



Terms of Service

Last revised on September 21, 2020

PLEASE REVIEW THESE TERMS OF SERVICE CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION IN SECTION 11, WHICH REQUIRES THAT DISPUTES ARE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL AND WITHOUT RIGHT TO A TRIAL BY JURY AND NOT A CLASS-ACTION OR CONSOLIDATED BASIS.

1. Introduction

The PayNearMe™ payment network (the “**Network**”) is operated and maintained by PayNearMe MT, Inc. (“**PayNearMe**” “**we**” “**our**” or “**us**”) a Delaware USA corporation, licensed money transmitter, and wholly owned subsidiary of Handle Financial, Inc. (formerly known as PayNearMe, Inc.). We operate the Network to enable you to make payments and load funds online or at convenient payment locations, e.g., 7-Eleven, Inc. (each an “**Authorized Payment Location**”) near you to participating businesses, governmental and nongovernmental organizations (“**biller(s)**”) with whom we have a contractual relationship. For the avoidance of doubt, each Authorized Payment Location is a payment agent of PayNearMe. Depending on the biller that you are paying, payments can be in the form of cash (“**Cash Payment(s)**”) or through a third-party credit/debit/prepaid card or from your bank account transfers (“**Electronic Payment(s)**”). Cash Payment services require that payments are made at Authorized Payment Locations, while Electronic Payments may be made using our software applications on your computer or mobile device. We also operate the Network to enable you to receive a disbursement of funds from a participating biller via a “push” to your debit card. For example, if you sign up for a loan, your lender may disburse loan proceeds through our Network. We sometimes call “**you**” a “**user**” of the Network.

By using or accessing the Network, our related “**Website**” – www.paynearme.com -, or our software applications on your computer or mobile device (each and all called the “**Content**”), you agree to be bound by these Terms of Service (“**Terms**”), so read them carefully. If you don’t agree to all of these Terms, then refrain from using the Content.

We reserve the right to change or modify these Terms at any time and in our sole discretion. If we make changes to these Terms, we will provide notice of such changes by sending an email or alert posting a notice on the Content or updating the “Last Revised” date above. Any changes or additions will be effective twenty-one (21) days after such notice. Your continued use of the Content will confirm your acceptance to the revised Terms. Therefore, you should frequently review these Terms and all related information that may apply to your use of the Content. If you do not agree to the updated Terms, you must stop using the Content.

Some Content may have additional or different terms and conditions that supplement these terms. These terms are intended to apply generally across many places and customs to ensure fairness, uniformity and better service levels for all users of the Content, however, to accommodate the special regulatory requirements of certain kinds of billers, e.g., consumer lenders or health care providers, or certain state requirements, we may agree to modify these Terms for the benefit of such billers, authorities and users by separate agreement. To the extent a particular provision of these Terms is illegal in a specific place or for a certain kind of user or payment recipient, then it will not be enforceable to that extent, and these Terms will be reasonably and equitably adjusted at our discretion with this general intent in mind.

2. Eligibility, Registration and Account

By using the Content, you represent and warrant that you (a) have not been previously suspended or removed from the Content and (b) have full power and authority to agree to these Terms.

Some areas or features of the Content may require you to register for an account and/or create a profile. You may only register for one online account when you use the Content. When registering for an account, you agree to: provide accurate, current and complete information; maintain and promptly update your information; maintain the security of your password and other access credentials and accept all risks associated with unauthorized access to your account and the information you provide to us; and promptly notify us if you discover or otherwise suspect any security breaches related to your account or the Content. Electronic Payment account information will be stored on our remote cloud service. All information and instructions received from your account will be deemed to have been authorized by you and the recipients of this information can reasonably rely on its authenticity. You will be responsible for the actions taken by anyone accessing the Content using your password and/or account designation.

By using the Content, you confirm that you have reviewed these terms and accepted them with ample opportunity to get advice from others and to choose from other payment alternatives. In any event, PayNearMe may reasonably rely on these understandings and PayNearMe reserves the right to terminate your access to all or any portion of the Content at any time.

3. Privacy Policy and User Data

Please refer to our [Privacy Policy](#) for information on how we collect, use, and disclose information about our users.

4. User Payment Terms

The Network allows you to make Electronic Payments online, or in-person Cash Payments at convenient locations, when you and the biller that you want to pay are not face-to-face. For cash payments in particular, PayNearMe has contracted with these Authorized Payment Locations and integrated with their point of sale information systems. In all cases, you can make payments to or load funds into your account with a list of approved billers that we update regularly. We have agreed to act as a payment agent for a number of these billers. For these “contracted billers”, we make payment directly to them through the banking system. They have agreed to treat confirmation of your Electronic Payment, or receipt of your Cash Payment at the Authorized Payment Locations, as payment by you, even if for any reason, PayNearMe does not make the corresponding payment to them. Therefore, you are not at risk of having to pay twice. (Your receipt or payment acknowledgement will show this important information.)

