

AppCap Terms of Use

These Terms of Use are effective as of February 2, 2026.

Introduction

By accessing this website, and any sub-sites of this website (together the “**Site**”), and/or using any of the services or obtaining any product(s) offered (the “**Service**”) accessible through the Site, you become a user and agree to, and are bound by, these terms of use between you and Emigrant Bank also referred to as AppCap (“**AppCap**”, “**Emigrant Bank**”, “**we**”, “**us**”, or “**our**”) and the AppCap Online Privacy Policy (collectively, “**Terms**”) for as long as you continue to use the Site or Services. In these terms, “**Company**” or “**you**” means the company that is using the Site, applying for or is using products or services.

IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS, DO NOT USE THE SITE OR THE SERVICES. The AppCap Online Privacy Policy can be accessed here: www.useappcap.com/privacy-policy. Your use of, or participation in, certain Services may be subject to additional terms, and such terms will be either listed in the Terms or will be presented to you for your acceptance when you sign up to use such Services or apply for such products. Please check these Terms periodically for changes because we reserve the right, in our sole discretion, to change, modify, add or remove portions of these Terms without advance notice to you. Your continued use of the Site and the Services following the posting of changes will mean that you accept and agree to the changes. Please see the beginning of the Terms to determine when the Terms were last revised.

THESE TERMS STATE THAT ANY DISPUTES BETWEEN YOU AND EMIGRANT BANK MUST BE RESOLVED IN BINDING ARBITRATION, THAT YOU WAIVE THE RIGHT TO PARTICIPATE IN ANY CLASS ACTION, AND THAT THE LAW OF THE STATE OF NEW YORK APPLIES TO ALL INTERACTIONS BETWEEN YOU AND EMIGRANT BANK.

1. Use of Site and Service

As a user of the Site, you agree to the following:

- a. Exclusive Use.** Your account is to be used only by you and only for your business needs. You may not authorize others to use your account, and you may not assign or otherwise transfer your account to any other person or entity. You acknowledge that Emigrant Bank is not responsible for third-party access to your account that results from theft or misappropriation of your login information or any of your sensitive data.
- b. Information Submitted.** You are solely responsible for, and assume all liability regarding (i) the information and content you provide through your use of the Site and any Services, (ii) the information and content you make available in any manner through the service, and (iii) your interaction with any and all third-parties. Any attempt to enter information to create a duplicate account will be rejected and your account will be put on hold.

- c. Risk Assumption and Precautions.** You assume all risk when using the Services, including but not limited to all of the risks associated with any interactions with third-parties.
- d. No Guarantees.** Emigrant Bank may not be able to provide every business seeking to use the Services with such Service. Emigrant Bank makes no guarantees as to the funding amount or the suitability of the business funding for any business which utilizes the Services.
- e. No False Information.** You agree to provide accurate, true, current and complete information and keep such information up-to-date. In the event that Emigrant Bank determines that the information that is provided is incomplete, fraudulent, false, or otherwise inaccurate, Emigrant Bank reserves the right to terminate your access to the Services and the Site.
- f. Legal Purpose.** You agree to not use the Site or Services for any illegal purpose. You will only use the Site or Service in accordance with federal, state and local laws.
- g. Business Purpose.** You agree to only use the Site or Services for a bona fide business purpose. You agree not to use the Site or Services for personal, family or household purposes.

2. Eligibility

Only companies organized in the United States (e.g., C-corps, S-corps, LLCs, or LLPs) may apply for financial product accounts or services. Individual consumers, sole proprietors, unincorporated partnerships, and companies organized and/or registered outside the United States, are not permitted to use the Services.

The Services are commercial in nature, and you acknowledge and understand that certain consumer protection laws (e.g., the Electronic Funds Transfer Act or Regulation E) and consumer-specific rules do not apply to your use of the Services and transactions you may conduct using the Site.

