

Konviv, Inc.

Terms of Service

These Terms of Service (hereinafter the “Terms”) represent an agreement between you and Konviv, Inc. (hereinafter “Konviv”) and contain the terms and conditions governing your use of and access to our website at www.konviv.com, all affiliated websites owned and operated by us, our products, services, and mobile applications, including the App (defined below), (together, the “Services”). “You” and “your” mean the person who uses or accesses the Services. “We”, “us” and “our” mean Konviv and its successors, affiliates and assignees. As used in these Terms, “Konviv Account” means the account you have with us to use and access the Services.

Your use of and access to the Services are subject at all times to these Terms and our [Privacy Policy](#). Please read these Terms and our Privacy Policy carefully. By using or accessing the Services, or clicking a button or checking a box marked “I Agree” or something similar, you represent that you have read and understand these Terms and our Privacy Policy and you agree to be bound by these Terms and our Privacy Policy. If you do not agree to all the terms and conditions of these Terms and our Privacy Policy, you may not use or access the Services.

THESE TERMS INCLUDE, AMONG OTHER THINGS, YOUR AUTHORIZATION TO MONITOR BANK AND CREDIT CARD ACCOUNTS, PROVIDE ALERTS, AND A BINDING ARBITRATION PROVISION CONTAINING A CLASS ACTION WAIVER.

I. ACCEPTANCE OF TERMS AND CONDITIONS

By signing up for Konviv or using the Services, you agree to be bound by these Terms. You may not use any of the Services and you may not accept these Terms if you are not legally authorized to accept and be bound by these Terms or are not at least 18 years of age and, in any event, of legal age in your applicable jurisdiction, to form a binding contract with us. Konviv does not sell products through its Service for or to children.

II. DESCRIPTION OF SERVICES

A. What Does My Konviv Account Do?

The Services, which are provided free of charge, allow you to consolidate, budget and track your financial information. Konviv monitors and analyzes your current and historical transactions (your “Transaction Information”) in the bank and/or credit card accounts you add to your Konviv Account (your “Designated Account(s)”) and, based on our analysis of your Transaction Information, we:

1. Identify and categorize your Transaction Information into the various spending categories you determine and create in your Konviv Account (your “Spending Buckets”);

2. Analyze your Transaction Information to assist you in reaching the savings goals you determine and create in your Konviv Account (your "Savings Goals"); and
3. Suggest actions related to your Spending Buckets and Savings Goals, or to your Konviv Account generally.

You can modify your Spending Buckets, Saving Goals or other settings in your Konviv Account at any time by updating their Konviv Buckets pages or by modifying options in the Profile and Settings pages.

B. How Will Konviv Communicate With Me?

By providing Konviv your email address you consent to our using the email address to (i) send you Service-related notices, including any notices required by law, in lieu of communication by postal mail, and (ii) send you other messages, such as messages related to your Savings Goals and Spending Buckets and changes to features of the Services and newsletters and special offers (collectively, the "Electronic Alerts"). If you do not want to receive such Electronic Alerts, you may opt out or change your preferences in your Konviv Account. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers. Konviv may, at its discretion, change the default frequency of Electronic Alerts and send you Electronic Alerts it deems necessary.

C. No Professional Advice.

You are solely responsible for determining whether your Savings Goals, Spending Buckets and use of the Services are acceptable to you. We are not responsible for any third-party fees that may be incurred as a result of using the Services, including, but not limited to, third-party fees incurred as a result of insufficient funds or credit in your Designated Account(s).

The Services provided are intended to assist you in your personal financial organization and decision-making, are for informational purposes only and should not be construed as professional advice. Konviv is not a financial adviser, and the Services are not intended to provide legal, tax or financial advice. Your financial situation is unique, and any information obtained through or suggested by Konviv is broad in scope and may not be appropriate for your situation. We are not responsible for ensuring your Designated Account(s) have sufficient funds or credit for your needs, purposes, or transactions. We do not make any representations, warranties, or guarantees of any kind that the Services are appropriate for you. Before using the Services, you should consider obtaining additional information and advice from a financial adviser who is fully aware of your individual circumstances.