Neither PayNearMe, nor its agents and Authorized Payment Locations are responsible for fulfilling your order, adjusting your account balance with the biller, ensuring the quality of the merchandise or service or its delivery. Billers are responsible for adjusting their own books and records with respect to users, e.g., outstanding account or loan balances. Generally, all payments to contracted billers are final and nonrefundable, unless PayNearMe does not send your payment or does not give instructions committing an equivalent amount of money to the biller designated by you within ten days of the date of Electronic Payment or Cash Payment by you at the Authorized Payment Location and you do not receive the benefit of the payment that you made. Any refund request after PayNearMe has sent your payment must be directed to the biller. **To be clear, when paying with cash, Authorized Payment Locations never provide refunds.** See your [Applicable State Refund Policy](#) and refer to your receipt for any state-specific details. If you involve us in a dispute with your biller, bank, or credit card company that is not the result of our failure to fulfill our obligations, you will be obligated to reimburse our costs, including attorneys’ fees, unless the biller accepts such obligation and further subject to Section 11 below.

Pursuant to these Terms, PayNearMe will at its complete discretion: (1) Create an information record for you; (2) Process payments on a timely and accurate basis by applying biller instructions, Bank and Network policies, and PayNearMe’s proprietary methods; and (3) Provide standard support information to address inquiries regarding use of the Network. PayNearMe reserves the right to decline any payment request. PayNearMe also reserves the right to change payment methods, billers and Authorized Payment Locations without notice and cannot guaranty the availability of a specific payment method, biller or Authorized Payment Location at any time. There may be times when the Content is not available to you. For example, system maintenance, back-ups or failures may limit the Content’s availability. Access to the Content is provided on an “as available” basis and you are not guaranteed access at any particular time.

In consideration for your use of the Content, PayNearMe collects a transaction fee. For Electronic Payments, the transaction fee is collected at the time of payment. For Cash Payments, the transaction fee is collected by the Authorized Payment Location and a portion is shared with the Authorized Payment Location. Some billers pay this fee. When they do not, you pay the applicable fee as a convenience fee charge in addition to the payment you are making to the biller. PayNearMe may elect to waive its fees from time to time for charitable or promotional purposes.

You must provide complete and accurate information while using the Content and must update all account information and timely respond to requests for additional information truthfully. You understand that to engage in some transactions, use some Authorized Payment Locations, or use a particular payment method, you may be required to provide additional identifying information. You expressly authorize PayNearMe and its affiliates, customers, vendors, Suppliers, licensors, agents and Authorized Payment Locations to exercise all good faith measures to verify the information provided both initially and from time to time thereafter. You will not use any information provided through the Network for any purpose other than for making lawful payments and completing transactions with bona fide billers. All other uses are prohibited. You will always act reasonably and in good faith in connection with your use of the Network, recognizing that the Network's purpose is to facilitate remote commerce and enhance the integrity and efficiency of such transactions. If PayNearMe concludes at its complete discretion that any use by you frustrates this purpose, PayNearMe may prohibit your use of the Network.

The Network may not be used to make payments by persons under thirteen years old, or other legally prescribed age required in biller's line of business, for: any form of illegal gambling activities (including underage gambling); firearms, controlled substances, prescription drugs, steroids, or related paraphernalia; obscenity, copyrighted materials where the merchant does not have the right to copy or distribute such materials; or where the total payment amount exceeds the applicable PayNearMe or Authorized Payment Location limits, typically less than one thousand dollars per day, less for some kinds of transactions and more for some others. Monthly limitations are also applicable at our complete discretion. You acknowledge your obligation to know the biller that you are paying along with related legal limitations (including age requirements) and to avoid misuse. PAYNEARME ACTIVELY MONITORS THE NETWORK FOR IMPROPER USE AND ILLEGAL ACTIVITY AND COOPERATES WITH LAW ENFORCEMENT AND OTHER SERVICE PROVIDERS TO REDUCE THE RISK OF MONEY LAUNDERING AND OTHER CRIMINAL OR TERRORIST ACTIVITY. Our Authorized Payment Locations, Billers, other payment processors and supporting financial service providers may have additional requirements related to countering money laundering, crime, and terrorism. YOU EXPRESSLY CONSENT TO ALL SUCH COMPLIANCE EFFORTS AND OUR RELATED COOPERATION WITH OTHERS AND WILL REASONABLY COOPERATE WITH ALL SUCH GOOD FAITH EFFORTS.

Some payments are regulated under the money transmission laws of applicable states and territories as well as federal law, or we may elect to treat them as so regulated. For this reason, PayNearMe is licensed as a money transmitter in the places identified in [additional state required information](#). Ways to contact the regulatory authority and other relevant information for your state or territory is provided there.

It is your (or your biller's) responsibility to determine what, if any, taxes apply to the payments you make, and it is your responsibility to collect, report and remit the correct tax to the appropriate tax authority. We are not responsible for determining whether taxes apply to your payment transaction or for collecting, reporting, withholding or remitting any taxes arising from any payment transaction.

