

# Abacus Terms of Service

## 1. What These Terms of Service Cover

Please read these Terms of Service (the “Terms of Service”) fully and carefully before using [www.abacus.com](http://www.abacus.com) (the “Site”) and the services, features, content offered by Abacus Labs, Inc. (the “Services”), and software applications (the “Abacus App”) offered by Abacus Labs, Inc. These Terms of Service set forth the legally binding terms and conditions for your use of the Site, the Abacus App and the Services. If you do not agree to be bound by these Terms of Service, you must not access or use the Site, Abacus App or Services. By clicking the “I Accept” (or similar) button or box, or registering for or using the Site, Abacus App or Services, you acknowledge that you have read, understood, agree with and accept all of the terms and conditions in these Terms of Service and our [Privacy Policy](#). Please scroll down through these Terms of Service to review important provisions regarding arbitration, limitation of liability, waivers, indemnities, and other important topics. As used in these Terms of Service, “Abacus Labs, Inc.,” “Abacus,” “we,” “us” and “our” means Abacus Labs, Inc.

**THESE TERMS OF SERVICE CONTAIN PROVISIONS FOR BINDING ARBITRATION AND WAIVER OF JURY TRIAL. YOUR ACCEPTANCE OF THESE TERMS OF SERVICE INCLUDES YOUR ACCEPTANCE OF AND AGREEMENT TO SUCH PROVISIONS. WHEN ARBITRATION IS INVOKED FOR CLAIMS SUBJECT TO ARBITRATION, YOU AND WE WILL NOT HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM AND YOU WILL NOT HAVE THE RIGHT TO BRING OR PARTICIPATE IN ANY CLASS ACTION OR SIMILAR PROCEEDING IN COURT OR IN ARBITRATION. SEE SECTION 21 FOR MORE DETAILS.**

## 2. Acceptance of Terms of Service

a. If you are accepting these Terms of Service on your own behalf, then the terms “you”, “your” and “user” means the individual accepting these Terms of Service and such individual is personally bound by these Terms of Service. If you are accepting these Terms of Service on behalf of a company or other legal entity, then the terms “you”, “your” and “user” mean such company and its affiliates, officers, directors, employees, agents, contractors and assigns. If you are entering into these Terms of Service on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these Terms of Service. If you do not have such authority, do not accept these Terms of Service or use the Site, Abacus App or Services.

b. Certain of the Services may be subject to additional terms and conditions specified by us from time to time. Your use of such Services is subject to your agreement to those additional terms and conditions, which, upon your agreement, will be thereby incorporated into these Terms of Service by this reference.

c. These Terms of Service apply to all users of the Site, Abacus App and Services, whether or not such users have registered for any Services, including, without limitation, users who are contributors of content, information, materials or services.

d. You may not access the Abacus App or Services if you are our direct competitor, except with our prior written consent. In addition, you may not access the Site, Abacus App or Services for purposes of monitoring or analyzing their availability, performance or functionality, or for any other benchmarking or competitive purpose.

## 3. The Site and the Services

This Site is an informational site about the Abacus App and Services provided by Abacus to its registered customers and their employees and other designated users. It also serves as a portal for access to the expense reimbursement management Services

offered by Abacus. Use of this Site, the Abacus App and the Services is limited to Abacus customers who have contracted with Abacus for the Services and, if applicable, such customers' users. No other use of this Site, the Abacus App or the Services is permitted. The Services include, but are not limited to, the web-based and mobile application-based expense management Services provided by Abacus to registered users via the Internet. Following acceptance of these Terms of Service, and provided that you are not in breach of these Terms of Service, you will have access to the Services either as our customer or as a designated user of our customer. Your access to the Abacus App and Services will be limited based on your status and is subject to these Terms of Services and the User Manual for the Services at [www.abacus.com](http://www.abacus.com). Notwithstanding anything to the contrary in these Terms of Service, the Services, or any portion thereof, may be amended, modified, updated, discontinued or replaced by Abacus at any time in its sole discretion. If you register for a free trial for the Services, these Terms of Service will also govern your use of the Services during that free trial.