Our Services are only intended for use by persons aged 18 years and over. **Individuals under the age of 18 are not permitted to use the Services.**

3. Account Requirements

By submitting an application for products and services, you, on Company's behalf, represents and warrants that at the time of application and at all times that Company uses the Services:

- Company is a business entity (e.g., C-Corp, S-Corp, LLC, LLP)
- Company is duly organized and registered in the United States
- Company is in good standing under the laws of the United States
- Company has a valid U.S. Employer Identification Number (EIN)
- Company is not engaged and will not engage in any Prohibited Activities as defined below
- The natural person using this website and that submits Company's application:
 - is an authorized representative of Company;
 - is not, and is not affiliated with, a Prohibited Person, as defined below; and

- is authorized to submit the application and all required information on behalf of Company, and enter into binding agreements on behalf of Company
- All information provided to us is and will be current, accurate, and complete
- All linked accounts are business rather than consumer accounts and are not established or used for personal, family, or household purposes

4. Required Information and Actions

You must provide Company information to apply for and maintain financial product accounts and to access the Services. Company information may include registered business name, business address, ownership details, contact information including email and phone number, tax identification number, the nature of the business, financial information, details for your Linked Accounts (defined below), and other business or personal information that we may require or request from time to time.

You may also be asked to provide certain personal information including the names, contact information, personal addresses, social security numbers, and dates of birth of you, Beneficial Owners, and Control Persons. We may also require that you provide certain documentary information used to verify Company information and personal information such as organizational documents and certificates of registration, proof of address, or personal identification.

You will keep all Company information and personal information current, complete, and accurate at all times during the application process and while the Services are in use. We may require additional information from you at any time, including data about you or the Company to assess Company's financial condition, for verification purposes, or for other legitimate business purposes.

You must link at least one external account ("**Linked Account**") in order to apply for a financial product account. All Linked Accounts must be business accounts rather than consumer accounts. You authorize us to verify that the account details you provide for your Linked Accounts are correct, the Linked Accounts belong to the Company, and proper authorization is received for any Linked Accounts.

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person, company and Beneficial Owners associated with an account (USA PATRIOT Act §326 – Customer Identification Program (31 CFR 1020.220)).

What this means for you: When you open an account, we will ask you for your name, address, date of birth, and other information to identify you. We may also ask to see your government issued identification or other identifying documents. You agree to provide the required information to open and maintain your financial product and services and agree to keep such information current.

5. Managing Services

You represent that you have the requisite power and authority to conduct business and manage the Services, including by authorizing debits from Linked Accounts. In the event that you no longer have such requisite power and authority, you must notify us promptly and shall be responsible to designate another individual with such requisite power and authority to conduct business and manage the Services.

You may take a variety of actions, including: applying for or removing Services, connecting and authorizing debits from current and new Linked Accounts; consenting to new and updated terms, if applicable; and taking actions specified in any other service-specific terms. You must not allow access to the Services by any Prohibited Person.

In the event of a dispute regarding who is authorized to act on behalf of the Company in connection with the Services, you agree that we are not obligated to adjudicate any such dispute and may continue to honor instructions from any designated individual, or suspend the Services or limit use of the Services unless and until the dispute is resolved, in our sole discretion.

6. Responsibility for Use

Company is responsible and liable for the actions or failures to act of any user that uses, or accesses the Services through the Site, including without limitation, any breach or violation of these Terms by Company, or any user or other person associated therewith.

Company is responsible for ensuring that you, and any other persons associated with Company communicate respectfully and will refrain from using any form of disrespectful, harassing, abusive, or hateful speech when communicating with us. If we receive reports of any such behavior, we may contact you, suspend or limit access to the Site, the Services, or close your financial product account, in our sole discretion without notice.

- a. Safeguards.** You will take all reasonable steps to safeguard the privacy, confidentiality, and security of login information. You will use all reasonable means to protect mobile devices, web browsers, and anything else used to access or utilize the Services. You will not allow any unauthorized person to use the Services. You will immediately disable access to the Services where you know or suspect your account has been compromised or may be misused or where you; and you will promptly notify us of any unauthorized access or use of the Services.
- b. Updates to Company Information.** We may require additional information from you, at any time, including business information (such as business licenses or other information related to Company's business) and personal information (such as copies of government-issued personal identification and proof of address) to verify Beneficial Owners or Control Persons, validate information provided, verify your identity, or assess the financial condition and business risks of Company. You are required to keep Company information and personal information current, complete, and accurate at all times.

