

Valid as of June 21, 2018

This User Agreement ("Agreement") is a contract between You ("You/Your") and Earnest Money Pro, LLC ("Company") and applies to Your use of the Earnest Money Pro Services on Company website. The Earnest Money Pro Services are provided to You subject to this Agreement as well as our Privacy Policy ("Privacy Policy") and is incorporated in this Agreement by this reference.

## EARNEST MONEY PRO TERMS OF SERVICE

### 1. Terms for Earnest Money Pro Services

The Earnest Money Pro Services allow You to facilitate the transfer of funds to a third-party home builder ("Third Party"). You may use the Earnest Money Pro Services through a web browser using a computer or mobile device. Your use of the service is free of charge to You provided by Third Party membership of Company services for such use. By using the Earnest Money Pro Service application, you agree to the Earnest Money Pro, LLC Terms of Service and Privacy Policy. All transfer status notifications will be sent via email from Earnest Money Pro. Company can be reached at [www.earnestmoneypro.com](http://www.earnestmoneypro.com), [info@earnestmoneypro.com](mailto:info@earnestmoneypro.com), and/or 1-844-666-3900.

### 2. Eligibility

To be eligible to use the Earnest Money Pro Services, You must be a resident of the United States, be 18 years or older, use the Earnest Money Pro Services in the United States, and authorize and accept money transfer requests via computer or mobile phone device. As further detailed in our Privacy Policy, Company may require that You submit certain Personal Information (as defined in the Privacy Policy), including but not limited to your name, email address, text-enabled cellular/wireless telephone number, street address or zip code, date of birth, and social security number to Company. You agree that the Personal Information You provide to Company or Third Party, and at all other times will be true, accurate, current and complete, and You agree to maintain and update this Personal Information with us as necessary.

### 3. Types of Transfer Services

We offer two different types of accounts. Echeck using Online Banking credentials, or Echeck using manual entry of bank account and bank routing numbers, located at the bottom of a check. Your acknowledgement and entry of required information constitutes as Your agreement to transfer the specified dollar amount of money from Your account to the Third Party account.

### 4. Identity Authentication

You hereby authorize Company, directly or through Third Party, to make any inquiries we consider necessary to validate Your identity and/or authenticate Your identity and

account information. This may include asking You for further information and/or documentation about Your account usage or identity, or requiring You to take steps to confirm ownership of Your email address, financial instruments, and verifying Your information against Third Party databases or through other sources. This process is for internal verification purposes.

## 5. Maximum Money Transfer

i. We impose a \$25,000 per week maximum amount of money You are authorized to conduct through the Earnest Money Pro application to a Third Party. If we have authenticated Your identity, we may increase Your transaction limits. These limits may change from time to time in the Company's sole discretion.

## ii. Bank Account Information & Limitations

When You approve a request of funds transfer to Third Party, using Your bank account credentials, through the Earnest Money Pro Services application, You are requesting that we facilitate on Your behalf an electronic transfer of funds from Your bank account to the Third Party bank account. You agree that such requests constitute Your authorization to process the requested electronic transfer, and once You have provided Your authorization for the transfer, You will not be able to cancel the electronic transfer and if required Third Party may resubmit any debit You authorized that is returned for insufficient or uncollected funds, except as otherwise provided by applicable law.

## iii. Request for Refund of Transactions

Any and All requests by You for a refund of earnest money, You authorized to be electronically transferred to Third Party, must be directed to Third Party. You and Third Party are the only authorizers of requests for earnest money transfer between You and Third Party. Company is not affiliated with You and Third Party, and Company will not transfer funds without authorization of requested transfer by You or Third Party. If a Third Party deems You eligible for refund of earnest money that You transferred to Third Party via the Earnest Money Pro application, Third Party will return the money to the original funding source via the Company application.

## GENERAL TERMS AND CONDITIONS.

### 1. Notices to You

You agree that Company may provide notice to You by posting it on Company website (including but not limited to our [User Agreement](#), [Policy Updates](#), [Licenses](#), [Privacy Policy](#) and [Security Statement](#) documents), or Your email address by emailing it to the email address used for payment authorization. Such notice shall be considered to be received by You within 24 hours of the time it is posted to Company website or emailed to You unless Company receives notice that the email was not delivered.

