

Terms of Service

(Last Updated 2022-10-31)

Welcome to Earnin! The Earnin Terms of Service Agreement (the “Agreement”) constitutes a legal agreement between you, and Activehours, Inc., d/b/a Earnin (“**Earnin**”) governing your use of the Site and the Services. As used in the Agreement, the words “**Community Member**”, “**you**” and “**your**” refer to you, the user of Earnin’s website, device, and/or applications, as the party agreeing to the Agreement. The words “**we**”, “**us**”, “**our**” and any other variation thereof refer to Earnin. Any reference to “**Earnin**” in this document includes the directors, officers, employees, contractors, owners, agents, licensors, or licensees of Earnin. As used in the Agreement, the term “**Site**” or “**Sites**” includes all websites, technology platforms, and/or mobile applications (“**Application**” or “**Applications**”) we operate that link to the Agreement, pages within each such website, or application, any equivalent, mirror, replacement, substitute or backup website, device, or application, and pages that are associated with each such website, device, or application. The term “**Services**” refers to Earnin’s products, services, and features available to you through one or more Sites. The use of the word “**including**” in the Agreement to refer to specific examples will be construed to mean “including, without limitation” or “including but not limited to” and will not be construed to mean that the examples given are an exclusive list of the topics covered.

ARBITRATION NOTICE: PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND A WAIVER OF CLASS ACTION AND JURY PROVISION. PLEASE REFER TO SECTION 14 BELOW FOR MORE INFORMATION.

PLEASE ALSO SEE “YOUR RESPONSIBILITY FOR THIRD PARTY BANK FEES” FOR A BETTER UNDERSTANDING OF YOUR CONTINUED RESPONSIBILITY FOR THIRD-PARTY BANK FEES, INCLUDING BUT NOT LIMITED TO, OVERDRAFT AND INSUFFICIENT FUNDS FEES CHARGED BY YOUR BANK. BY ENTERING INTO THIS AGREEMENT AND BY USING EARNIN’S SERVICES, YOU AGREE AND UNDERSTAND THAT YOU, AND NOT EARNIN, SHALL BE LIABLE FOR ANY THIRD-PARTY BANK FEES YOU MAY INCUR. PLEASE REFER TO SECTION 4 BELOW FOR MORE INFORMATION.

Table of Contents

ACCEPTANCE OF TERMS	3
SIGNING UP WITH EARNIN	4
Eligibility.	4

Confidentiality of Credentials.	5
Accuracy of Information.	6
TERMINATING YOUR ACCOUNT	6
YOUR RESPONSIBILITY FOR THIRD PARTY BANK FEES	6
SMS MESSAGING	7
PUSH NOTIFICATIONS	7
ACCEPTABLE SITE & SERVICES	8
RIGHTS YOU GRANT TO US	8
Third-Party Services.	8
License for Submitted Content.	9
Earnin’s Intellectual Property Rights.	10
DIGITAL MILLENNIUM COPYRIGHT ACT	10
DISCLAIMERS; NO WARRANTIES	12
No Advice	12
Alerts	12
DISCLAIMER OF REPRESENTATION AND WARRANTIES	12
LIMITATION OF LIABILITY	13
INDEMNIFICATION OF EARNIN	14
DISPUTE RESOLUTION BY BINDING ARBITRATION	14
Election to Arbitrate.	14
Opt-Out of Arbitration Provision.	15
Judicial Forum for Disputes.	15
Informal Dispute Resolution.	15
Waiver of Right to Litigate.	16
No Class Actions.	16
Arbitration Rules.	16
Arbitration Process.	17
Arbitration Location and Procedure.	17
Arbitrator’s Decision.	18

Fees.	18
Survival and Severability of Arbitration Provision.	18
Changes to the Arbitration Provision.	18
Existing Litigation.	19
GOVERNING LAW; JURISDICTION	19
MISCELLANEOUS	19
NOTICE TO CALIFORNIA CUSTOMERS	20
MODIFICATION TO SITE OR SERVICES	20
CONTACTING US	20

1. ACCEPTANCE OF TERMS

Please read this Agreement carefully before using the Site and Services. By accessing and/or using the Site or the Services, you acknowledge that you have read, understood and agree to be bound by the Agreement. By accessing or using the Site or the Services, you agree to be bound by the Agreement. Earnin reserves the right to amend this Agreement at any time and will notify you of any such changes by posting the revised Agreement on the Site. If we make material changes to this Agreement, we will provide you notice of such changes before they become effective. You should check this Agreement on the Site periodically for changes. All changes shall be effective upon posting. We will date the terms with the last day of revision. Your continued use of the Site or Services after any change to this Agreement constitutes your agreement to be bound by any such changes.

