information. Moreover, Outserved does not operate or have any control over any communications network or device on which the Platform is used. Any failure or malfunction of either the communications network or device on which the Platform, independent or in conjunction with Google Maps are operated shall controlled by service terms of either or both of the operator of the communications network and the manufacturer of the device.

### **Apps Downloaded from Third Party App Stores**

Our App may be available for download from third party app stores which are not owned or operated by Outserved. When downloading, installing, accessing, using or browsing the App, you must comply with any applicable third party terms and conditions, including any End User License Agreement, your mobile device agreement or any wireless data service agreement, and ensure that your use of the App is not in violation of any such terms or conditions.

Without limiting the foregoing, any Apps accessed through or downloaded from Apple's App Store (an "**App Store Download**") may only be used (i) on an Apple-branded product that runs the iOS (Apple's proprietary operating system), and (ii) as permitted by the "Usage Rules" set forth in the Apple App Store Terms and Conditions.

Without limiting the foregoing, the following applies to App Store Downloads:

- You acknowledge and agree that (i) the Terms are concluded between you and Outserved only, and not Apple, and (ii) Outserved, not Apple, is solely responsible for the App Store Download and content thereof. Your use of the App Store Download must comply with the App Store Terms and Conditions.
- You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Download.
- In the event of any failure of the App Store Download to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Download to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Download. As between Outserved and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Outserved.
- You acknowledge that, as between Outserved and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Download or your possession and use of the App Store Download, including: (i) product liability claims; (ii) any claim that the App Store Download fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- You acknowledge that, in the event of any third-party claim that the App Store Download or your possession and use of that App Store Download infringes that third party's intellectual property rights, as between Outserved and Apple, Outserved, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.
- You acknowledge and agree that Apple and its subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Download, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Download against you as a third party beneficiary thereof.
- Without limiting any other terms of the Terms, you must comply with all applicable third party terms and conditions when using the App Store Download.

## **IX. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION**

### **Warranties by Users**

You represent and warrant to Outserved that:

- (i) you have all right, title and interest necessary to accept and agree to the Terms and to grant the rights

granted herein,

- (ii) you will not violate or infringe any federal, state or local laws, rules or regulations or to infringe the rights of any third party, including, any intellectual property, privacy or publicity-related rights, in connection with your User Content, your conduct of any Transactions, your fulfillment of any obligations hereunder or otherwise in connection with your access to or use of the Platform,
- (iii) the exercise by Outserved of the rights granted by you hereunder will not cause Outserved to violate any applicable laws, rules or regulations, or to infringe the rights of any third party,
- (iv) you have obtained and will maintain all federal, state, local and other licenses and registrations required to operate your business, conduct transactions, and otherwise fulfill your obligations hereunder,
- (v) all User Content provided by you will be complete, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date,
- (vi) you will conduct and complete all Transactions in accordance with the pricing, delivery and other terms agreed upon, and otherwise in accordance with the Terms, and
- (vii) you will not recruit or otherwise solicit any person or entity to join third-party services or websites that are competitive to Outserved or complete a transaction independent of the Platform, in order to circumvent the obligation to pay any fees related to the Platform or for any other reasons.
- (viii) you will not recruit or otherwise solicit any person or entity to join a third-party service or website that is competitive to Outserved or complete any transaction independently of the Platform, in order to circumvent the obligation to pay any fees related to the Platform or for any other reason.

Without limiting the foregoing, Sellers further represent and warrant that:

- (i) any and all quotes, descriptions of products and services and other information and content provided in connection with a Transaction will be true, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date,
- (ii) your products and services comply with all applicable laws, rules and regulations and do not infringe the rights of any third party, including, intellectual property or privacy-related rights,
- (iii) your products and services will be safe and free from defect and provided in a first-class, professional manner by qualified personnel and in accordance with the terms and conditions of any applicable quote(s) and the Terms,
- (iv) your products and services will be merchantable and fit for their intended purposes
- (v) you will sell all products in compliance with all applicable laws, rules and regulations,
- (vi) you will address and resolve all complaints promptly and thoroughly (including performing any and all necessary correction and remediation), and
- (vii) you will be responsible for use of the App while operating a motor vehicle or automobile

#### **Disclaimers**

EXCEPT AS EXPRESSLY PROVIDED ABOVE, THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, OUTSERVED EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, ARISING OUT OF COURSE OF DEALING OR ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE USAGE OF TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, WARRANTIES AS TO THE RELIABILITY OR AVAILABILITY OF THE PLATFORM OR THAT USE OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, WARRANTIES AS TO THE COMPLETENESS, ACCURACY OR TIMELINESS OF ANY PLATFORM CONTENT. OUTSERVED MAKES NO REPRESENTATION OR WARRANTY THAT USE OF THE PLATFORM BY BUYERS OR SELLERS WILL RESULT IN ANY TRANSACTIONS.