## 4. Eligibility

a. By using the Site, Abacus App or Services, you represent and warrant to us that: (a) you are at least eighteen (18) years of age; (b) you are eligible to use the Site, Abacus App and Services, as applicable, and have the right, power, and ability to enter into and perform under these Terms of Service; (c) the name identified by you when you registered is your name; (d) you and your use of the Site, Abacus App and Services will comply with all federal, state, and local laws, rules, and regulations applicable to you, including any applicable tax laws and regulations; (e) you will not use the Site, Abacus App or Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the provision or use of the Site, Abacus App or Services; (f) your primary residence is located in the United States; (g) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; (h) you are not listed on any U.S. Government list of prohibited or restricted parties; and (i) the bank account(s) and/or payment card(s) you registered in your Account are owned by you, have been issued in your name and are in good standing.

b. If you are under age 18, you may not, under any circumstances or for any reason, use the Site, Abacus App or Services. We may, in our sole discretion, refuse to offer the Site, Abacus App or Services to any person or entity, and change our eligibility criteria, at any time. You are solely responsible for ensuring that your use of the Site, Abacus App and Services are in compliance with all laws, rules and regulations applicable to you. We reserve the right to refuse or revoke your access to the Site, Abacus App and Services where use of the Site, Abacus App and Services is prohibited or to the extent that the offering, sale, provision or use of the Site, Abacus App or Services conflicts with any applicable law, rule or regulation. The Site, Abacus App and Services are offered only for your use, and not for the use or benefit of any third party.

## 5. Registration

Prior to using the Abacus App and Services, you must register for a user account (an "Account") using accurate and complete information and keep your Account information updated. You shall not: (i) select or use as a username a name of another person with the intent to impersonate that person; (ii) use as a username a name subject to any rights of a person other than you without appropriate authorization; or (iii) use, as a username, a name that is otherwise offensive, vulgar or obscene. You are solely responsible for the activity that occurs on your Account, and for keeping your Account user ID and password secure. You may never use another person's user account or registration information for the Abacus App or Services without permission. You must notify us immediately of: (a) any change in your eligibility to use the Abacus App or Services (including any changes to or revocation of any licenses from state authorities), (b) a breach of security involving your Account, registration information, Abacus App or the Services, or (c) unauthorized use of your Account. You should never publish, distribute or post login information for your Account. If the security of your Account is compromised, you will have the ability to delete your Account by following the instructions on the Site or through the Abacus App or Services.

## 6. Expenses

Each time you submit or approve expenses for reimbursement using the Site, Abacus App or Services, you represent and warrant that: (i) the information submitted through the Site, Abacus App or Service is current, accurate and complete; (ii) you are either a client,

employee, contractor or other authorized agent of the company to whom you are submitting an expense, and (iii) each expense request is for the payment of a business expense and is not a personal, family or household expense.

## 7. Modification, Disclosures and Notice

a. Abacus reserves the right to change, modify delete, replace or update these Terms of Service or other policies that govern use of the Site, Abacus App or Services at its discretion, at any time, for any reason, without notice, including without limitation the right to terminate, change or suspend the Site, Abacus App or Services (including without limitation, the availability of any feature, database, or content), any part of the Site, Abacus App or Services, or one or more users' access to the Site, Abacus App or Services. We may also impose limits on certain features and services or restrict your access to parts or all of the Site, Abacus App or Services without notice or liability. Any amendments and modifications by Abacus will be prospective only, and unless otherwise provided in these Terms of Service, will be effective upon being posted on the Site or by sending you notice through the Abacus App or Services, or by emailing you at the email address provided by you in connection with your Account or by another appropriate means of electronic communication. Abacus encourages you to review these Terms of Service periodically for updates and changes. Your continued access or use of the Site, Abacus App or Services shall be deemed acceptance of all changes.

b. You agree that we can provide these Terms of Service and [Privacy Policy](#) (and revisions or amendments), notices, disclosures, payment authorizations, and any other matter relating to your use of the Site, Abacus App or Services to you electronically, either by posting it on the Site, or by sending you notice through the Abacus App or Services, or by emailing you at the email address provided by you in connection with your Account. You further agree that such communications have the same meaning and effect as if we had provided you with a paper copy. You should maintain copies of electronic communications by printing a paper copy or saving an electronic copy as applicable. Electronic communications shall be deemed received by you when they are posted to or communicated to you through the Site, Abacus App or Service, or sent to the email address provided by you in connection with your Account.