Please read our [Privacy Policy](#) carefully for information relating to our collection, use, and if applicable, disclosure of personally identifiable information. Earnin reserves the right to amend the Privacy Policy at any time and will notify you of any changes by posting the revised Privacy Policy on the Site. You should check this Agreement on the Site periodically for changes. All changes shall be effective upon posting. By accessing and/or using the Services you agree to Earnin's Privacy Policy.

You also agree to the [Electronic Communications Consent](#) and to any additional terms specific to elements of the Services you use, which become part of your agreement with us.

2. SIGNING UP WITH EARNIN

a. Eligibility.

You may only have one account with Earnin, which will give you access to Services and Site. To create an account, you must be at least eighteen (18) years old and the age of majority in your state of residence. By agreeing to this Agreement you represent and warrant to us:

- i. that you are at least eighteen (18) years old or the age of majority in your state of residence;
- ii. that you have not previously been suspended, removed or deactivated from the Services;
- iii. that you are a legal resident of the United States;
- iv. that your registration and your use of the Site and Services is in compliance with any and all applicable laws and regulations.

In addition, you must have the following to create an account with Earnin:

- v. use of a valid US cellular/wireless telephone number;
- vi. an email address that you control;
- vii. a checking account at your bank that you have linked to your Earnin account to use the Site or Services ("**Bank Account**"); and
- viii. a "**Verified Source of Income**", meaning you have either (1) paychecks you receive from a Verified Employer (as defined below); or (2) anticipated income that may include, but is not limited to certain government-sponsored benefits (as determined by Earnin)

If your bank is not listed in the Application, then Earnin unfortunately is unable to support it and you will not be able to use the Site or Services. We are actively working to support more banks as we continue to grow, and we encourage you to check back at a later time to see if your bank has been added to our list.

A "**Verified Employer**" is an employer that has a fixed work location in which you work out of and has an online/electronic timekeeping system, or is verified by any other means that we may permit and is paying you on a regular pay schedule (either weekly, bi-weekly, semi-monthly, or monthly). If you do not, or cannot provide timesheets, you can use "Automagic Earnings", which can automatically track your earnings, and add them to your Earnin account based on your work address. To use Automagic Earnings, we need your phone's GPS (location services) to be on at all times, and you must have a fixed work address.

If you are unsure or have questions about your eligibility, please contact us by emailing support@earnin.com or using live chat with the Earnin team via the mobile app.

b. Your Use of Earnin's Services.

We control and operate our Services from the United States and we make no representations or warranties that the information, products, or services provided through our Services, or our Content (defined below), are appropriate for access or use in other jurisdictions. You are not permitted to access or use our Services in any jurisdiction or country if it would be contrary to the law or regulation of that jurisdiction or if it would subject us to the laws of, or any registration requirement with, such jurisdiction. We reserve the right to limit the availability of our Services or the provision of any of our Content to any person, geographic area, or jurisdiction, at any time and in our sole and absolute discretion.

You may only use the Site and Services for your own personal, non-commercial use and not on behalf of or for the benefit of any third party. Your use of the Site and the Services must comply with all applicable law. If your use of the Site and/or the Services is prohibited by applicable law, then you are not authorized to use the Site and/or the Services. We are not responsible if you use the Site and/or the Services in any manner that violates applicable law.

c. Permissible Fees

When you request to transfer out cash deposits, you will generally receive them in your Bank Account within the next 1-2 Banking Days after you request the transfer. Depending on your bank, you may be able to request transfers with Lightning Speed, a service that enables funds associated with your transfer requests to be delivered to you on an expedited basis. The vast majority of Lightning Speed transfers occur within one minute; although, some may take up to 30 minutes. Fees may apply to Lightning Speed, as will be disclosed to you ahead of time in the app.

d. Confidentiality of Credentials.