III. AUTHORIZATIONS TO MONITOR AND ANALYZE DESIGNATED ACCOUNT(S)

A. Authorizations.

By agreeing to these Terms, you further agree to the following:

1. Authorize Konviv to electronically monitor and analyze your Designated Account(s) in order to identify and categorize your Transaction Information into the Spending Buckets you determine and create in your Konviv Account.
2. Authorize Konviv to analyze your Transaction Information to assist you in reaching the Savings Goals you determine and create in your Konviv Account.

You acknowledge that the authorization contained in this Section represents your written authorization for the above-described actions and that such authorizations will remain in full force and effect until you notify Konviv that you wish to revoke this authorization by contacting us via Konviv's Contact page located at <http://www.konviv.com/contact/>. Please include "Revoke Authorization" in the subject line. Please allow Konviv up to ten (10) business days (based on any calendar day other than U.S. Federal holidays or Saturdays and Sundays in the Pacific Standard Time (PST) zone) to process the revocation of this authorization. This action will result in the termination of your Konviv Account.

IV. USING THE SERVICES

A. Requirements.

In order to use the Services you must:

1. Register for a Konviv Account;
2. Have a bank and/or credit card account, in your name, with a U.S. financial institution;
3. Agree to abide by all applicable laws, regulations and rules in connection with your use of the Services;
4. Agree that you are solely responsible for all acts or omissions associated with your access and use of the Services and the access and use of the Services by anyone on your behalf;
5. Provide all information requested by Konviv, such as your name, mobile device number, location, payment information, bank account information, email address and online credentials for your Designated Account(s), and such other information as we may request from time to time (collectively, "User Information");
6. Take steps to verify your User Information;
7. Authorize Konviv to, either directly or through a third party, obtain, verify your User Information and Designated Account(s);
8. Agree to update any of your User Information that changes by contacting Konviv; and
9. Authorize Konviv to take any reasonable actions to ensure the provision of the Services.

You represent and warrant that all User Information you provide us from time to time is truthful, accurate, current, and complete, and you agree not to misrepresent your identity or your User Information. You agree to promptly notify us of changes to your User Information including, but not limited to, the closure of your Designated Account(s) by updating your Konviv Account. If we approve your registration, you will be authorized to use the Services, subject to these Terms.

By using the Services and providing User Information to us, in addition to the authorizations set forth in Section III (Authorizations to Monitor and Analyze Designated Account(s)), you agree and authorize us to obtain, directly or indirectly through our third party service providers and without the requirement to pay any fees, information about you and your Designated Account(s) from the financial institution holding your Designated Account(s) and other third-party websites and databases as necessary to provide the Services to you. Our third-party service providers include but are not limited to Plaid Technologies, Inc. ("Plaid"). YOU ACKNOWLEDGE AND AGREE THAT WHEN KONVIV OR OUR THIRD-PARTY SERVICE PROVIDERS ACCESS AND RETRIEVE INFORMATION FROM SUCH THIRD-PARTY WEBSITES, KONVIV AND OUR THIRD-PARTY SERVICE PROVIDERS ARE ACTING AS YOUR AGENT, AND NOT THE AGENT OR ON BEHALF OF THE THIRD PARTY. You agree that other third parties shall be entitled to rely on the foregoing authorization, agency, and power of attorney granted by you. You understand and agree that the Services are not endorsed or sponsored by any third-party account providers accessible through the Services. We make no effort to review information obtained from the financial institution(s) holding your Designated Account(s) and other third-party websites and databases for any purpose, including, but not limited to, accuracy, legality, or non-infringement.

V. FEES FOR USING THE SERVICE

There are no fees for the Services, but we reserve the right to charge fees for the Services in the future. We will notify you before charging a fee for the Services by delivering notice to you electronically. If you continue using the Services after such notice, you must pay all applicable fees for the Service.

You will be responsible for paying, withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Services.