OUTSERVED DISCLAIMS ANY AND ALL LIABILITY RELATED TO THE ACTS OR OMISSIONS OF ANY

USER, ANY USER CONTENT, INCLUDING ANY AND ALL INFORMATION OR PRODUCT DESCRIPTIONS CONTAINED IN ANY COUPON, THE PRODUCTS OR SERVICES OF ANY USER, INCLUDING THEIR QUALITY, CONDITION, LEGALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, ANY TRANSACTION CONDUCTED ON THE PLATFORM. IN ADDITION, THE PAYMENT PROCESSING SERVICES ARE MADE AVAILABLE BY A THIRD-PARTY SERVICES PROVIDER. WE MAKE NO REPRESENTATIONS OR WARRANTIES AND HAVE NO LIABILITY FOR THE ACTS OR OMISSIONS OF SUCH THIRD PARTY SERVICE PROVIDER.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE OR WEBSITE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR AND HEREBY WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGE TO YOUR COMPUTER SYSTEM, INTERNET ACCESS, DOWNLOAD OR DISPLAY DEVICE, OR LOSS OR CORRUPTION OF DATA THAT RESULTS OR MAY RESULT FROM THE DOWNLOAD OF ANY SUCH MATERIAL. IF YOU DO NOT ACCEPT THIS LIMITATION OF LIABILITY, YOU ARE NOT AUTHORIZED TO DOWNLOAD OR OBTAIN ANY MATERIAL THROUGH THE SERVICE OR WEBSITE.

#### **Limitation of Liability**

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE PLATFORM AND YOUR INABILITY TO ACCESS OR USE THE PLATFORM, INCLUDING ANY TRANSACTION CONDUCTED ON OR THROUGH THE PLATFORM AND YOUR INTERACTIONS WITH ANY OTHER USERS, REMAINS WITH YOU.

IN NO EVENT WILL OUTSERVED BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST REVENUES OR PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THE TERMS, FROM THE USE OF OR INABILITY TO USE THE PLATFORM, FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE PLATFORM OR OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE PLATFORM OR FROM ANY TRANSACTION CONDUCTED ON OR THROUGH PLATFORM, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT OUTSERVED HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL OUTSERVED'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE TERMS, YOUR ACCESS TO OR USE OF THE PLATFORM AND YOUR INABILITY TO ACCESS OR USE THE PLATFORM INCLUDING, ANY TRANSACTION CONDUCTED ON OR THROUGH THE PLATFORM, AND YOUR INTERACTIONS WITH ANY OTHER USERS, EXCEED THE AMOUNTS YOU HAVE PAID OR OWE (IF YOU ARE A BUYER) OR AMOUNTS PAID OR OWED TO YOU (IF YOU ARE A SELLER) FOR TRANSACTIONS CONDUCTED ON OR THROUGH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

IF THE FOREGOING IS UNENFORCEABLE IN ANY JURISDICTION WITH RESPECT TO USERS THAT HAVE NOT CONDUCTED ANY TRANSACTIONS ON OR THROUGH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY, OUTSERVED'S AGGREGATE LIABILITY SHALL BE LIMITED TO ONE HUNDRED U.S. DOLLARS (US\$100).

THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN OUTSERVED AND YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

#### **Indemnification**

You agree to release, defend, indemnify, and hold Outserved its parent, subsidiaries, affiliates, licensors and service

providers, and its and their officers, directors, members, agents, employees and representatives, harmless (collectively "indemnify" or any variation thereof) from and against any claims, liabilities, damages, losses, costs and expenses, including, any bodily injury, illness, death or damage to any real or personal property, or any other injuries, losses, or damages (whether compensatory, direct, incidental, consequential or otherwise) of any kind, reasonable legal and accounting fees and litigation costs, arising out of or in any way connected with (i) your access to or use of the Platform, including any and all features, functionality, tools, content and promotions available on and through the Services, Website and App, (ii) your User Content and any interactions with any other User, (iii) any Transaction contemplated or conducted hereunder and the use of any products and services purchased or sold by you (including, the sale of defective or unsafe products or services by Sellers), whether based on a theory of contract, torts (including negligence), strict or product liability or otherwise, (iv) your breach or violation of the Terms or under applicable law, including any violation of any environmental or hazardous materials or similar laws in any jurisdiction, and (v) your gross negligence or willful misconduct.

**No Implied Indemnity.** No person or entity shall be entitled to any form of equitable or implied indemnification at any time, except as provided by the Terms.