You acknowledge that you must keep confidential any username, password (collectively, "**Credentials**") or mobile device you use to access your Earnin account, the Site and the Services.

You understand that the use of any of your Credentials by another person will still be recognized by Earnin as being authorized by you. You agree to keep confidential and to take all reasonable precautions and make all reasonable efforts to protect the secrecy of all Credentials issued to you, selected by you, or utilized by you.

If you believe that either your Credentials or a device that you use to access the Site and/or our Services has been lost or stolen, that someone is using your account without your permission, or that an unauthorized transaction has occurred, you must notify us **IMMEDIATELY** at support@earnin.com or live chat the Earnin team via the mobile app.

e. Accuracy of Information.

You agree to provide accurate profile information, including, as applicable, your name, physical address, email address (“**Profile Information**”). Please update all your Profile Information whenever the information provided to us is no longer accurate. You can update your Profile Information through the settings menu of the mobile app, after you login. If you need help in changing your Profile information, please email us at support@earnin.com or live chat the Earnin team via the mobile app. You also agree to provide accurate information about your Bank Account, and promptly update it whenever the information is no longer accurate. Note that we are not responsible for any payment processing errors or fees or other Services-related issues arising from your failure to keep your Profile Information current.

3. TERMINATING YOUR ACCOUNT

You may close your account and terminate your relationship with us through the settings menu of the mobile app, after you login. There is no fee to close your account. If you close your account, you will not be permitted to use any Services and any Service-specific accounts will also be closed. If you need help in terminating your account, please email us at support@earnin.com or live chat the Earnin team via the mobile app.

4. YOUR RESPONSIBILITY FOR THIRD PARTY BANK FEES

IMPORTANT, PLEASE READ: Unless Earnin withdraws funds from your Bank Account on a day before your next regularly scheduled paycheck or scheduled debit date as designated in the Services, you acknowledge and agree that you, and not Earnin, shall be responsible for any fees charged by your bank associated with overdrafts or insufficient fund events that occur when Earnin debits your Bank Account for any outstanding amounts. You are responsible for funding all payments you initiate. This means that you, and not Earnin, are responsible for any overdraft fees, over-the-limit fees, or insufficient fund charges (including finance charges, late fees, or similar charges), or any other third-party fees that result from your failure to maintain a balance or available credit in your Bank Account that is sufficient to fund all payments you authorize, including any outstanding amounts due to Earnin that you have authorized.

Your bank, and not Earnin, controls the sequence in which it processes credits and debits (additions and subtractions) to your Bank Account. Thus, when Earnin seeks to debit your Bank Account for amounts authorized to Earnin, or you authorize a transfer of funds between various accounts, the manner in which your bank processes credits and debits associated with various transactions may result in overdrafts and/or generate insufficient funds fees or other bank fees even where you believe that you have sufficient funds in your Bank Account. You, and not Earnin, are responsible for reviewing the terms of your Bank Account to understand your Bank's overdraft policy and the manner in which your bank posts debits and credits.

5. SMS MESSAGING

By providing Earnin with a telephone number for a cellular phone or other wireless device, you agree to receive autodialed and pre-recorded, non-marketing, service-related text messages from or on behalf of Earnin at the phone number provided. You further consent to receiving autodialed and pre-recorded text messages from or on behalf of Earnin at the number provided for marketing or promotional purposes. You understand that consent to marketing-related messages is not a condition of using the Services. To stop receiving marketing-related messages, you may reply "STOP" to any marketing-related text message you receive from Earnin. After you text "STOP" to us, we will send you a text message to confirm that you have been unsubscribed from marketing-related text messages. After this, you will no longer receive text messages from us. Standard message and data rates may apply to both non-marketing and marketing-related messages. You consent to receive SMS messages (including text messages), including prerecorded and artificial voice and autodialed from us, our agents, representatives, affiliates or anyone calling on our behalf at the specific number(s) you have provided to us, with service-related information such as alerts, or questions about your use of the Services and/or Earnin account.