You must promptly notify us in writing if any of the following events occur with respect to Company, as your failure to do so can result in fines, losses, damages, and other expenses to you and Emigrant Bank:

- The nature of the company's business changes significantly;
- There is a change of Beneficial Owners or Control Persons;
- There is a material change in the control or ownership (whether direct or indirect), including transfer or sale of 25% or more of assets;
- There is a planned or anticipated liquidation or voluntary bankruptcy or insolvency proceeding;
- Involvement in a regulatory proceeding in which claims are asserted that would, if sustained in a legal or regulatory proceeding or alternative dispute resolution forum, result in a material monetary penalty or materially impact the company's financial condition or business operations;
- Receipt of a judgment, writ or warrant of attachment or execution, lien, or levy against 25% or more of the Company's total assets; and/or
- Engagement in any Prohibited Activities or any Restricted Activities that were not previously disclosed to and preapproved by us.

7. Intellectual Property Rights

- a. **Ownership of Proprietary Information.** All text, graphics, user interfaces, visual interfaces, photographs, trademarks (whether registered or not), logos, sounds, artwork of any kind, and computer code (collectively, "**Content**"), including but not limited to the design, structure, coordination, selection, appearance, and arrangement of the Content, contained on the Site, or used in connection with the Services, is owned by Emigrant Bank and is protected by trade dress, copyright, trademark, and other property laws and unfair competition laws. You hereby acknowledge and agree that Emigrant Bank is the owner of all rights in and to the Site and Services. Federal, state, and local laws and regulations protect these proprietary rights. You are permitted to use the Site and Services only as expressly authorized by these Terms. You may not copy, reproduce, distribute or create derivative works, reverse engineer or reverse compile any of the Site or Services or technology. Any misuse of the Content will be at your peril and Emigrant Bank will do all that is lawful to enforce and protect its rights in the Content.
- b. **No Use of Confidential Information.** You will not post, copy, modify, transmit, disclose, show in public, create any derivative works from, distribute, make commercial use of, or reproduce in any way any (i) confidential information or (ii) other copyrighted material, trademarks, or other proprietary information accessible via the Site or Services, without first obtaining the prior written consent of the owner of such proprietary rights.
- c. **License to Provided Content.** By providing information or content to any account or public area of the Site or Service, you automatically grant, and you represent and warrant that you have the right to grant, to Emigrant Bank and its users, an irrevocable, perpetual, non-exclusive, fully-paid, worldwide license to use, reproduce, publicly perform, publicly display and distribute such information and content, and to prepare derivative works of, or incorporate into other works, such information and content, and to grant and authorize sub-licenses of the foregoing. From time to time, we may create, test or implement new

features or services on the Site in which you may voluntarily choose to participate, in accordance with the additional terms and conditions of such features or programs. By your voluntary participation in such features or programs, you grant us the rights stated in this subsection in connection with the additional terms and conditions (if any) of such features or services.

8. Links to Third Party Websites

The Site and Services may contain links to websites of third-parties, including without limitation, websites which are not under the control of Emigrant Bank, and Emigrant Bank is not responsible for the content of any linked site or any link contained in a linked site, or any changes or updates to such websites. Emigrant Bank provides these links to you as a convenience, and the inclusion of any link does not imply that Emigrant Bank endorses or accepts any responsibility for the content on such third-party websites. Your business dealings with third-parties found on or through the Site or Services are solely between you and such third-party. Please visit our Privacy Policy to learn more about how we use your information.