VI. RESTRICTIONS ON USING THE SERVICES

A. Personal Use: Restrictions.

Subject to the terms and conditions of these Terms, you are hereby granted a non-exclusive, limited, non-transferable, freely revocable license to use the Services for your own personal, non-commercial use and not on behalf of or for the benefit of any third party. Your use of the Services must comply with all applicable law. If your use of the Services is prohibited by applicable law, then you are not authorized to use the Services. We are not responsible if you use the Services in any manner that violates applicable law.

When creating a Konviv Account, you must provide accurate and complete information and you must keep this information up to date. You are solely responsible for the activity that occurs on your Konviv Account, and you must keep your account user name and password secure. You agree not to authorize any other person or entity to use your Konviv Account and you agree you are responsible for all transactions and other activities performed using your Konviv Account, whether authorized or unauthorized by you.

You are solely responsible for the maintenance, confidentiality, and security of your User Information. Except as otherwise expressly stated in these Terms or required by applicable law, we are not responsible for any losses arising out of the loss or theft of your User Information or your mobile device or from unauthorized or fraudulent transactions associated with your Designated Account(s) or your Konviv Account. If you suspect or become aware of any unauthorized activity or access to your username, password, or mobile device, you must contact us immediately via Konviv's Contact page located at <http://www.konviv.com/contact/>. Please include "Unauthorized Activity" in the subject line. In order for us to take any action to recover or delete your Konviv Account, you may need to provide certain User Information so we can verify your identity.

B. Konviv's Intellectual Property Rights; Restrictions.

1. Konviv Content.

Except for your User Content (defined below), the Services and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, and User Content belonging to other users (the "Konviv Content"), and all Intellectual Property Rights (defined below) related thereto, are the exclusive property of Konviv and its licensors (including other users who post User Content to the Services). Except as explicitly provided herein, nothing in these Terms shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any Konviv Content. Use of the Konviv Content for any purpose not expressly permitted by these Terms is strictly prohibited. We do not grant you any licenses, express or implied, to our intellectual property or the intellectual property of our licensors, except as expressly stated in these Terms. We and our third-party licensors retain all right, title, and interest in and to the Services, Konviv Content, and any associated patents, trademarks, copyrights, mask work rights, trade secrets, and other Intellectual Property Rights.

2. Restrictions.

You agree not to engage in any of the following prohibited activities with respect to the Services or any Konviv Content: (i) copying, distributing, or disclosing any part of the Services in any medium, including without limitation by any automated or non-

automated “scraping”; (ii) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Services in a manner that sends more request messages to Konviv servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser (except that Konviv grants the operators of public search engines revocable permission to use spiders to copy publicly available materials from the Konviv’s website for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Services; (vii) collecting or harvesting any personally identifiable information, including account names, from the Services; (viii) using the Services for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the proper working of the Services; (xi) accessing any content on the Services through any technology or means other than those provided or authorized by the Services; (xii) bypassing the measures we may use to prevent or restrict access to the Services, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein; or (xiii) using the Services or Konviv Content in any way that is illegal, harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable.

3. User Content.

The Services may permit you to submit content, send communications, and provide other information for publication or distribution to third parties (collectively, “User Content”). Any User Content must not be illegal, threatening, obscene, racist, defamatory, libelous, pornographic, infringing of intellectual property rights, promoting of illegal activity or harm to groups and/or individuals, invasive of privacy, purposely false or otherwise injurious to third parties, or objectionable and must not consist of or contain software, computer viruses, commercial solicitation, political campaigning, chain letters, mass mailings, or any form of “spam.” If you submit User Content, and unless we indicate otherwise, you grant us a nonexclusive, perpetual, royalty-free, irrevocable, and fully sublicensable (through multiple tiers) right to use, modify, reproduce, adapt, translate, publish, create derivative works from, distribute, display, and otherwise exploit such User Content throughout the world in any media. We take no responsibility and assume no liability for any User Content submitted by you or any other user or third party. For the purposes of these Terms, “Intellectual Property Rights” means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill,

trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction. In connection with your User Content, you affirm, represent and warrant the following: (i) you have the written consent of each and every identifiable natural person in the User Content, if any, to use such person's name or likeness in the manner contemplated by the Services and these Terms, and each such person has released you from any liability that may arise in relation to such use; (ii) you have obtained and are solely responsible for obtaining all consents as may be required by law to post any User Content relating to third parties; (iii) your User Content and Konviv's use thereof as contemplated by these Terms and the Services will not violate any law or infringe any rights of any third party, including but not limited to any Intellectual Property Rights and privacy rights; (iv) Konviv may exercise the rights to your User Content granted under these Terms without liability for payment of any guild fees, residuals, payments, fees, or royalties payable under any collective bargaining agreement or otherwise; and (v) to the best of your knowledge, all your User Content and other information that you provide to us is truthful and accurate.

To the extent permitted by applicable law, we may, in our sole discretion and without liability to you, terminate (or suspend access to) your use of the Services, Konviv Content, or your Konviv Account for any reason, including, but not limited to, your breach of these Terms.

C. Feedback.

You may choose to or we may invite you to submit comments or ideas about the Services, including without limitation about how to improve the Services or our products ("Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Konviv under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Konviv does not waive any rights to use similar or related ideas previously known to Konviv, or developed by its employees, or obtained from sources other than you.

VII. **MOBILE DEVICE TERMS**

A. We may make available software to access the Service via a mobile device (the "App"). To use the App you must have a mobile device that is compatible with the App. Konviv does not warrant that the App will be compatible with your mobile device. You may use mobile data in connection with the App and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. Konviv hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the App for one Konviv account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the App, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense,

distribute or otherwise transfer the App to any third party or use the App to provide time sharing or similar services for any third party; (iii) make any copies of the App; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the App, features that prevent or restrict use or copying of any content accessible through the App, or features that enforce limitations on use of the App; or (v) delete the copyright and other proprietary rights notices on the App. You acknowledge that Konviv may from time to time issue upgraded versions of the App, and may automatically electronically upgrade the version of the App that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of these Terms will apply to all such upgrades. Any third-party code that may be incorporated in the App is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of the App or any copy thereof, and Konviv or its third-party partners or suppliers retain all right, title, and interest in the App (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in these Terms, is void. Konviv reserves all rights not expressly granted under these Terms. If the App is being acquired on behalf of the United States Government, then the following provision applies. The App will be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Service and any accompanying documentation by the U.S. Government will be governed solely by these Terms of Service and is prohibited except to the extent expressly permitted by these Terms of Service. The App originates in the United States, and is subject to United States export laws and regulations. The App may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the App may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the App and the Service.

B. Additional App Store Terms.

App from Apple App Store. The following applies to any App you acquire from the Apple App Store ("Apple-Sourced Software"): You acknowledge and agree that these Terms are solely between you and Konviv, not Apple, Inc. ("Apple") and that Apple has no responsibility for the Apple-Sourced Software or content thereof. Your use of the Apple-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple-Sourced Software. In the event of any failure of the Apple-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to

any warranty will be solely governed by these Terms and any law applicable to Konviv as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the Apple-Sourced Software or your possession and/or use of the Apple-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by these Terms and any law applicable to Konviv as provider of the software. You acknowledge that, in the event of any third-party claim that the Apple-Sourced Software or your possession and use of that Apple-Sourced Software infringes that third party's intellectual property rights, Konviv, 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 these Terms. You and Konviv acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of these Terms as relates to your license of the Apple-Sourced Software, and that, upon your acceptance of the terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms as relates to your license of the Apple-Sourced Software against you as a third-party beneficiary thereof.

VIII. UPDATING OR CANCELLING YOUR KONVIV ACCOUNT

You may update your User Information or your Konviv Account or stop using the Services, close your Konviv Account, and cancel these Terms at any time by contacting us via Konviv's Contact page at <http://www.konviv.com/contact/>. Please include either "Update my Account" or "Cancel my Account" in the subject line. Your termination of these Terms will not affect any of our rights or your obligations arising under these Terms prior to termination. Provisions of these Terms that, by their nature, should survive termination of these Terms will survive termination of these Terms.