5. User Conduct

In using the Content, you agree:

- not to disrupt or interfere with the security of, or otherwise abuse, the Content, or any services, system resources, accounts, servers or networks connected to or accessible through the Content or affiliated or linked web sites;
- not to disrupt or interfere with any other user's enjoyment of the Content or affiliated or linked websites;
- not to upload, post or otherwise transmit through or on the Content any viruses or other harmful, disruptive or destructive files;

- not to use or attempt to use or access another person's account or personal information, or create or use a false identity on the Content;
- not to attempt to obtain unauthorized access to the Content or portions of the Content which are restricted from general access; and
- not to use any robot, spider or other automatic device, or manual process to monitor, extract, collect, harvest or copy the web pages or any data or data fields contained at the Content including, but not limited to, personally identifiable information of any other user of the Content.

In addition, you agree that you are solely responsible for actions and communications undertaken or transmitted under your account, and that you will comply with all applicable local, state and federal laws and regulations that relate to your use of or activities on the Content. Fraudulent transactions may result in the loss of your money with no recourse, except as otherwise required by law, to the Authorized Payment Locations, PayNearMe, and billers. Fraudulent transactions include, but are not limited to, unauthorized account cash transactions, unauthorized electronic funds transfers, and transactions intended to deceive or defraud another party using the Network.

6. Jurisdiction

The Content is solely directed to individuals residing in the United States. We make no representation that any portion of the Content is appropriate or available for use in locations outside the United States.

7. Ownership

PayNearMe and/or its Suppliers, licensors, agents and Authorized Payment Locations either own or license all right, title, and interest in the Content and may change them at any time. Nothing in these Terms confers any license to our intellectual property rights, whether by estoppel, implication or otherwise. You may report bugs and fixes, provide feature requests, comments, testimonials, feedback and suggestions to PayNearMe by emailing us at support@paynearme.com ("**Feedback**"). PayNearMe may use the Feedback without any compensation, notice or attribution to you and will own all intellectual property rights in such Feedback.

8. Trademarks

The trademarks, logos and service marks used and displayed herein and in connection with the Network and in the Content (collectively, the "**Trademarks**") are the trademarks of Handle Financial, Inc., our affiliates, and our Authorized Payment Locations. The Trademarks may not be copied, imitated or used, in whole or in part, without the prior written permission of PayNearMe or the applicable trademark holder. Any authorized use of the Trademarks must be in accordance with guidelines that we may provide you from time to time. The term Trademarks as used in these Terms does not include the trademarks, intellectual property, or other content or material owned by third parties and not covered under a license with PayNearMe or its Authorized Payment Locations. Reference to any products, services, trademarks, or service marks on the Network or in the Content is not an endorsement or recommendation by PayNearMe of these products or services.

9. Warranty and Disclaimers

WE WILL MAKE REASONABLE, GOOD FAITH EFFORTS TO PROVIDE THE SERVICES LAWFULLY IN THE MANNER THAT WE DESCRIBE IN THESE TERMS, WHILE MINDFUL OF YOUR REASONABLE NEEDS AND EXPECTATIONS AND APPLICABLE INDUSTRY STANDARDS OF WHICH WE ARE AWARE. THE CONTENT IS OTHERWISE PROVIDED "AS IS" "WHEN AVAILABLE". PAYNEARME AND ALL THIRD PARTIES PAYNEARME HAS CONTRACTED WITH TO PROVIDE THE SERVICES, INCLUDING ITS AFFILIATES, AGENTS, AUTHORIZED PAYMENT LOCATIONS, AND THIRD PARTY PAYMENT PROCESSORS (collectively the "**SUPPLIERS**") DISCLAIM ALL WARRANTIES, GUARANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL IMPLIED WARRANTIES, GUARANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. PAYNEARME AND ITS SUPPLIERS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, ITS FUNCTIONS WILL MEET YOUR REQUIREMENTS, OR THAT USE WILL BE UNINTERRUPTED, ERROR FREE, OR FREE FROM VIRUSES OR OTHER COMPONENTS THAT MIGHT CAUSE DAMAGE TO YOUR PROPERTY, OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

YOUR SOLE REMEDY FOR ANY SURVIVING WARRANTIES WILL BE TO CEASE USE OF THE CONTENT OR TO TIMELY ADVISE PAYNEARME OF ANY DEFICIENCY AND ALLOW PAYNEARME TO CORRECT IT TO THE EXTENT PRACTICAL AS REASONABLY DETERMINED BY PAYNEARME. THE DURATION OF ANY SURVIVING WARRANTY, GUARANTY OR CONDITION THAT CANNOT BE DISCLAIMED WILL NOT EXCEED NINETY DAYS OR ANY LONGER SPECIFICALLY MANDATED PERIOD.