## 8. Privacy Policy

The Abacus [Privacy Policy](#) contains information about Abacus' privacy practices in connection with the Site, Abacus App and Services. The Privacy Policy is incorporated into these Terms of Service by this reference and explains how Abacus collects, uses and shares your personal information in connection with the Site, Abacus App and Services. When you create an Account or use the Site, Abacus App or Services, you thereby agree to the terms of the Privacy Policy.

## 9. Content and User Content

a. **Content; Notices and Restrictions.** For purposes of these Terms of Service, the term "Content" includes, without limitation, information, data, text, photographs, videos, audio clips, written posts and comments, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through the Site, Abacus App or Services. Content also includes all User Content (as defined below). You acknowledge that all Content accessed by you using the Site, Abacus App or Services is at your own risk and you will be solely responsible for any damage or loss to you or any other party resulting therefrom. We do not guarantee that any Content you access on or through the Site, Abacus App or Services is or will continue to be accurate. The Site, Abacus App and Services may contain Content specifically provided by us, our partners or our users and such Content is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. You shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through the Site, Abacus App or Services.

b. **User Content.** All Content added, created, uploaded, submitted, distributed, or posted to the Site, Abacus App or Services by users (collectively "User Content"), whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such User Content. If you provide User Content, such User Content will be considered non-confidential and non-proprietary and you agree that we may publish such User Content in whole, or in part, in our sole discretion. By providing User Content, you grant us and our affiliates, officers, directors, employees, agents, contractors, suppliers and content providers and our respective licensees, successors and assigns the right to use, reproduce, modify, perform, display, distribute and otherwise disclose to third parties any such material for

any purpose. You represent and warrant that: (i) you own or control all rights in and to the User Content and have the right to grant the license granted above to us and our affiliates, officers, directors, employees, agents, contractors, suppliers and content providers and our respective licensees, successors and assigns, and (ii) all of your User Content does and will comply all applicable laws, rules and regulations. User Content does not include information and data you provide when you register for an Account.

c. **Availability and Use of Content.** We do not guarantee that any Content will be made available on or through the Site, Abacus App or Services. We reserve the right to, but do not have any obligation to, (i) remove, edit or modify any Content in our sole discretion, at any time, without notice to you and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have violated these Terms of Service), or for no reason at all and (ii) to remove or block any Content from the Site, Abacus App or Services. Use, reproduction, modification, distribution or storage of any Content for other than purposes of using the Site, Abacus App or Services is expressly prohibited without prior written permission from us. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial use or in any way that violates any third party right.

## 10. License Grant

Subject to these Terms of Service, we grant each user of the Site, Abacus App and Services a limited, revocable, non-exclusive, non-sublicensable and non-transferable license to use the Site, Abacus App or Services solely for purposes of using the Services. We may in our sole discretion suspend, discontinue or terminate this license at any time, for any reason. All rights not expressly granted to you are reserved by Abacus. If you download the Abacus App, you also agree to be bound by the end user license agreement applicable to such application, which is available through Apple or Google, as applicable.