You certify, warrant and represent that the telephone number you have provided to us is your contact number and not someone else's. You represent that you are permitted to receive text messages at the telephone number you have provided to us. Carriers are not liable for delayed or undelivered messages. You agree to promptly alert us whenever you stop using a telephone number. You may text "STOP" to opt out at any time. Standard message and data rates may apply to all SMS messages (including text messages) for any messages sent to you from us and to us from you. We will message you as needed. We may modify or terminate our SMS messaging services from time to time, for any reason, and without notice, including the right to terminate SMS messaging with or without notice, without liability to you.

6. PUSH NOTIFICATIONS

By agreeing to this Agreement, you agree to receive push notifications from us. You can opt out of receiving push notifications through your device settings. Please note that opting out of receiving push notifications may impact your use of the Services.

7. ACCEPTABLE SITE & SERVICES

You represent and warrant to us that you will not use Earnin's Sites or Services for any purpose that is unlawful or prohibited by the Agreement. You agree that you will not:

- o use the Site or Services for activities that violate any law, statute, ordinance or regulation;
- o use the Site or Services in any manner that could damage, disable, overburden, or impair the Sites or Services;
- o obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Sites or Services;
- o access the Site by any means other than through the interface that is provided by Earnin for use in accessing the Sites;
- o use or attempt to use any engine, software, tool, agent, or other device or mechanism, other than those required by law (including browsers, spiders, robots, avatars or intelligent agents) to navigate or search the Site or Services;
- or
- o attempt to decipher, decompile, disassemble, or reverse-engineer any of the software comprising or in any way making up a part of the Site or the Service.

If we, in our sole discretion, have reason to believe that you may have engaged in any activities restricted by this Agreement or by law, we may take various actions to protect ourselves, other users, and other third parties from fees, fines, penalties, and any other liability. The actions we may take include the following:

- o we may close, suspend, or limit your access to your Earnin account or ability to use the Sites or Services;
- o we may update inaccurate information you provided us;
- o we may take legal action against you; and
- o we may hold you liable to Earnin for the amount of damages caused by your violation of the Agreement.

Earnin, in its sole discretion, reserves the right to terminate this Agreement, access to its Sites, or access to the Services for any reason and at any time with or without notice to you.

8. RIGHTS YOU GRANT TO US

a. Third-Party Services.

By using the Site and the Services and providing this information to us, you authorize us to obtain, directly or indirectly through our third-party service providers, information about you and your Bank Account from the financial institution holding your Bank Account and other third-party websites and databases that may be necessary to provide the services. We make no effort to review such information for any purpose, including, but not limited to, accuracy, legality, or non-infringement. You agree that our third-party service providers and the operators and owners of the third-party websites will be entitled to rely on the foregoing authorization granted by you.

You acknowledge and agree that when Earnin is accessing and retrieving account information from third party sites, Earnin is acting as your agent, and not as the agent of or on behalf of the third party. You understand and agree that the Services are not sponsored or endorsed by any third parties accessible through the Services.

b. License for Submitted Content.

You hereby grant to Earnin a royalty-free, perpetual, irrevocable, worldwide, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, create derivative works of, distribute, perform, and display all content, remarks, suggestions, ideas, graphics, or other information or materials of any kind or nature communicated by you (or on your behalf) to Earnin through this Site or the Services (each, a "Submission"), and to incorporate any Submission in other works in any form, media, or technology now known or later developed. For the avoidance of doubt, any feedback, questions, comments, suggestions, ideas, or the like that you send to Earnin will be treated as a Submission. You agree that Earnin will not be bound to treat any Submission as confidential and may use any Submission in its business (including for products, services, marketing, or advertising) without incurring any liability for royalties or any other consideration of any kind, and will not incur any liability as a result of any similarities that may appear in future Earnin operations or businesses. Earnin reserves the right to remove any Submission. Earnin will not compensate you for any Submission.