9. Disclaimer of Warranty

- a. **No Warranties.** EMIGRANT BANK PROVIDES THE SERVICES ON AN “AS IS” AND “AS AVAILABLE” BASIS AND GRANTS NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH RESPECT TO THE SERVICES OR THE SITE (INCLUDING ALL INFORMATION CONTAINED THEREIN), INCLUDING NON-INFRINGEMENT, THE OPERATION OF THE SERVICES, THE ACCURACY OF DATA PROCESSING, OR THE QUALIFICATION OF APPLICATIONS. EMIGRANT BANK DOES NOT GUARANTEE THAT ANY APPLICANT WILL BE REFERED FOR OR APPROVED FOR A LOAN OR THAT ANY LOAN APPLICATION WILL BE SUCCESSFULLY CLOSED. EMIGRANT BANK DOES NOT WARRANT THAT YOUR USE OF THE SERVICES WILL BE SECURE, UNINTERRUPTED, ALWAYS AVAILABLE, ERROR-FREE OR WILL MEET YOUR REQUIREMENTS, OR THAT ANY DEFECTS IN THE SERVICES WILL BE CORRECTED. EMIGRANT BANK DISCLAIMS LIABILITY FOR, AND NO WARRANTY IS MADE WITH RESPECT TO, THE CONNECTIVITY AND AVAILABILITY OF THE SERVICES.
- b. **Third-Party Content.** Opinions, advice, statements, offers, or other information or content made available through the Site or Services, but not directly by Emigrant Bank, are those of their respective authors, and Emigrant Bank is not responsible for such content. EMIGRANT BANK DOES NOT: (i) GUARANTEE THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION PROVIDED ON THE SERVICES, OR (ii) ADOPT, ENDORSE OR ACCEPT RESPONSIBILITY FOR THE ACCURACY OR RELIABILITY OF ANY OPINION, ADVICE, OR STATEMENT MADE ON THE SITE.
- c. **Beta Features.** From time to time, Emigrant Bank may offer new “beta” features or tools with which its users may experiment on the Site or Services. Such features or tools are offered solely for experimental purposes and without any warranty of any kind, and may

be modified or discontinued at Emigrant Bank sole discretion. The provisions of this Disclaimer of Warranty section apply with full force to such features or tools.

10. Limitation of Liability

- a. **Incidental Damages and Aggregate Liability.** IN NO EVENT WILL EMIGRANT BANK BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE THE SERVICES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OR CORRUPTION OF DATA OR PROGRAMS, SERVICE INTERRUPTIONS, RELIANCE ON INFORMATION OR OTHER CONTENT POSTED ON THE SITE OR SERVICES AND PROCUREMENT OF SUBSTITUTE SERVICES, EVEN IF EMIGRANT BANK KNOWS OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL EMIGRANT BANK AGGREGATE LIABILITY, IN ANY FORM OF ACTION WHATSOEVER IN CONNECTION WITH THIS TERMS OR THE USE OF THE SERVICES OR SITE, EXCEED THE PRICE PAID BY YOU FOR YOUR ACCOUNT OR SUBSCRIPTION, OR, IF YOU HAVE NOT PAID EMIGRANT BANK FOR THE USE OF ANY SERVICES, THE AMOUNT OF USD \$25.00 OR ITS EQUIVALENT.
- b. **No Liability for non-Emigrant Bank Actions.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EMIGRANT BANK BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, COMPENSATORY, CONSEQUENTIAL, AND/OR INCIDENTAL, ARISING OUT OF OR RELATING TO THE CONDUCT OF YOU OR ANYONE ELSE IN CONNECTION WITH THE USE OF THE SERVICES.
- c. **Information Verification.** Emigrant Bank and its contractors may use various methods of verifying information that users have provided. However, none of those ways are perfect, and you agree that Emigrant Bank and its contractors will have no liability to you arising from any incorrectly verified information. By applying for Services, you consent to us conducting a 'soft' inquiry on your credit report to review your creditworthiness. This inquiry will not affect your credit score. This information will be used to consider you and your Company for the Services.