## 11. Rules of Conduct

a. As a condition of use, you promise not to use the Site, Abacus App or Services for any purpose that is prohibited by these Terms of Service. You are responsible for all of your activity in connection with the Site, Abacus App and Services.

b. You shall not (and shall not permit any third party to) either (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any Content on or through the Site, Abacus App or Services, including without limitation any User Content, that:

i. infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty;

ii. you know is false, misleading, untruthful or inaccurate;

iii. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, or is otherwise inappropriate as determined by us in our sole discretion;

iv. constitutes unauthorized or unsolicited advertising, junk or bulk email ("spamming");

v. contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of ours or of any third party;

vi. impersonates any person or entity, including any of our employees or representatives; or

vii. includes anyone's identification documents or sensitive financial information without that person's authorization.

c. You shall not: (i) take any action that imposes or may impose (as determined by us in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers') infrastructure; (ii) interfere or attempt to interfere with the proper working of the Site, Abacus App or Services or any activities conducted on the Site, Abacus App or Services; (iii) bypass, circumvent or

attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Site, Abacus App or Services (or other accounts, computer systems or networks connected to the Site, Abacus App or Services); (iv) run any form of auto-responder or “spam” on the Site, Abacus App or Services; (v) use manual or automated software, devices, or other processes to “crawl” or “spider” any page of the Site; (vi) harvest or scrape any Content from the Site, Abacus App or Services; or (vii) otherwise take any action in violation of our guidelines and policies.

d. You shall not (directly or indirectly): (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Site, Abacus App or Services (including without limitation any application), except to the limited extent applicable laws specifically prohibit such restriction, (ii) modify, translate, or otherwise create derivative works of any part of the Site, Abacus App or Services, or (iii) copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder. You shall abide by all applicable local, state, national and international laws and regulations.

e. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these Terms of Service, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of us, our users and the public.

## 12. Links to Other Websites and Social Media

a. The Site, Abacus App or Services may permit you to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the Site, Abacus App or Services. When you access third party resources on the Internet, you do so at your own risk. These other resources are not under our control, and you acknowledge that we are not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply our endorsement or any association between us and their operators. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource. Please remember that when you use a link to go to another website, our Privacy Policy is no longer in effect. Your browsing and interaction on any other website is subject to that website's own rules, policies, terms and conditions.

b. We may allow you to use Facebook, Twitter, email and other social networking platforms (collectively, “Social Media”) in order to “like us”, communicate and share information about the Site, Abacus App or Services. If you choose to use Social Media, you are solely responsible for ensuring that your use complies with all applicable laws, rules and regulations, these Terms of Service, and any terms, conditions and restrictions of the particular Social Media. Abacus is not responsible for any emails, communication or information you send or receive using such features. If you share information with another person through email functionality, you represent and warrant that you have the authority to provide the recipient's email address and expressly authorize us to send the email on your behalf. In addition, the recipient must be a permanent, legal resident of the 50 United States or the District of Columbia, who is at or above the legal age of majority in their jurisdiction of residence. We may elect not to transmit any email if the recipient has opted out of receiving emails from Abacus and the opt out applies to this type of email.

## 13. Payments

a. For individual users of the reimbursement Services, you are responsible for resolving all disputes with the paying entity regarding amounts credited or debited to the underlying payment method for your Account. You agree to cooperate with Abacus and any other parties involved in processing approved expenses to recover funds credited to you in error. You agree that you are responsible for all instructions that you provide to Abacus and any results therefrom with respect to the return of funds.

b. By logging into your Account, you may obtain a history of approved expenses and transactions initiated through your Account.

c. You agree to provide us with current, complete and accurate information for any bank account or payment method that you wish to register in your Account. If you provide us with your credit card information for purposes of generating expense reimbursement requests using the Services, you authorize us to access and use your credit card transaction data for purposes of providing the

Services. You must provide current, complete and accurate information for your Account. You must promptly update all information to keep your Account current, complete and accurate (such as a change in billing address, bank account number or payment method), and you must promptly notify us or our payment processor if your payment method is canceled (e.g., for loss or theft) or if you become aware of a potential breach of security, such as the unauthorized disclosure or use of your username or password. Changes to such information can be made at [www.abacus.com/me](http://www.abacus.com/me) (or, if you are an organization that approves reimbursements, then changes to your Account information can be made at [www.abacus.com/organization](http://www.abacus.com/organization)). If you are an organization that approves reimbursements, you agree that we may continue charging you for any use of the paid Services under your billing account until you have terminated your paid Services and have discontinued your use of such Services.