10. Limitation of Liability

PAYNEARME AND ITS SUPPLIERS WILL NOT BE LIABLE TO ANYONE FOR ANY DAMAGES INCLUDING BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, ARISING OUT OF, RELATING TO, OR RESULTING FROM YOUR USE, INABILITY TO USE, OR OPERATION OF THE CONTENT, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY YOU ON ANY INFORMATION OBTAINED FROM US OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO OUR SERVICES. PAYNEARME AND ITS SUPPLIERS WILL NOT BE LIABLE BASED UPON ANY THEORY OF LIABILITY, INCLUDING, FOR EXAMPLE, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL PAYNEARME AND ITS SUPPLIERS BE LIABLE TO USER IF LOSSES RESULT FROM: USE OF THE CONTENT IN A MANNER THAT VIOLATES APPLICABLE LAW OR PAYNEARME'S TERMS OF SERVICE; LOSSES OR DELAYS IN TRANSMISSION OF INSTRUCTIONS ARISING OUT OF THE USE OF ANY INTERNET ACCESS SERVICE OR TELECOMMUNICATIONS PROVIDER OR CAUSED BY ANY BROWSER OR OTHER SOFTWARE; PROVISION OF LATE, INCORRECT OR INCOMPLETE INFORMATION; MALFUNCTION OR INOPERABILITY OF ANY EQUIPMENT OR SYSTEMS; INSUFFICIENT CREDITWORTHINESS OR IDENTIFICATION OR LACK OF GOOD STANDING BASED ON PAYNEARME'S PROPRIETARY METHODOLOGIES OR OTHER STANDARD PRACTICES; CIRCUMSTANCES BEYOND PAYNEARME'S REASONABLE CONTROL, SUCH AS, BUT NOT LIMITED TO, POWER OUTAGES, FIRE, FLOOD, CHANGE OF LAW OR ENFORCEMENT PRACTICES, MECHANICAL, TELECOMMUNICATIONS OR SYSTEMS FAILURES; INTERCEPTION OF PAYMENTS BY LEGAL PROCESS OR OTHER ENCUMBRANCES RESTRICTING EXECUTION OF THE PAYMENT; INABILITY TO CONFIRM USER'S IDENTITY; OR, SUSPECTED FRAUD. PAYNEARME, YOUR BILLERS AND RESPECTIVE PAYMENT PROCESSORS ARE NOT RESPONSIBLE FOR ANY OVERDRAFT OR INSUFFICIENT FUND CHARGES THAT MAY BE INCURRED BY YOU FOLLOWING YOUR INSTRUCTIONS OR THE IMPROPER USE OF THE SERVICES BY THIRD PARTIES IN A MANNER INJURIOUS TO YOU. YOUR ONLY RECOURSE TO PAYNEARME IF THE NETWORK IS NOT AVAILABLE OR CANNOT COMPLETE A TRANSACTION WHEN PRESENTED IS TO TRY AGAIN LATER OR TO CONTACT CONSUMER SUPPORT.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. IN SUCH STATES, PAYNEARME AND ITS SUPPLIERS' TOTAL LIABILITY TO YOU IN CONNECTION WITH EACH TRANSACTION WILL NEVER EXCEED ENSURING THAT YOUR PAYMENT WILL BE PAID TO THE DESIGNATED VENDOR OR BILLER WITHIN A REASONABLE PERIOD OF TIME LESS OUR FEES, I.E., THE AMOUNT OF THE PAYMENT.

11. Dispute Resolution

PLEASE READ THE FOLLOWING SECTION 11 CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES WITH PAYNEARME AND ITS SUPPLIERS (EXPRESSLY INCLUDING 7-ELEVEN, INC.) AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM PAYNEARME AND ITS SUPPLIERS. IN CONSIDERATION OF PAYNEARME'S PROVIDING TO YOU ACCESS OR USE OF THE CONTENT, YOU AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL AND INSTEAD AGREE TO ARBITRATE ALL CLAIMS OR DISPUTES WITH PAYNEARME AND ITS SUPPLIERS ARISING OUT OF OR RELATED TO THESE TERMS ("DISPUTES").

11.1 Binding Arbitration. Except for disputes in which either party or PayNearMe or its Suppliers seek to bring an individual action in small claims court or seek injunctive or other equitable relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets or patents, you, PayNearMe and its Suppliers agree: (a) to waive your, PayNearMe's and its Suppliers' right to have any and all disputes arising from or connected to these Terms and/or the Content (collectively, "**Disputes**") resolved in a court; and (b) to waive your, PayNearMe's, and its Suppliers' right to a jury trial. Instead, you, PayNearMe, and any applicable Supplier agree to arbitrate Disputes through binding arbitration (which is the referral of a Dispute to one or more persons charged with reviewing the Dispute and making a final and binding determination to resolve it instead of having the Dispute decided by a judge or jury in court).

11.2. No Class Arbitrations, Class Actions or Representative Actions. YOU, PAYNEARME, AND ITS SUPPLIERS AGREE THAT DISPUTES ARE PERSONAL TO YOU, PAYNEARME, AND ITS SUPPLIERS AND THAT DISPUTES WILL BE RESOLVED SOLELY THROUGH INDIVIDUAL ARBITRATION AND WILL NOT BE BROUGHT AS A CLASS ARBITRATION, CLASS ACTION OR ANY OTHER TYPE OF REPRESENTATIVE PROCEEDING. YOU, PAYNEARME, AND ITS SUPPLIERS AGREE THAT A DISPUTE CANNOT BE BROUGHT AS A CLASS OR OTHER TYPE OF REPRESENTATIVE ACTION, WHETHER WITHIN OR OUTSIDE OF ARBITRATION, OR ON BEHALF OF ANY OTHER INDIVIDUAL OR GROUP OF INDIVIDUALS.