### 2. Business Days

“Business Days” means Monday through Friday, excluding Holidays. “Holidays” means New Year's Day (January 1), Birthday of Martin Luther King, Jr. (the third Monday in January), Washington's Birthday (the third Monday in February), Memorial Day (the last Monday in May), Independence Day (July 4), Labor Day (the first Monday in September), Columbus Day (the second Monday in October), Veterans Day (November 11), Thanksgiving Day (the fourth Thursday in November) and Christmas Day (December 25). If a Holiday falls on a Saturday, Company shall observe the Holiday on the prior Friday. If the Holiday falls on a Sunday, Company shall observe the Holiday on the following Monday.

### 3. Notices to Company

Notice to Company must be sent by postal mail to: Earnest Money Pro, LLC 8700 Stonebrook Pkwy Suite 1221 Frisco Tx 75034

### 4. Calls to You

By Providing Company a telephone number (including a wireless/cellular telephone), You consent to calls from Company at that number should the need arise. However, we will never call You for promotional purposes.

### 5. Intellectual Property

"Earnestmoneypro.com", "Earnest Money Pro", and all related logos, products and services described in our website are either trademarks or registered trademarks of Company. You may not copy, imitate or use them without Company's prior written consent. In addition, all page headers, custom graphics, button icons, and scripts are service marks, trademarks, and/or trade dress of Company. You may not copy, imitate, or use them without our prior written consent. All right, title and interest in and to the Earnest Money Pro website and any content thereon is the exclusive property of Company.

### 6. Privacy

Protecting Your privacy is very important to us. Please review our [Privacy Policy](#) in order to better understand our commitment to maintaining Your privacy, as well as our use and disclosure of Your information.

### 7. Disputes with Company

#### i. Dispute with Company

If a dispute arises between You and Company, our goal is to learn about and address Your concerns and, if we are unable to do so to Your satisfaction, to provide You with a neutral and cost effective means of resolving the dispute quickly. Disputes between You and Company regarding our services may be reported by emailing us at the following email address: [support@earnestmoneypro.com](mailto:support@earnestmoneypro.com)

## ii. Law and Forum for Disputes; Arbitration

This User Agreement shall be governed in all respects by the laws of the State of Texas, without regard to conflict of law provisions, except to the extent that federal law applies.

ANY CLAIMS ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS USER AGREEMENT MUST BE ASSERTED INDIVIDUALLY IN BINDING ARBITRATION CONDUCTED BY A SINGLE ARBITRATOR WITH EXPERIENCE IN CONSUMER ONLINE PAYMENT SERVICES DISPUTES ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES AND THE AAA SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES. The forum for arbitration shall be in the city closest to Your residence having a federal district courthouse. The arbitrator shall not conduct any form of class or collective arbitration nor join or consolidate claims by or for individuals. To the extent allowed by applicable law, the Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this User Agreement including, but not limited to, any claim that all or any part of this User Agreement is void or voidable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

This User Agreement and each of its parts evidence a transaction involving interstate commerce, and the United States Arbitration Act shall apply in all cases and govern the interpretation and enforcement of the arbitration rules and arbitration proceedings.

## iii. Waiver of Right to Jury; Class Action Waiver

TO THE EXTENT ALLOWED BY LAW, YOU AGREE TO IRREVOCABLY WAIVE ANY RIGHT YOU MAY HAVE TO A TRIAL BY JURY OR OTHER COURT TRIAL (OTHER THAN SMALL CLAIMS COURT) OR TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING FILED AGAINST US AND/OR RELATED THIRD PARTIES.

## 8. Liability of Company

### i. Failure to Complete Transfers

If Company does not complete a transfer from Your account to a Third Party according to this Agreement, Company will not be liable for any repercussions You may have in connection with Your agreements or contracts with Third Party.

### ii. Disputes Between You and Third Party

Company will not be liable for any and all disputes between You and Third Party with regard to authorized and not authorized money transfer requests, earnest money requests, option money requests, or refund requests.

#### 9. Disclaimers of Warranty; Damages Exclusions

Unless otherwise prohibited by law, You assume all responsibility for Your use of the Earnest Money Pro Services and use them at Your own risk. To the fullest extent permissible under applicable law, all such representations, warranties, guarantees and conditions are disclaimed, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, title, no infringement of intellectual property rights, or other terms which might otherwise be implied by statute, common law or in equity. Company does not warrant that the services will be uninterrupted or error-free, that defects will be corrected, or that the services, or the servers that process information for the services, are free of viruses, bugs or other harmful components. On behalf of Company and Third Party, Company makes the following disclaimers set forth in this section: the Services are provided on an **"as is", "as available" and "with all faults"** basis, without any representations, warranties, guarantees, or conditions of any kind, express, implied or statutory, including, but not limited to, any warranty as to the use or operation of the services, or the information, content or other materials related to the services, whether provided by Company or any Third Party. Company does not warrant nor make any representations regarding the results of the services in terms of correctness, accuracy, timeliness, reliability, or otherwise.