IX. CANCELLATION BY KONVIV

Konviv may terminate this Agreement or suspend or terminate your use of the Services for any reason at any time upon notice to you. In the event of cancellation, Konviv may suspend or close your Konviv Account. We will inform you of our decision via electronic notifications, and you can always talk to our support team if you have questions. You agree that Konviv will not be liable to you or any third party for any termination of your Konviv Account.

X. GUARDING YOUR PRIVACY

Konviv takes your privacy very seriously. You understand that by using the Services, you consent to the collection, use, storage, and disclosure of your personally identifiable information, including any and all User Information, and aggregate data as set forth in these Terms and our [Privacy Policy](#) and to have your personally identifiable information collected, used, transferred

to and processed in the United States. You acknowledge that you provide your personal information and User Information at your own risk.

XI. ADDITIONAL TERMS

A. WARRANTY DISCLAIMER.

THE SERVICES AND KONVIV CONTENT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. USE OF THE SERVICES AND KONVIV CONTENT IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND KONVIV CONTENT ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM KONVIV OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, KONVIV, ITS SUBSIDIARIES, ITS AFFILIATES, AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICES OR KONVIV CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICES OR KONVIV CONTENT WILL MEET YOUR REQUIREMENTS; THAT THE SERVICES OR KONVIV CONTENT WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICES OR KONVIV CONTENT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY KONVIV CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE SERVICES.

KONVIV DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR ANY HYPERLINKED WEBSITE OR SERVICE.

FEDERAL LAW, SOME STATES, PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS AND EXCLUSIONS UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

B. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL KONVIV, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION

DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, THESE SERVICES. UNDER NO CIRCUMSTANCES WILL KONVIV BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR YOUR KONVIV ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KONVIV ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF THE SERVICES AND KONVIV CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICES OR KONVIV CONTENT; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICES; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES OR KONVIV CONTENT BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY SERVICES OR KONVIV CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY KONVIV CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICES; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL KONVIV, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO KONVIV HEREUNDER OR \$100.00, WHICHEVER IS GREATER.

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

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

THE SERVICES ARE CONTROLLED AND OPERATED FROM FACILITIES IN THE UNITED STATES. KONVIV MAKES NO REPRESENTATIONS THAT THE SERVICES ARE APPROPRIATE OR AVAILABLE FOR USE IN OTHER LOCATIONS. THOSE WHO ACCESS OR USE THE SERVICES FROM OTHER JURISDICTIONS DO SO AT THEIR OWN VOLITION AND ARE ENTIRELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE UNITED

STATES AND LOCAL LAWS AND REGULATIONS, INCLUDING BUT NOT LIMITED TO EXPORT AND IMPORT REGULATIONS. YOU MAY NOT USE THE SERVICES IF YOU ARE A RESIDENT OF A COUNTRY EMBARGOED BY THE UNITED STATES, OR ARE A FOREIGN PERSON OR ENTITY BLOCKED OR DENIED BY THE UNITED STATES GOVERNMENT. UNLESS OTHERWISE EXPLICITLY STATED, ALL MATERIALS FOUND ON THE SERVICES ARE SOLELY DIRECTED TO INDIVIDUALS, COMPANIES, OR OTHER ENTITIES LOCATED IN THE UNITED STATES.

C. Indemnity.

You agree to defend, indemnify and hold harmless Konviv and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Services, including any data or content transmitted or received by you; (ii) your violation of any term of these Terms, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) User Content or any content that is submitted via your account including without limitation misleading, false, or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Services with your unique username, password or other appropriate security code.

D. Assignment.

You may not transfer, assign, or delegate these Terms or your rights or obligations hereunder or your Konviv Account in any way (by operation of law or otherwise) without our prior written consent. Any transfer, assignment, or delegation of these Terms that you make shall be null and void from the initial date thereof. To the extent permitted by applicable law, we may transfer, assign, or delegate these Terms and our rights and obligations hereunder without your consent.