11. Indemnification

You agree to indemnify, defend and hold harmless Emigrant Bank, its officers, directors, employees, agents and third parties, for any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of (i) your use of or inability to use the Site or Services, (ii) any user postings made by you, (iii) your violation of any terms of these Terms or your violation of any rights of a third-party, or (iv) your violation of any applicable laws, rules or regulations. Emigrant Bank reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Emigrant Bank in asserting any available defenses.

12. User Information

- a. **Privacy Policy.** For information about the collection and possible use of information and material provided by you, please visit AppCap Online Privacy Policy located on the Site. By using the Site or the Services, you are consenting to the terms of AppCap Online Privacy Policy.
- b. **Contact Information.** You verify that any contact information provided to Emigrant Bank, including, but not limited to, your name, business entity name and type, mailing address, email address, business telephone is true and accurate. If we discover that any information provided in connection with your application is false or inaccurate, we may suspend or terminate your account at any time. Should any of your contact information change you agree to immediately notify us in writing by sending such notification via email to support@useappcap.com.
- c. **Disclosure by Law.** You acknowledge and agree that Emigrant Bank may disclose information you provide if required to do so by law, at the request of a third-party, or if we, in our sole discretion, believe that disclosure is reasonable to (i) comply with the law, requests or orders from law enforcement, or any legal process (whether or not such disclosure is required by applicable law); or (ii) protect or defend Emigrant Bank, or a third-party's, rights or property.
- d. **Information Security.** We work hard to protect Emigrant Bank and our users from unauthorized access to or unauthorized alteration, disclosure or destruction of information we hold. In particular:
 - i. We encrypt many of our services using industry standard methods.
 - ii. We review our information collection, storage and processing practices, including physical security measures, to guard against unauthorized access to systems.
 - iii. We restrict access to personal information to Emigrant Bank employees, contractors and agents who need to know that information in order to process it for us, and who are subject to strict contractual confidentiality obligations and may be disciplined or terminated if they fail to meet these obligations.
- e. **Use of Anonymous Information for Research.** By using the Site and/or Services, you agree to allow Emigrant Bank to anonymously use the information from you and your experiences through the Services to continue Emigrant Bank research into successful business practices and to improve the Services.
- f. **License Regarding Your Content.** You retain all ownership interest in and to the content you provide to the Site or as part of your use of the Services. However, by submitting your content, including your personal and business information, you hereby grant to Emigrant Bank a perpetual, non-exclusive, irrevocable, royalty-free license to reproduce, adapt, edit, modify, translate, publish, transfer, and/or distribute any of your content. This license specifically includes the right for Emigrant Bank to make such content available to other trusted companies, organizations, and/or individuals with whom Emigrant Bank has a business relationship in order to carry out the performance of the Services. As part of its performance of the Services, Emigrant Bank may (i) transmit or distribute your information over various public networks and in various forms; and (ii) make necessary changes to your content in order to perform its obligations.

13. Restrictions

You may not, and will also make all reasonable efforts to make sure any third parties do not:

- Use the Services as a money services business, money transmitter, payment intermediary, aggregator, or service bureau or resell the Services in any manner.
- Use the Services on behalf of a third party in any manner.
- Abuse the Services in any manner.
- Use the Service in violation of any other agreement you may have, including without limitation, the agreement you have with any app store, including but not limited to, Apple App Store.
- Create a similar product or service through use of or access to the Service. Use the Service in violation of any law, regulation, or rule.
- Use the Service to perpetuate or commit a fraud of any kind.
- Use the Services in any way that is not authorized by Emigrant Bank.
- Use the Service for any personal, family, or household purposes.

14. Regulation GG – Unlawful Internet Gambling Enforcement Act (UIGEA)

This notice is provided in accordance with the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG. The UIGEA prohibits any person engaged in the business of betting or wagering (as defined in the UIGEA) from knowingly accepting payments in connection with the participation of another person in unlawful internet gambling. You may not use the Services for any activity that involves any gambling, bet, wager, lottery, sweepstakes, or game of chance which is unlawful under applicable law, including the development of gambling software or hosting environments as defined in the UIGEA and Regulation GG.