**Obligation to Defend.** You agree that, at Outserved's option, you will conduct the defense of any such claim or action; provided that, notwithstanding our election that you to conduct the defense, (i) Outserved may nevertheless participate in such defense or settlement negotiations and pay its own costs associated therewith, and (ii) you will not enter into any settlement or other compromise without the prior written approval of Outserved (which approval shall not be unreasonably withheld), unless such settlement or other compromise includes a full and unconditional release of the relevant parties from all liabilities and other obligations in respect of such claim or action.

## **X. DISPUTE RESOLUTION**

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND OUTSERVED HAVE AGAINST EACH OTHER ARE RESOLVED.

### **Governing Law**

Except to the extent inconsistent with or preempted by federal law, the Terms shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to conflict of law principles; provided that Outserved shall be entitled to the benefits of any "innocent seller" or statutory indemnification or similar statute in any applicable jurisdiction, including Section 82.002 of the Texas Civil Practice and Remedies Code (as amended or superseded).

### **Waiver of Right to Jury Trial**

You and Outserved agree to waive the right to a trial by jury and to submit any and all disputes, claims and actions, at law or in equity, arising out of or relating to the Terms or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Platform, including the Services, Website or App and any products or services sold or purchased through the Platform (collectively, "**Disputes**") to be exclusively settled by a bench trial in Lubbock County, Texas..

### **Prohibition of Class and Representative Actions and Non-Individualized Relief**

You and Outserved agree THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS and hereby waive the right to participate as a plaintiff or class member in any class action or representative proceeding.

## **XI. MISCELLANEOUS**

### **Entire Agreement**

These Terms, including these Terms of Use, our Privacy Policy, the applicable Supplemental Terms and any and all rules and policies referenced herein or posted on the Website and/or App, constitute the entire and exclusive understanding and agreement between you and Outserved regarding your access to and use of the Platform, including the Services, Website and App, and supersede and replace any and all prior or contemporaneous oral or written understandings or agreements between you and Outserved and regarding the subject matter hereof.

### **Assignment**

You may not assign, transfer or delegate any of your rights or obligations under the Terms, including by operation of

law, without our express prior written consent, which may be granted or withheld in our sole discretion. Any attempted assignment, transfer or delegation without the foregoing consent will be null and void. Outserved may assign, transfer or delegate our rights and obligations under the Terms, in whole or in part, in its sole discretion, without restriction.

Subject to the foregoing, the Terms will bind and inure to the benefit of the parties, their successors and assigns.

### **No Agency**

Except as otherwise expressly set forth herein, no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by the Terms.

### **Survival of Terms**

Any provisions of the Terms that contemplate performance or observance subsequent to the expiration or termination of this Agreement shall survive such expiration or termination.

### **Notices**

Any notices or other communications permitted or required hereunder, including those regarding modifications to the Terms, will be in writing and given by Outserved (i) via e-mail (in each case to the address that you provide), or (ii) by posting to the Website or via the App. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted. If a Seller wishes to terminate this agreement, the Seller must give Outserved at least sixty (60) days written notice.

### **Waiver**

Our failure to exercise any right or enforce any obligation under these Terms of Use or to take action with respect to a breach by you or others will not constitute a waiver of such right, obligation or breach. The waiver of any right, obligation or breach will be effective only if in writing and signed by a duly authorized representative of Outserved. In addition, no waiver granted in any instance shall constitute a waiver in any other instance.

### **Remedies**

Except as expressly set forth in the Terms, the exercise by either party of any of its remedies under the Terms will be without prejudice to its other remedies available under contract, at law, in equity or otherwise.

### **Severability**

Except as otherwise provided in the Terms, if a court of competent jurisdiction finds any provision of the Terms to be invalid, void or unenforceable, in whole or in part, for any reason, the offending provision will be enforced to the maximum extent permissible and will not affect the validity or enforceability of the remaining provisions, which will remain in full force and effect.

### **Headings**

The headings in the Terms are for reference purposes only and do not limit or otherwise affect the meaning or interpretation of any of the provisions hereof.

### **Third Party Beneficiaries**

The parties agree that the payment card networks are third party beneficiaries of the Terms for purposes of enforcing provisions related to payments, but that their consent or agreement is not necessary for any amendments or modifications to the Terms. Except as otherwise expressly set forth herein, the Terms do not and are not intended to confer any rights or remedies upon any person other than the parties hereto.

### **Construction**

In the Terms, unless the context requires otherwise: (i) "herein," "hereof," "hereunder," "hereto," and similar terms refer to the Terms collectively and as a whole, and not merely to the specific section, paragraph or clause in which the term appears, (ii) "or" connotes any combination of all or any of the items listed, and (iii) "including" (and any of its derivative forms) means "including but not limited to."

**Contacting Us**

If you have any questions about the Platform or the Terms, please contact Outserved at [Support@OutservedApp.com](mailto:Support@OutservedApp.com).

You can also write to us at:

Inquiries

Outserved

---

Lubbock, Texas