## 14. Termination

We may terminate your access to all or any part of the Site, Abacus App or Services at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your membership. If you wish to terminate your Account, you may do so by following the instructions on the Site or through the Abacus App or Services. Any fees paid hereunder are non-refundable. All provisions of these Terms of Service which by their nature should survive termination shall survive termination, including, without limitation, licenses of User Content, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## 15. Warranty Disclaimer

a. The Site, Abacus App and Services are provided “as is”, “as available” and without warranty of any kind, express or implied, including, but not limited to, the implied warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed. We, and our affiliates, officers, directors, employees, agents, contractors, suppliers and content providers, do not warrant that: (i) the Services will be secure or available at any particular time or location; (ii) any defects or errors will be corrected; (iii) any Content or software available at or through the Services is free of viruses or other harmful components; or (iv) the results of using the Services will meet your requirements. Your use of the Services and the Site is solely at your own risk.

b. You hereby waive California Civil Code Section 1542 (if you are a California resident), or any similar provision in any other jurisdiction (if you are a resident of such jurisdiction), which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

## 16. Indemnification

You shall defend, indemnify, and hold harmless us, our affiliates and each of our and their respective representatives, affiliates, officers, directors, employees, agents, contractors, suppliers and content providers from all liabilities, claims, and expenses, including reasonable attorneys' fees, that arise from or relate to your use or misuse of, or access to, the Site, the Abacus App, the Services, Content, or otherwise from your User Content, violation of these Terms of Service, or infringement by you, or any third party using your Account or identity on the Site, Abacus App or Services, of any intellectual property or other right of any person or entity. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defenses.

## 17. Limitation of Liability

In no event shall we, nor our affiliates, officers, directors, employees, agents, contractors, suppliers or content providers, be liable under contract, tort, strict liability, negligence or any other legal or equitable theory with respect to the Site, Abacus App or Services (i) for any lost profits, data loss, cost of procurement of substitute goods or services, or special, indirect, incidental, punitive, compensatory or

consequential damages of any kind whatsoever, substitute goods or services (however arising), (ii) for any bugs, viruses, trojan horses, or the like (regardless of the source of origination), or (iii) for any direct damages in excess of (in the aggregate) of the greater of (a) the fees, if any, paid by you to us for the particular Services during the immediately previous three (3) month period or (b) the fees paid to Abacus for your use of the particular Services during the immediately previous six (6) month period.

## 18. Ownership

The Site, Abacus App and Services are licensed and not sold to you. Abacus, on behalf of itself and its licensors and suppliers, reserves all rights not expressly granted to you in these Terms of Service. The Site, Abacus App and Services are protected by copyright, trade secret and other intellectual property laws. You acknowledge and agree that Abacus, or its third party providers, or their respective licensors owns or has the legal right and title to the copyright and other worldwide intellectual property rights in the Site, Services and the Abacus App and all copies thereof. These Terms of Service do not grant you any rights to the trademarks or service marks of Abacus or its third party providers or their respective licensors.

## 19. Governing Law and Jurisdiction

These Terms of Service shall be governed by and interpreted in accordance with New York law, without regard to its conflict of laws principles, and the United States of America. You agree that any dispute arising from or relating to the subject matter of these Terms of Service shall be governed by the exclusive jurisdiction and venue of the state and Federal courts of New York County, New York.

## 20. Miscellaneous

- a. Entire Agreement and Severability.** These Terms of Service are the entire agreement between you and us with respect to the Site, Abacus App and Services and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and us with respect to the Site, Abacus App and Services. If any provision of these Terms of Service is held to be invalid or unenforceable, it will be stricken from these Terms of Service and all other provisions of these Terms of Service will remain in full force and effect.
- b. Force Majeure.** We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation.
- c. Assignment.** These Terms of Service are personal to you and are not assignable, transferable or sublicensable by you except with our prior written consent. We may assign, transfer or delegate any of our rights and obligations hereunder without your consent.
- d. Independent Contractors.** We act as an independent contractor in providing the Site, Abacus App and Services and neither you nor we are the partner, employee or agent of the other and neither has the authority to bind or obligate the other in any way.
- e. Notices.** Except as otherwise specified in these Term of Service, all notices under these Terms of Service will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by email; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Electronic notices to Abacus should be sent to [hi@abacus.com](mailto:hi@abacus.com).
- f. Waiver.** Our waiver of or failure to exercise any right provided for in these Terms of Service will not be deemed a waiver of any further or future right under these Terms of Service.
- g. Headings.** The section and paragraph headings in these Terms of Service are for convenience only and shall not affect their interpretation.
- h. Export Compliance.** The Site, Abacus App, Services, Content, other technology we make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. You agree to not export any intellectual property of Abacus outside the United States. You represents that you are not named on any U.S. government denied-party list.