15. Dispute Resolution by Binding Arbitration; Class Action Waiver Notice

ARBITRATION NOTICE. THIS AGREEMENT CONTAINS AN ARBITRATION CLAUSE AND A CLASS ACTION WAIVER. PLEASE READ THIS PROVISION CAREFULLY, AS IT AFFECTS YOUR LEGAL RIGHTS. IT PROVIDES THAT ANY CLAIM RELATING TO YOUR ACCOUNT MAY BE RESOLVED BY BINDING ARBITRATION. YOU ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT, AND ARBITRATION DECISIONS ARE SUBJECT TO VERY LIMITED REVIEW.

CLAIMS MAY BE ARBITRATED ONLY ON AN INDIVIDUAL BASIS. YOU EXPRESSLY WAIVE ANY RIGHT THAT YOU MAY HAVE TO ARBITRATE A CLASS ACTION. IF EITHER PARTY CHOOSES TO ARBITRATE A CLAIM, NEITHER PARTY WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR TO HAVE A JURY TRIAL ON THAT CLAIM, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO SUCH CLAIM.

- a. Arbitration of Claims. Except as expressly provided herein, any claim, dispute or controversy (whether based upon contract; tort, intentional or otherwise; constitution; statute; common law; or equity and whether pre-existing, present or future), including initial claims, counter-claims, cross-claims and third-party claims, arising from or relating to (i) these Terms; (ii) the Service; (iii) the Site; (iv) the technology, (v) any other services,

products or information provided, sold purchased or managed, operated or fulfilled by us under this Agreement, including the validity, enforceability, interpretation, scope, or application of the Agreement and this arbitration provision (except for the prohibition on class or other non-individual claims, which shall be for a court to decide); and (v) any other agreement or instrument relating to the account or any such service (“**Claim**”) shall be decided, upon the election of you or the Bank (or the Bank’s agents, employees, successors, representatives, affiliated companies, or assigns), by binding arbitration pursuant to this arbitration provision and the applicable rules and procedures of the arbitration administrator in effect at the time the Claim is filed. The American Arbitration Association (“**AAA**”) shall serve as the arbitration administrator. You may obtain copies of the current rules, forms, and instructions for initiating an arbitration with the AAA by contacting the AAA as follows: on the website at www.adr.org or by writing to AAA at 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043.

- b. Other Claims Subject to Arbitration. In addition to Claims brought by either you or the Bank, Claims by or against its affiliates, anyone connected with you or the Bank or claiming through you or the Bank (including a second cardholder, employee, agent, representative, affiliated company, predecessor or successor, heir, assignee, or trustee in bankruptcy) shall be subject to arbitration as described herein.
- c. Exceptions. You and we agree not to invoke our right to arbitrate any individual Claim you bring in small claims court or an equivalent court so long as the Claim is pending only in that court. This arbitration provision also does not limit or constrain the Bank’s right to interplead funds in the event of claims by several parties.
- d. Individual Claims Only. It is the intent of the parties to require Claims to be submitted to arbitration on an individual basis only.
- e. Claims subject to this arbitration provision may not be joined or consolidated in arbitration with any Claim of any other person or be arbitrated on a class basis, in a representative capacity on behalf of the general public or on behalf of any other person, unless otherwise agreed to by the parties in writing.
- f. Arbitration Fees. If the Bank initiates or elects arbitration, the Bank will pay the entire amount of the arbitration fees, including any required deposit. Notwithstanding any provision of this arbitration provision or the rules and procedures of the arbitration administrator, the Bank will be responsible for payment and/or reimbursement of any arbitration fees to the extent that such fees exceed the amount of the filing fees you would have incurred if your Claim had been brought in the state or federal court nearest your residence with jurisdiction over the Claims
- g. Procedure. A single arbitrator will resolve the Claims. The arbitrator will be a lawyer with at least ten years of experience or who is a former or retired judge. The arbitration shall follow the rules and procedures of the arbitration administrator in effect on the date the arbitration is filed, except when there is a conflict or inconsistency between the rules and procedures of the arbitration administrator and this arbitration provision, in which case this arbitration provision shall govern. Any in-person arbitration hearing for a Claim shall take place within the federal judicial district in the Borough of Manhattan, New York, New York or in which you live as agreed by the parties. The arbitrator shall apply applicable substantive law consistent with the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the “**FAA**”)