E. Third-Party Beneficiary.

You agree that our third-party services providers are third-party beneficiaries of the applicable provisions of these Terms, with all rights to enforce such provisions as if such service providers were a party to these Terms.

F. Governing Law/Jurisdiction.

These Terms are made under and will be governed by and construed in accordance with the laws of the State of California, consistent with the Federal Arbitration Act, without regard to choice or conflicts of law principles.

The provider of services is set forth herein. If you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the

Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

Further, you and Konviv agree to the jurisdiction of the federal Northern District of California to resolve any dispute, claim, or controversy that relates to or arises in connection with the Services or these Terms (and any non-contractual disputes/claims relating to or arising in connection with them) and is not subject to mandatory arbitration under Section XII(G) of these Terms.

G. ARBITRATION AGREEMENT.

1. Dispute Resolution By Binding Arbitration.

You and Konviv agree that any and all controversies, disputes, demands, claims, or causes of action between you and Konviv (including the interpretation and scope of this Section and the arbitrability of the controversy, dispute, demand, claim, or cause of action) relating in any way to the Services (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and whether the claims arise during or after the termination of these Terms) or these Terms (as well as any related or prior agreement between you and Konviv), will be determined and resolved exclusively through binding and confidential arbitration. The arbitration will take place in San Francisco, California, unless you and Konviv otherwise agree in writing. As used in this Section, “we”, “us”, or “Konviv” mean Konviv and its subsidiaries, affiliates, predecessors, successors, and assigns and all of its and their respective employees, officers, directors, agents, and representatives. In addition, “we”, “us”, or “Konviv” include any third party providing any product, service, or benefit in connection with the Services or these Terms (as well as any related or prior agreement that you may have had with us) if such third party is named as a co-party with us in any controversy, dispute, demand, claim, or cause of action subject to this Section.

Arbitration is more informal than a lawsuit in court. You should review this Arbitration Agreement carefully. To the extent permitted by applicable law, you are GIVING UP YOUR RIGHT TO GO TO COURT to assert or defend your rights. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT A JUDGE OR JURY. You are entitled to a FAIR HEARING, BUT the arbitration procedures may be SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT. Arbitrators’ decisions are as enforceable as any court order and are subject to VERY LIMITED REVIEW BY A COURT.

2. Exceptions.

Notwithstanding the section above (XII(G)(1)), you and Konviv both agree that nothing in this Arbitration Agreement will be deemed to waive, preclude, or otherwise

limit either of our rights, at any time, to (a) bring an individual action in a U.S. small claims court or (b) bring an individual action seeking only temporary or preliminary individualized injunctive relief in a court of law, pending a final ruling from the arbitrator. In addition, this Arbitration Agreement doesn't stop you or us from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against us on your behalf (or vice versa).

3. Notice; Process.

A Party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail, Federal Express, UPS, or Express Mail (signature required), or in the event that we do not have a physical address on file for you, by electronic mail (the "Notice"). Konviv's address for Notice is: Konviv, Inc., Attn: Legal, 2150 Shattuck Avenue, Penthouse, Berkeley, CA 94704. The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (the "Demand"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or Konviv may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Konviv shall not be disclosed to the arbitrator. All documents and information disclosed in the course of the arbitration or the enforcement of the arbitrator's decision and award shall not be disclosed except in confidence to persons who have a need to know for such purposes or as required by applicable law.

4. Arbitration Rules.

Arbitration will be subject to the Federal Arbitration Act and not any state arbitration law. The arbitration will be conducted before one commercial arbitrator from the American Arbitration Association ("AAA") with substantial experience in resolving commercial contract disputes. As modified by these Terms, and unless otherwise agreed upon by the parties in writing, the arbitration will be governed by the AAA's Commercial Arbitration Rules and, if the arbitrator deems them applicable, the Supplementary Procedures for Consumer Related Disputes (collectively, the "Rules and Procedures").