11.3. Federal Arbitration Act. You, PayNearMe, and its Suppliers agree that these Terms affect interstate commerce and that the enforceability of this Section 11 shall be governed by, construed and enforced, both substantively and procedurally, by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "**FAA**") to the maximum extent permitted by applicable law.

11.4. Process. You, PayNearMe, and its Suppliers agree that we will notify each other in writing of any Dispute within thirty (30) days of when it arises so that we can attempt in good faith to resolve the Dispute informally. Notice to PayNearMe shall be sent by certified mail or courier to: PayNearMe MT, Inc., Attn: Legal, 5201 Great America Parkway, Suite 510, Santa Clara, CA 95054. Your notice must include: (a) your name and contact information; (b) a description of the nature or basis of the Dispute; and (c) the specific relief that you are seeking. If you, PayNearMe, and any applicable Supplier cannot agree to resolve the Dispute within thirty (30) days of PayNearMe or its Supplier receiving your notice, then either you, we, or our Suppliers may, as appropriate pursuant to this Section 11, commence an arbitration proceeding or file a claim in court. You, PayNearMe, and its Suppliers agree that any arbitration or claim must be commenced or filed within one (1) year after the Dispute arise; otherwise, you, PayNearMe, and its Suppliers agree that the claim is permanently barred (which means that you will no longer have the right to assert a claim regarding the Dispute). You, PayNearMe, and its Suppliers agree that (1) any arbitration will occur in Dallas County, TX which you may attend either in person or via videoconference or telephone; (2) arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS; and (3) the state or federal courts in Dallas County, TX will have exclusive jurisdiction over any appeals and the enforcement of an arbitration award and over any Dispute between the parties that is not subject to arbitration; provided, however, that small claims courts in the jurisdiction in which you reside will have jurisdiction over small claims disputes.

11.5. Authority of Arbitrator. As limited by the FAA, these Terms and the applicable JAMS rules, the arbitrator will have (a) the exclusive authority and jurisdiction to make all procedural and substantive decisions regarding a Dispute; (b) the authority to grant any remedy that would otherwise be available in court; and (c) the authority to determine gateway issues of arbitration. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

11.6. Rules of JAMS. The rules of JAMS and additional information about JAMS are available on the JAMS website (<http://www.jamsadr.com>). By agreeing to be bound by these Terms, you either (a) acknowledge and agree that you have read and understand the rules of JAMS or (b) waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

11.7. Severability. If any provision of this Section 11 is held invalid or unenforceable, it will be so held to the minimum extent required by law and all other provisions will remain valid and enforceable. Further, the waivers set forth in Section 11.2 are severable from the other provisions of these Terms and will remain valid and enforceable except as prohibited by applicable law.

If you involve us or our Suppliers in a dispute that is not the result of our failure to fulfill our obligations, you will be obligated to reimburse our costs, including attorneys' fees, unless the biller accepts such responsibility.

12. Governing Law and Venue

These Terms are governed by and construed in accordance with the laws of the State of Texas, USA, except for its conflict of law rules. You expressly consent to the personal and exclusive jurisdiction and venue of the state and federal courts in Texas for all purposes concerning arbitration or court actions pursuant to this Agreement.

13. Miscellaneous

This Agreement, as updated from time to time, including all additional terms posted on the Network or Website is our complete agreement with respect to use of or access to the Content and supersedes all communications relating to the Content. These terms will not be construed against PayNearMe nor its agents, vendors, Suppliers, and Authorized Payment Locations for reason of its drafting or preparation and may be modified or waived only in writing as set forth above.

You may not assign or transfer any of your rights or delegate any of your duties related to these terms. PayNearMe may assign its obligations and delegate its duties under this Agreement at its complete discretion, and these terms will therefore bind lawful successors in interest.

14. Indemnification

At your expense, you will defend and indemnify PayNearMe and its agents, Authorized Payment Locations, and their affiliates, employees, consultants, service providers, trustees, officers, and directors, and any other third parties PayNearMe uses to provide the Content from and against any and all actual or threatened suits, actions, proceedings (at law or in equity), claims filed against them by any third party, damages suffered by them, costs, liabilities and expenses (including but not limited to, reasonable attorneys' fees) arising out of, relating to, or resulting from (a) your use, inability to use, or misuse of or access to the Content, (b) from your actual or alleged breach of these Terms, (c) any actual or alleged violation of applicable laws or rules of any payment card association, network or company, and (d) your violation of the rights of any third party.

15. California Notice

Under California Civil Code Section 1789.3, California users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, California 95834, or by telephone at (916) 445-1254 or toll free (800) 952-5210.