Company does not have any control over any products that money is transferred for with our services, and Company cannot ensure that any Third Party You are dealing with will actually complete the transaction or is authorized to do so.

Company will make reasonable efforts to ensure that requests for electronic debits involving bank accounts are processed in a timely manner but Company makes no representations or warranties regarding the amount of time needed to complete processing because Company is dependent upon many factors outside of our control, such as delays in the U.S. banking system.

#### 10. Limitations on Liability

Except as otherwise EXPRESSLY provided in this agreement, and to the extent permissible under applicable law, Company's cumulative liability to You for any claims or damages arising out of or related to Your use of the Earnest Money Pro Services shall not exceed \$1.00 USD.

These limitations on liability will apply to the maximum extent permitted by applicable law, even if any remedy fails of its essential purpose.

## 11. Indemnification

You agree to defend, indemnify and hold harmless Company, affiliates, officers, directors and employees from any claim or demand (including any damages, losses, expenses and attorneys fees resulting therefrom) made or incurred by any Third Party due to or arising out of Your breach of this Agreement and/or Your use of the Earnest Money Pro Services.

## 12. Release of Company

If You have a dispute with a Third Party relating to Your use of the Company application, Company is not responsible for any such dispute and You hereby release Company, (and our officers, directors, agents, joint ventures and employees) from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes.

## 13. Modification of Terms

Company may amend this Agreement at any time by posting a revised version on Company website. The revised version will be effective at the time Company posts it unless it contains material changes. By using the Earnest Money Pro Services after a new Agreement has been posted, You agree to the revised Agreement.

## 14. Survival

In the event of termination of this Agreement or the Earnest Money Pro Services, the terms in this Agreement that by their nature are continuing shall survive such termination, including but not limited to the disclaimers and limitations of liabilities.

## 15. Force Majeure

Company shall not be liable for any delay or failure of transferring funds or in delivery of funds to Third Party, or for any damages suffered by You by reason of such delay or failures, directly or indirectly caused by or in any manner arising from or connected with acts of God, acts of public enemies, riots, strikes, acts of governmental agencies, labor difficulties, failure of our power, telecommunications or other suppliers, delays in securing or shortages of raw materials, breakdown or destruction of any system or equipment, or any other cause or causes beyond our control, whether or not similar to those enumerated herein.

## 16. Miscellaneous

This Agreement and other documents (including but not limited to the Privacy Policy) referenced in or linked to this Agreement, which are hereby incorporated herein and made a part of this Agreement by this reference, contain Yours and our entire Agreement regarding Your use of the Earnest Money Pro Services. If any provision of this Agreement is deemed to be illegal or unenforceable, such provision shall be

enforced to the extent possible, and any remaining illegality or unenforceability will not affect the validity or enforceability of any other provisions of this Agreement, which together will be construed as if such illegal or unenforceable provision had not been included in this Agreement. Any legal action arising out of Your use of the Earnest Money Pro Services must be brought within one year after the cause of action has arisen. The section headings in this Agreement are for convenience of reference only and are not to be considered as parts, provisions or interpretations of this Agreement. You may not transfer or assign any rights or obligations You have under this Agreement without Company's prior written consent. Company reserves the right to transfer or assign this Agreement or any right or obligation under this Agreement at any time. Our failure to act with respect to a breach by You or others does not waive our right to act with respect to that breach or subsequent or similar breaches.

#### 17. Independent Contractors

Independent Contractors. The parties agree they are independent contractors to each other in performing their respective obligations hereunder. Nothing in this Agreement or in the working relationship being established and developed hereunder shall be deemed or is intended to be deemed, nor shall it cause, the parties to be treated as partners, joint ventures, or otherwise as joint associates for profit.

#### HOW TO CONTACT US

If You have questions or concerns regarding this Agreement please email us at [support@earnestmoneypro.com](mailto:support@earnestmoneypro.com), You may write to us at Earnest Money Pro, LLC. 8700 Stonebrook Pkwy Suite 1221 Frisco Tx 75034 or call 1-844-666-3900