The following rules apply:

- a) In the event that you are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, we will pay as much of your filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation;
- b) We also reserve the right, in our sole and exclusive discretion, to assume responsibility for any or all of the costs of the arbitration;

- c) The arbitrator will honor claims of privilege and privacy recognized at law;
- d) The arbitration will be confidential, and neither you nor we may disclose the existence, content, or results of any arbitration, except as may be required by applicable law or for purposes of enforcement of the arbitration award;
- e) Subject to the limitation of liability provisions of these Terms, the arbitrator may award any individual relief or individual remedies that are expressly permitted by applicable law; and
- f) Each party will pay its own attorneys' fees and expenses, unless there is a statutory provision that requires the prevailing party to be paid its fees and litigation expenses and the arbitrator awards such attorneys' fees and expenses to the prevailing party, and, in such instance, the fees and costs awarded will be determined by the applicable law.

For more information on the AAA, the Rules and Procedures, or the process for filing an arbitration claim, you may call the AAA at 1-800-778-7879 or visit the AAA website at <http://www.adr.org>.

5. NO CLASS OR REPRESENTATIVE PROCEEDINGS: CLASS ACTION WAIVER.

YOU AND KONVIV AGREE THAT ANY CLAIMS BROUGHT BY YOU OR US MUST BE BROUGHT IN THE PARTY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. UNLESS YOU AND KONVIV AGREE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND MAY NOT AWARD CLASS-WIDE RELIEF.

6. Survivability and Severability of Arbitration Agreement.

This Arbitration Agreement will survive termination of your Konviv Account and these Terms as well as any voluntary payment of any debt in full by you or any bankruptcy by you or us. With the exception of subpart(5)(G) of this Section (prohibiting arbitration on a class or collective basis), if any part of this arbitration provision is deemed to be invalid, unenforceable, or illegal, or otherwise conflicts with the Rules and Procedures, then the balance of this arbitration provision will remain in effect and will be construed in accordance with its terms as if the invalid, unenforceable, illegal, or conflicting part was not contained herein. If, however, subpart (5)(G) of this Section is found to be invalid, unenforceable, or illegal, then the entirety of this Arbitration Agreement will be null and void, and neither you nor we will be entitled to arbitration, and you and we agree that the exclusive jurisdiction and venue described in Section XII(F) shall govern any claim in court arising out of or related to these Terms.

H. Waiver.

The failure of either you or us to exercise, in any way, any right herein will not be deemed a waiver of any further rights hereunder. To be effective, any waiver with regards to these Terms must be in writing and any such waiver shall apply only to the matter or instance specifically waived.

I. Severability.

If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms will otherwise remain in full force and effect and enforceable.

J. Headings.

You and Konviv agree that the headings of each Section of these Terms are for reference only and in no way affect the interpretation of this Agreement.

K. Entire Agreement.

These Terms, together with our [Privacy Policy](#), constitute the entire and sole agreement between you and us with respect to the Services and supersede all prior understandings, arrangements, or agreements, whether written or oral, regarding the Services.

L. Miscellaneous.

You hereby acknowledge and agree that you are not an employee, agent, partner, or joint venture of Konviv, and you do not have any authority of any kind to bind Konviv in any respect whatsoever.

XII. CHANGES TO THESE TERMS OF SERVICES

Konviv may add to or terminate any of the Services or amend these Terms at any time, in our sole discretion, without providing notice to you, subject to applicable law. We reserve the right, subject to applicable law, to deliver to you any notice of changes to existing terms or the addition of new terms electronically. You are free to decide whether or not to accept a revised version of these Terms, but accepting these Terms, as revised, is required for you to continue accessing or using the Services. If you do not agree to these Terms or any revised version of these Terms, your sole recourse is to terminate your access or use the Services. Except as otherwise expressly stated by us, your access and use of the Services are subject to, and constitute your acceptance of, the version of these Terms in effect at the time of your access or use.

XIII. CONTACTING KONVIV

If you have any questions, comments, or concerns regarding these Terms or the Services, please contact us via Konviv's Contact page located at <http://www.konviv.com/contact/>, or by U.S. Mail at Konviv, Inc., 2150 Shattuck Avenue, Penthouse, Berkeley, CA 94704.