16. DMCA

PayNearMe respects the intellectual property of others. It is our policy to respond promptly to any notices of alleged copyright infringement. To file a notice of infringement with us, you must provide a written communication, by fax or regular mail — not only by email — that sets forth the items specified below. Please note that you may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that material is infringing your copyrights. Please consult an attorney prior to sending a notification.

- The name, address, and electronic signature of the copyright owner or a person authorized to act on behalf of the copyright owner.

- Identification in sufficient detail of the copyrighted material you believe has been infringed. For example, “The copyrighted work at issue is ‘My Copyrighted Material,’ by John Auteur, Published by DMCA Publishing, ISBN #012345678910.”
- Identification of the material that you claim is infringing the copyrighted work listed above and information reasonably sufficient to permit us to locate the material, for example, the URL of the infringing material.
- Your contact information, including your name, address, telephone number, and email address.
- Include the following statements: “I have a good faith belief that use of the copyrighted material described in this notice is not authorized by the copyright owner, its agent, or the law.” And “I swear, under penalty of perjury, that the information contained in this notice is accurate and that I am the copyright owner or I am authorized to act on behalf of the copyright owner to enforce the copyrights that are allegedly infringed.”
- Sign the notice and send the notice to our designated agent to receive written notification of alleged copyright infringement at the following address: PayNearMe MT, Inc., Attn: Legal – DMCA, 5201 Great America Parkway, Suite 510, Santa Clara, CA 95054.

Failure to include all of the above information may result in a delay of the processing of your complaint. In accordance with the Digital Millennium Copyright Act and in accordance with these terms of service, PayNearMe reserves the right to terminate Content access to users who are repeat infringers of the rights of copyright owners.

17. Termination

Notwithstanding any of these Terms, we reserve the right, without notice and in our sole discretion, to suspend or terminate your access to the Content, and to block or prevent future access to and use of the Content. Upon learning of termination, you must discontinue use of the Content. We will attempt to complete all payment transactions that have begun processing through the functionality at the time of termination that comply with these Terms. We will not be liable to you for the termination of the services or for any consequence arising out of termination of the Services.

18. Additional Terms for Electronic Payments

A. Payment Account Authorization

We will make payments or load funds that you direct through the Content electronically by charging the account (bank account, credit card, prepaid card, or debit card) that you provide (the “**Payment Account**”). By initiating an Electronic Payment through the Content, you authorize us to initiate and complete the payment on your behalf. You agree to maintain a balance or available credit limit in the specified Payment Account that is sufficient to fund all payments that you initiate through the Content. You certify that your Payment Account is in your name and that you are authorized to use it. You represent and warrant that you have the right to authorize us, the billers, and payment processors to charge the Payment Account for payments that you initiate using the Content. You will indemnify and hold us harmless from any claims by any other owner of the account or any biller or payment processor resulting from your lack of authority, funds or credit. You may withdraw authorization at any time by contacting us at support@paynearme.com, calling us at 888-714-0004 or writing us at PayNearMe MT, Inc., 5201 Great America Parkway, Suite 510, Santa Clara, CA 95054. You acknowledge that once you have initiated a payment, we may not be able to cancel the electronic transfer if the transaction has already begun to be processed. All ACH transfers will be governed by the National Automated Clearing House Association – The Electronic Payments Association Operating Rules and Guidelines (the “NACHA Rules”). NACHA Rules may be amended from time to time and we may amend these Terms as necessary to comply with NACHA Rules.

You are responsible for confirming the accuracy of the information you provide about each Electronic Payment you authorize and the amount of the transaction. Failure to provide accurate and complete information may prohibit the use of the Content or result in errors in your requested payments to billers. You authorize us to send communications to the biller on your behalf in connection with the Content.

B. Consent to Electronic Communications

Electronic Delivery:

The Content allows you to make Electronic Payments online to some billers. Therefore you understand, agree and consent to receive electronically all communications, agreements, documents notices and disclosures (collectively "**Communications**") that the Content provides in connection with your use of the Network and your Electronic Payments. Communications include:

- This agreement and any updates, amendments, modifications, or supplements to it.
- Other disclosures, announcements, and updates related to your use of the Content, including without limitation error resolution notices, privacy notices, and change-in-terms notices.
- Records of any payment through the Network, including without limitation any payment histories and confirmations of individual transactions.
- Any courtesy or customer service communications relating to your use of the Content (e.g., communicating with you to resolve a customer service issue).

We will provide these Communications to you by posting them on our website. You agree that electronic Communications have the same meaning and effect as if we had provided you with paper copies. All Communications will be deemed to have been received by you no later than five business days after we post them online. You agree that these are reasonable procedures for providing electronic Communications. You should maintain copies of electronic Communications by printing paper copies or saving electronic copies, as applicable.

If, after you consent to receive Communications electronically, you would like a paper copy of a Communication we previously posted online, you may request a copy within 180 days after the date we provided the Communication by contacting us as described in the Consumer Liability Section, below. We will send your paper copy to you by U.S. mail. In order for us to send you paper copies, you must provide us with a current street address. If you request paper copies, you understand and agree that we may charge you a fee of up to \$15 per document requested. We may also authorize third parties to provide these copies to you.