and shall honor all claims of privilege and confidentiality recognized at law. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding. The arbitrator shall be empowered to grant whatever relief would be available in court under law or in equity. At the request of any party, the arbitrator will provide a written explanation of the basis for the disposition of each claim, including written findings of fact and conclusions of law. This arbitration provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA.

- h. **CLASS ACTION WAIVER.** WE EACH AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION WE EACH WAIVE ANY RIGHT TO A JURY TRIAL. NO ARBITRATION UNDER THESE TERMS MAY BE JOINED WITH ANOTHER ARBITRATION RELATED TO THE SUBJECT MATTER OF THE DISPUTE OR ANY OTHER CLAIMS UNDER THESE TERMS. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, YOU WAIVE YOUR RIGHT TO BRING OR PARTICIPATE IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION, AND WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.

16. General Provisions

- a. **Controlling Law and Jurisdiction.** You agree that New York law (without giving effect to its conflicts of law principles) will govern these Terms, the Site and the Services and that any dispute arising out of or relating to these Terms, the Site or the Services will be subject to the exclusive jurisdiction and venue of the federal and state courts in New York, New York. You acknowledge and agree that any violation of these Terms may cause Emigrant Bank irreparable harm, and therefore agree that Emigrant Bank will be entitled to seek extraordinary relief in court, including but not limited to temporary restraining orders, preliminary injunctions and permanent injunctions without the necessity of posting a bond or other security, in addition to and without prejudice to any other rights or remedies that Emigrant Bank may have for a breach of these Terms.
- b. **Entire Agreement.** These Terms, which you accept upon registration for the Services, the Privacy Policy located on the Site, and any applicable payment, renewal, additional services terms, comprise the entire agreement between you and Emigrant Bank regarding the use of this Service or the Site, superseding any prior agreements between you and Emigrant Bank related to your use of this Site or Services (including, but not limited to, any prior versions of this Terms). The FAQ's found on the Site are for informational purposes only and are not deemed to be part of these Terms. The section titles in the Terms are for convenience only and have no legal or contractual effect.
- c. **Survival.** Unless otherwise explicitly stated, these Terms will survive termination of your registration to the Service.
- d. **Waiver.** The failure of Emigrant Bank to exercise or enforce any right or provision of these Terms does not constitute a waiver of such right or provision.
- e. **Severability.** If any provision of these Terms is held invalid, the remainder of the Terms will continue in full force and effect.

- f. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Site or the Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

17. Notification of Terms of Use Changes

We may update these Terms of Use to reflect changes to our business operations. If we make any material changes, we will notify you by email (sent to the email address specified in your account) or by means of a notice on this Site. We encourage you to periodically review this page for the latest information on these Terms. When we make changes to these Terms we will revise the revision date at the top of the Terms.

18. Term and Termination

This agreement will become effective upon your acceptance of the Terms by your use of the Site or Services and will remain in effect in perpetuity unless terminated hereunder. Emigrant Bank may terminate your account at any time, for any reason or no reason, without explanation, with or without notice. Emigrant Bank reserves the right to immediately suspend or terminate your access to any of the Services, without notice, for any reason or no reason. We also reserve the right to refuse to remove your account information or data from our Services and any other records at any time to comply with legal and regulatory requirements. In the event your access to any of the Services is suspended due to the breach of these Terms, you agree that all fees then paid to Emigrant Bank by you will be nonrefundable and all outstanding or pending payments will immediately be due. You may terminate your account by contacting us.