i. **Survival.** Any provisions of these Terms of Service which by their express or implicit terms are intended to survive the termination of these Terms of Service will survive the termination of these Terms of Service and be enforceable in accordance with their terms.

## 21. Agreement to Arbitrate Disputes

a. **Purpose.** This Section 21 sets forth the circumstances and procedures under which Claims (as defined below) that arise between you and us will be resolved through BINDING ARBITRATION instead of litigated in court. THIS MEANS THAT NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED FOR IN THE RULES (AS DEFINED BELOW). OTHER RIGHTS THAT YOU WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE OR MAY BE LIMITED IN ARBITRATION, INCLUDING YOUR RIGHT TO APPEAL AND YOUR ABILITY TO PARTICIPATE IN A CLASS ACTION. EXCEPT AS SET FORTH BELOW, THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. NOTE THAT OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION. Nothing in this provision precludes you from filing and pursuing your individual Claim in a small claims court in your state or municipality, so long as that Claim is pending only in that court.

b. **Scope.** We each agree that all claims arising out of or related to these Terms of Service ("Claims") will be submitted exclusively to binding arbitration as set forth in this Section. This agreement to arbitrate applies to all Claims that could have been filed in court regarding the Claims, whether you or we are the first to file a Claim with the arbitral tribunal and whether the Claims are against you or us, or ours or your employees, agents, contractors or suppliers. This agreement to arbitrate covers all Claims under these Terms of Service, regardless of whether such Claim is based in contract, tort, statute, regulation, common law or equity, including, but not limited to, Claims arising out of or related to: (1) the interpretation, execution, administration, amendment or modification of these Terms of Service; (2) any alleged breach of these Terms of Service or tort, (3) the Site, Abacus App, Services, any transaction, features or services (whether provided by us or another service provider), any advertisement or solicitation, or your business, interaction or relationship with us; (4) any charge or cost incurred pursuant to these Terms of Service or the collection of any amounts due under these Terms of Service; and (5) any statements or representations made by us to you with respect to these Terms of Service, the Site, Abacus App, Services, any transaction, features or services (whether provided by us or another service provider) or any advertisement or solicitation, or your business, interaction or relationship with us.

c. **Initiation of Arbitration Proceeding/Selection of Administrator.** Any Claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Section 21 and the code of procedures of the national arbitration organization to which the Claim is referred in effect at the time the Claim is filed ("Rules"), except to the extent that the Rules conflict with these Terms of Service. Claims shall be referred to either the Judicial Arbitration and Mediation Services ("JAMS") or the American Arbitration Association ("AAA"), as selected by the party electing to initiate arbitration. If a selection by us of one of these organizations is unacceptable to you, you shall have the right within 30 days after you receive notice of our election to select the other organization listed to serve as arbitrator administrator. For a copy of the procedures, to file a Claim or for other information about these organizations, contact them as follows: (i) JAMS at 1920 Main Street, Suite 300, Irvine, CA 92614, website at [www.jamsadr.com](http://www.jamsadr.com); or (ii) AAA at 335 Madison Avenue, New York, NY 10017, website at [www.adr.org](http://www.adr.org).