You may withdraw your consent to receive electronic Communications at any time by contacting us at support@paynearme.com, calling us at 888-714-0004 or writing us at PayNearMe MT, Inc., 5201 Great America Parkway, Suite 510, Santa Clara, CA 95054. However, the ability to receive electronic Communications from us is a condition of your use of the Content. Accordingly, withdrawal of your consent to receive electronic Communications will result in termination of your access to the Content. Any withdrawal of your consent will be effective after a reasonable period of time for processing your request. If you do not wish to receive these Terms and other Communications electronically, you may not use the Content.

If you have created an account and you wish to withdraw your consent to have Communications provided in electronic form, you must close your account right away by contacting us at support@paynearme.com. There are no fees to close your account.

Hardware and Software Requirements:

In order to access and retain electronic Communications from us, you will need to maintain or have access to one or more of the following:

- A computer or mobile device with Internet connectivity.
- A current HTML5-based web browser.
- The appropriate mobile application or software
 - An Apple iPhone, iPad, or iPod touch running iOS 7.0 or later.
 - An Android device running Android 4.0 or later.
- A printer or sufficient storage space to save documents in PDF format.

We will notify you if there are any material changes to the hardware or software needed to receive electronic Communications from us. By giving your consent, you are confirming that you have access to the necessary equipment and are able to receive, access, print or save a copy of the electronic Communications.

C. Unauthorized Payment Transactions

Consumer Liability:

You must notify us IMMEDIATELY: if you believe that that your bank or card account has been accessed or used in an unauthorized manner, that is, in a way not authorized by you, for example, that an unauthorized electronic funds transfer has been drawn from your account. You should contact us via email at: compliance@paynearme.com. You may also call us at 888-714-0004 or write us at:

PayNearMe MT, Inc.

Attention: Compliance

5201 Great America Parkway, Suite 510,
Santa Clara, CA 95054

An “unauthorized electronic funds transfer” is an electronic funds transfer initiated by a person other than you who does not have actual, implied, or apparent authority to initiate the transfer, and from which you do not benefit. If you give access to your account to another person, all payments by that person are authorized unless and until you notify us that payments by that person are no longer authorized.

If you tell us within four business days after you learn of a loss or theft from your account, your loss is limited to no more than \$50 if someone used your account without your permission. However, if you FAIL to tell us within four business days after you learn of the loss or theft from your account, and we can prove that we could have stopped someone from using your account without your permission if you had told us, you could lose as much as \$500.

Also, if your biller history shows payments that you did not make, please tell us at once. If you do not tell us within 90 days after the payment was made, you may not get back any money you lost after the 90 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we will extend the time periods.

Contact in event of unauthorized payments:

If you believe that your account has been opened or used in an unauthorized manner, for example that an unauthorized electronic funds transfer has been drawn from your account, you may contact us as indicated above in the “Consumer Liability” section.

Business Days:

For the purposes of these disclosures, our business days are Monday through Friday. Holidays are not included as business days.

Transfer Types and Limitations:

Account Access: You may use the Content to load funds or make payments to billers from your Electronic Payment account(s) in the amounts and on the days you request. We do not support Electronic Payments to all types of billers. You may also use the Content to receive a disbursement from your biller.

Electronic Payment Transaction Limits or other Suspicious Activity:

We may impose limits on the frequency and dollar amount of your Electronic Payments to billers and adjust them from time to time at our complete discretion. For example, we may limit the maximum dollar amount allowed per transaction, the aggregate dollar amount of transactions allowed over a period of time or the maximum number of payments allowed over a period of time. We will advise you, as necessary, of then applicable limits and relevant time periods in the Content and these Terms. A period of time may be measured as a 24-hour period, a rolling 30-day period or otherwise. We also reserve the right to decline to process any payment that appears illegal or contrary to these Terms and to notify relevant authorities.

D. Electronic Payment Verification, Authentication, and Analysis

We use third party vendors to assist in verifying your payment information. For example, we use GIACT Systems, LLC ("**GIACT**") to assist us in confirming bank account data and customer ownership of bank accounts. We will provide GIACT with basic information, such as your name, zip code, and banking information to determine whether to accept or decline your payment. We also collect and analyze data from your use of the Content, third party vendors, and other sources to provide billers with inferences that may be used to determine whether to process a given payment or payment method. If your payment is declined, you will be notified accordingly.

E. Periodic Statements

You agree that we are not obligated to provide you with periodic statements for your use of the Content. Electronic Payment transactions will appear on the statement issued by your bank or other financial institution. Additionally, your Electronic Payment history for a particular biller can be viewed on the website by clicking on "Need help paying a bill? Click Here". You are responsible for reviewing your history and maintaining a copy for your records.

If you have questions about one of your transactions, contact us at support@paynearme.com, call us at 888-714-0004 or write us at PayNearMe MT, Inc., 5201 Great America Parkway, Suite 510, Santa Clara, CA 95054.