19. Defined Terms

Capitalized terms in these Terms and Conditions are defined as follows:

Beneficial Owner means an individual with significant responsibility to control, manage or direct the Company or who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns twenty-five percent (25%) or more of the equity interests of the Company.

Control Persons means a person with substantial responsibility to direct, manage, or significantly influence Company's operations or policies.

Linked Account means any account that is held with an external financial institution and is connected to your financial product account and authorized for payment of amounts.

Prohibited Person means any individual or organization that appears on, is owned or controlled (directly or indirectly) by, or is acting on behalf of any person or entity subject to sanctions under U.S. law, including any list maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**") or the U.S. Department of State or financial-crime watchlist including lists relating to terrorism, money laundering, fraud, corruption, human trafficking, proliferation, or other criminal or illicit activity; or is subject to any law, regulation, or other governmental restriction

that prohibits or limits us from providing an account, services, or otherwise conducting business with such person or entity.

20. Prohibited Activities

The examples listed below are not exhaustive and we reserve the right to modify or update the list at any time by posting a revised version to our website. The revised version will be immediately effective upon posting.

If we determine in our sole discretion that you engage or have engaged in the activities listed below, or are authorizing, facilitating, or helping others to do so, or otherwise are engaged in activities that are illegal, may harm others or our reputation or operations, or violate our or others' rights, we may deny, terminate, or suspend your use of the Services:

- Any activity which would violate any law, statute, ordinance, regulation, or sanctions programs applicable in the countries where we conduct business, including but not limited to the United States Department of Treasury's Office of Foreign Assets Control ("**OFAC**");
- Illegally utilizing identities that cannot be verified, applying anonymously or under fictitious names, and/or having accounts that do not identify the owners or stock certificates held in accounts without an owner endorsed to the "bearer";
- Unlawful, unlicensed, or unauthorized payment processing, including but not limited to facilitating or processing payments for, or on behalf of, a third party;
- Any activity where there is a suspicion or evidence that criminal activity has taken place, a criminal offense has been committed, or where there is a suspicion of terrorist financing;
- Any activity involving the suspicious use of shell banks or shell companies (entities that have no physical existence in the country in which it is incorporated and licensed) or banks with no physical presence in any country that are not licensed by any banking authority;
- Any activity that involves any gambling, bet, wager, lottery, sweepstakes, or game of chance which is unlawful under applicable law, including the development of gambling software or hosting environments as defined in the Unlawful Internet Gambling Act of 2006 (UIGEA) and Prohibition of Funding of Unlawful Internet Gambling ("**Regulation GG**");
- Unlawful high interest rate loans and/or payday loans;
- Unlawful marijuana-related activities, such as manufacturing, dispensing, transporting, and/or otherwise deriving revenue from illicit marijuana-related activity;
- Illegal sexually-related services including prostitution and child pornography (child or adult);
- Human trafficking entities that are involved in forced labor, sex trafficking, or other forms of exploitation;
- Illicit drugs trafficking, drug paraphernalia manufacturing, or illicit drug distribution, including providing tools or services to aid in illicit drug trafficking or distribution;
- Production, sale, or distribution of Schedule I controlled substances with or without a pharmaceutical license, or sale of Schedules II-V controlled substances without a pharmaceutical license, where such schedules are defined by the United States Department of Justice, Drug Enforcement Agency (DEA);

- Business models indicative of a ponzi scheme, pyramid selling, pump and dump schemes, or other forms of “get rich quick,” unfair, or deceptive business models;
- Manufacturing of counterfeit goods or goods meant to infringe on intellectual property rights;
- Illegal weapons or Proliferation such as the production, sale or distribution of nuclear, chemical, or biological weapons, missile technology, or other restricted military equipment;
- Activities involving pseudo-medical and pseudo-pharmaceutical products, services, or companies with unsubstantiated or misleading medical claims not authorized by the applicable regulatory body;
- Trade, sale, or distribution of illegal products or products or services that are imported or exported illegally; and
- Any other industry or business type that we reasonably determine presents an unacceptable legal or regulatory risk.