For each Submission, you represent and warrant that:

- You have all the licenses, rights, consents and permissions in your Submission necessary to make the above license and grant;
- The Submission and Earnin's use of such Submission does not and will not infringe any intellectual property, privacy, proprietary or publicity rights, or otherwise violate confidentiality obligations, this Agreement or applicable law;

- The Submission does not contain any worms, viruses or other code deemed harmful to Earnin and Earnin's users;
- The Submission does not contain political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam";
- Your Submission is accurate and if the Submission involves feedback about the Site or Services, statements made in such Submission are true and verifiable and reflect your actual experiences and beliefs. If at any time the opinions expressed in your Submission change, you must notify us immediately;
- The Submission is not libelous, defamatory, obscene, pornographic, abusive, indecent, threatening, harassing, hateful, or offensive or otherwise unlawful; and
- You agree that no confidential or fiduciary relationship is intended or created between you and Earnin. To the extent that any so-called "moral rights," "neighboring rights," or similar or analogous rights apply to any Submission and are not exclusively owned by Earnin under any laws now existing or which become law in the future in any part of the world, you irrevocably and unconditionally waive, and agree not to enforce or assign, or permit any third party to enforce or assign, any such rights.

c. Earnin's Intellectual Property Rights.

All content included or available in connection with the Site, including any and all materials, information, text, data, contents, names, trade names, trademarks, trade dress, service marks, layout, logos, designs, images, graphics, illustrations, artwork, icons, photographs, displays, sound, music, video, animation, organization, assembly, arrangement, interfaces, databases, technology, and all intellectual property of any kind whatsoever (collectively, the "**Content**") and the selection and arrangement thereof is owned exclusively by Earnin, the licensors or suppliers of Earnin and is protected by U.S. and international copyright and other intellectual property laws. You may not copy, imitate, modify or use them without our prior written consent. All rights, title and interest in the Content is hereby reserved. Without limiting the foregoing, no Content on the Site or in the Services may be copied, reproduced, duplicated, published, or distributed in any form or by any means whatsoever without the express prior written permission of Earnin. You may not alter or modify or change Earnin's Content in any way, use them in a manner that mischaracterizes Earnin or display the Content in a manner that implies Earnin's sponsorship or endorsement.

9. DIGITAL MILLENNIUM COPYRIGHT ACT

DMCA Notice: If you are a copyright owner or an agent thereof and believe that any content posted by an Earnin Community Member user infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("**DMCA**") by providing our Copyright Agent with the following information in writing (see 17 U.S.C. § 512(c)(3) for further detail):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You may direct copyright infringement notifications to our DMCA Agent at:

ActiveHours Inc., dba Earnin
Legal Department
200 Portage Ave.
Palo Alto, California USA 94306
Email: legal-notices@earnin.com

You acknowledge that if you fail to comply with all of the requirements, your DMCA notice may not be valid.

Counter-Notice: If you believe that your content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your content, you may send a counter-notice containing the following information to the DMCA Agent:

- Your physical or electronic signature;
- Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled;
- A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and
- Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California,

and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the DMCA Agent, Earnin may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at Earnin's sole discretion.

Earnin's policy is to terminate the accounts of those who are repeat infringers or are repeatedly charged with infringement in appropriate circumstances.

10. DISCLAIMERS; NO WARRANTIES

a. No Advice

The Service is not intended to provide legal, tax or financial advice. Earnin is not a financial planner, broker, or tax advisor.

To the extent you use a Service for banking or other financial services, the Service is intended only to assist you in your financial organization and decision-making and is broad in scope. Before making any final decisions or implementing any financial strategy, you should consider obtaining additional information and advice from your accountant or other financial advisers who are fully aware of your individual circumstances. Please note that we are not a financial adviser, and our services are not intended to provide financial advice. Your financial situation is unique. We are not responsible for ensuring your Bank Account has sufficient funds for your needs, purposes, or transactions. We do not make any representations, warranties, or guaranties of any kind that the Services are appropriate for you. Before using the Services, you should consider obtaining additional information and advice from a financial adviser.

b. Alerts

You understand and agree that any alerts provided to you through the Services may be delayed or prevented by a variety of factors. Earnin makes commercially reasonable efforts to provide alerts in a timely manner with accurate information, but we cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. Earnin will not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert.

11. DISCLAIMER OF REPRESENTATION AND WARRANTIES

THE SITE, SERVICES, INFORMATION, DATA, FEATURES, AND ALL CONTENT IS OFFERED AND MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, EARNIN AND ITS AFFILIATES AND LICENSORS EXPRESSLY DISCLAIM ANY WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EARNIN AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE CONTENT OR OPERATION OF THE SITES OR SERVICES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITES AND SERVICES IS AT YOUR SOLE RISK.