F. Our Liability

If your Electronic Payment is not completed on time or in the correct amount according to these Terms, we will generally not be liable for your losses, damages or inconvenience. Please see Sections 9 and 10 above. We will also not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the payment.
- If the payment is rejected, returned, mishandled, or delayed by the biller for any reason.
- If you have provided us with incorrect information about the biller.
- If the Electronic Payment account you specify as the payment source is closed or does not contain sufficient funds to complete the payment or the charge is rejected or returned by your bank or financial institution.
- If the payment would go over the credit limit on your overdraft line.
- If the Content was not working properly and you knew about the problems when you started your payment.
- Due to fraud or attacks on our systems or the Network.
- Due to third party service providers.
- If your bank or financial institution, or the biller's bank or financial institution, takes an action that results in some or all of the funds not being timely deposited.
- If circumstances beyond our control (such as fire or flood) prevent a payment, despite reasonable precautions we have taken.
- There may be other exceptions stated in our agreement with you.

G. Error Resolution

All questions about Electronic Payment transactions made through the Content must be directed to us and not to your bank or other financial institution where you have an account, except as otherwise set out in Section 18-K, "Refunds or Reversals of Completed Payments". We are responsible for the Content and for resolving any errors in transactions made pursuant to your use of the Content.

In case of errors or questions about a payment, contact us as soon as possible at support@paynearme.com, call us at 888-714-0004 or write us at PayNearMe MT, Inc., 5201 Great America Parkway, Suite 510, Santa Clara, CA 95054, if you think your payment history or confirmation notice is wrong or if you need more information about a payment. We must hear from within 90 days from the time we sent the payment and/or you received the confirmation.

When you contact us, you must:

- Tell us your name, phone number, email and account number (if any).

- Describe the payment you are unsure about and explain as clearly as you can why you believe it is an error or you need more information. If possible, please provide the confirmation number for the payment.
- Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send your complaint in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit the affected account within 10 business days after we hear from you, for the amount that you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

We will tell you the results within three (3) business days of completing our investigation. If we decide that there was no error, we will provide you with a written explanation via electronic delivery within three (3) business days after we have completed our investigation, and within 10 business days of the date of such explanation, we will debit your account of the amount previously credited to you for use during the time it took us to complete our investigation. You may ask for copies of documents that we used during our investigation and we can provide them to you electronically.

H. Collection of Returned Item Fees

If your Electronic Payment is returned unpaid, you authorize us at our complete discretion to make a one-time electronic fund transfer from your account to collect a \$15 fee. This is in addition to other charges that may apply with your biller or financial institution.

I. Scheduling Electronic Payment Transactions

When you use the Content to make an Electronic Payment with a credit or debit card, it is authorized in real-time on the same day. ACH payments from your bank account will be processed on the same day, subject to weekends, holidays, and cut-off times. In any case, when making an Electronic Payment to a contracted biller, the biller has agreed to treat your payment as having been received on the day that you make it, regardless of when they actually receive the money from us. We are not liable for any fees that result from late payments.

J. Recurring Transactions

For certain billers, you may schedule Electronic Payment transactions to recur on a regular basis. Your account or card information will be saved in order to process such transactions. This authorization will remain in full force and effect until you revoke such authorization by either clicking the "Suspend Autopay" link, or by notifying us by email at autopay@paynearme.com. We require at least three (3) business days prior notice in order to revoke this authorization by email.

ACH payments scheduled after 12:00 P.M. PST and ACH payments scheduled to occur on a weekend or holiday will be applied as of the next banking day. In the case of an ACH transaction being returned due to non-sufficient funds, a biller can reattempt the transaction up to two (2) additional times. You will not dispute our recurring payments with your bank or credit card company so long as the transaction corresponds to the terms indicated here and in any other agreement you have with us. Copies of your authorizations are available once recurring transactions are scheduled.

K. Refunds or Reversals of Completed Electronic Payments

You cannot use the Content to request a refund, cancellation, correction, or reversal of a completed Electronic Payment. In such situations, you will need to contact your biller's customer service in order to request refund, cancellation, correction, or reversal to a completed payment. If the biller cannot, or is unwilling, to assist you with a request for a refund, cancellation, correction, or reversal of a completed payment, you should contact your financial institution's customer service to determine if your financial institution is able to provide additional assistance.

L. Disbursements

A disbursement is a “push” of funds from a participating biller to your debit card. The biller obtains the debit card number from you and non-exclusively appoints us as its agent for the limited purpose of facilitating disbursements from the biller to you, directly and through all participating processing parties and banks. We reserve the right to hold any disbursement amount until the biller has successfully verified your payment information. If the amount disbursed to your account is incorrect, delayed, or clawed back by us, please contact your biller for more information.

M. Google Pay

By using Google Pay, you are agreeing to be bound by the Google Pay API Terms of Service, posted at the following link: <https://payments.developers.google.com/terms/sellertos>

19. Severability

If any provision of these Terms shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

20. Contact

All questions or comments about the Content, the Network, or these Terms should be directed to support@paynearme.com.