d. **Class Action Waiver and Other Restrictions.** If either party elects to resolve a Claim by arbitration, that Claim shall be arbitrated on an individual basis. There shall be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Cardholders or other persons similarly situated. The arbitrator's authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to you and us alone. Furthermore, Claims brought by you against us or by us against you may not be joined or consolidated in arbitration with Claims brought by or against someone other than you, unless otherwise agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues or claims in any Dispute with anyone who is not a named party to the arbitration. Notwithstanding any other provision in these Terms of Service (including the "Continuation" provision below), and without waiving either party's right of appeal, if any portion of this "Class Action Waiver and Other Restrictions" provision is deemed invalid or unenforceable, then the entire Section 21 (other than this sentence) shall not apply.

e. **Location of Arbitration/Payment of Fees.** Any arbitration hearing that you attend shall take place in the federal judicial district of your residence. At your written request, we will consider in good faith making a temporary advance of all or part of the filing administrative



and/or hearing fees for any Claim you initiate as to which you or we seek arbitration. Waivers may also be available from the JAMS or AAA. At the conclusion of the arbitration (or any appeal thereof), the arbitrator (or panel) will decide who will ultimately be responsible for paying the filing, administrative and/or hearing fees in connection with the arbitration (or appeal). If and to the extent you incur filing, administrative and/or hearing fees in arbitration, including for any appeal, exceeding the amount they would have been if the Claim had been brought in the state or federal court which is closest to your billing address and would have had jurisdiction over the Claim, we will reimburse you to that extent unless the arbitrator (or panel) determines that the fees were incurred without any substantial justification.

f. **Arbitration Procedures.** This Section 21 is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as it may be amended (the "FAA"), and the applicable Rules, except that (to the extent enforceable under the FAA) this Section 21 shall control if it is inconsistent with the applicable Rules. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law and, at the timely request of either party, shall provide a brief written explanation of the basis for the decision. In conducting the arbitration proceeding, the arbitrator shall not apply the Federal or any state rules of civil procedure or rules of evidence. Either party may submit a request to the arbitrator to expand the scope of discovery allowable under the applicable Rules. The party submitting such a request must provide a copy to the other party, who may submit objections to the arbitrator with a copy of the objections provided to the request party, within fifteen (15) days of receiving the requesting party's notice. The granting or denial of such request will be in the sole discretion of the arbitrator who shall notify the parties of his/her decision within twenty (20) days of the objecting party's submission. The arbitrator shall take reasonable steps to preserve the privacy of individuals, and of business matters. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision will be final and binding, except for any right of appeal provided by the FAA. However, any party can appeal that award to a three-arbitrator panel administered by the same arbitration organization, which shall consider anew any aspect of the initial award objected to by the appealing party. The appealing party shall have thirty (30) days from the date of entry of the written arbitration award to notify the arbitration organization that it is exercising the right of appeal. The appeal shall be filed with the arbitration organization in the form of a dated writing. The arbitration organization will then notify the other party that the award has been appealed. The arbitration organization will appoint a three-arbitrator panel which will conduct arbitration pursuant to its Rules and issue its decision within one hundred twenty (120) days of the date of the appellant's written notice. The decision of the panel shall be by majority vote and shall be final and binding.

g. **Survival; Severability.** This Section 21 shall survive termination of these Terms of Service, your Card or the relationship between you and us concerning your Card, any permitted transfer, sale or assignment of your Card, or any amounts owed on your Card, to any other person or entity as well as voluntary payment of any debt in full by you, any legal proceeding by or between you and us to collect a debt owed by you, and any bankruptcy by you or us. If any portion of this Section 21, except the "Class Action Waiver and Other Restrictions" provision above, is deemed invalid or unenforceable for any reason, it shall not invalidate the remaining portions of this Section 21, these Terms of Service or any prior agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

**IF YOU DO NOT AGREE TO THE TERMS OF THIS SECTION 21, DO NOT USE THE SITE, ABACUS APP OR THE SERVICES.**

**Contact Us:** You may contact us using the "Contact Us" link at [www.abacus.com](http://www.abacus.com) or at the following address: 14 E 38th St, Floor 9, New York, NY 10016.

Effective Date of Terms of Service: August 31, 2015