EARNIN AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS, OR CONTINUED AVAILABILITY OF THE CONTENT ON THE SITES OR THE SERVICES, AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. EARNIN AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT THE CONTENT THAT MAY BE AVAILABLE THROUGH THE SITES OR SERVICES IS FREE OF BUGS, DEFECTS, OR ERRORS, OR INFECTION FROM ANY VIRUSES OR OTHER CODE OR COMPUTER PROGRAMMING ROUTINES THAT CONTAIN CONTAMINATING OR DESTRUCTIVE PROPERTIES OR THAT ARE INTENDED TO DAMAGE, SURREPTITIOUSLY INTERCEPT, OR EXPROPRIATE ANY SYSTEM, DATA, OR PERSONAL INFORMATION. EARNIN AND ITS AFFILIATES, LICENSORS AND SUPPLIERS WILL NOT BE LIABLE IN ANY WAY TO YOU OR TO ANY THIRD PARTY, FOR ANY ERROR OR DELAY IN THE SITES OR THE SERVICES, AND ANY LOSS OR DAMAGE ARISING FROM

- ANY SUCH ERROR OR DELAY;
- NON-PERFORMANCE; OR
- INTERRUPTION IN THE SITES OF SERVICES DUE EITHER TO ANY NEGLIGENT ACT OR OMISSION BY EARNIN AND ITS AFFILIATES, LICENSORS AND SUPPLIERS, OR "FORCE MAJEURE" OR ANY OTHER CAUSE BEYOND THE CONTROL OF EARNIN.

12. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL EARNIN OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, OR AGENTS (COLLECTIVELY, THE "*EARNIN PARTIES*") BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY THIRD PARTY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR

OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, LIQUIDATED, OR PUNITIVE DAMAGES YOU MAY INCUR IN CONNECTION WITH THE SITE, THE SERVICES YOUR USE THEREOF, OR ANY OF THE USER SUBMISSIONS, INFORMATION, DATA, OR OTHER MATERIAL TRANSMITTED THROUGH OR RESIDING ON THE SITES, OR ANY ERRORS, DEFECTS, INTERRUPTIONS, DELETIONS, OR LOSSES RESULTING THEREFROM, INCLUDING LOSS OF PROFIT, REVENUE, OR BUSINESS, ARISING IN WHOLE OR IN PART FROM YOUR ACCESS TO OR USE OF THE SERVICE, EVEN IF THE EARNIN PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH STATES LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF THIS SECTIONS AND THE PREVIOUS SECTION MAY NOT APPLY TO YOU.

13. INDEMNIFICATION OF EARNIN

To the fullest extent permitted by law, you agree to indemnify, defend and hold harmless the Earnin Parties from and against any and all claims, losses, expenses, demands or liabilities, including reasonable attorneys' fees arising out of or relating to:

- your access to, use of or alleged use of the Site or the Services;
- your violation of this Agreement or any representation, warranty, or agreements referenced herein, or any applicable law or regulation;
- your violation of any third party right, including any intellectual property right, publicity, confidentiality, property or privacy right; or
- any disputes or issues between you and any third party.

We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim. You shall cooperate as fully as reasonably required in the defense of any such claim. Earnin reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by you. You agree not to settle any matter without the prior written consent of Earnin.

14. DISPUTE RESOLUTION BY BINDING ARBITRATION

PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS PROVISION CAREFULLY AND UNDERSTAND THAT IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE

BETWEEN YOU AND US. YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO REJECT THIS PROVISION AS PROVIDED IN SECTION 14.b BELOW.

a. Election to Arbitrate.

You and Earnin agree that the sole and exclusive forum and remedy for resolution of a Claim be final and binding arbitration pursuant to this Section 14, titled “Dispute Resolution by Binding Arbitration (the “**Arbitration Provision**”), unless you opt out as provided in **Section 14.b** below or your Claim is subject to an explicit exception to in this Arbitration Provision. As used in this Arbitration Provision, “**Claim**” shall include any past, present, or future claim, dispute, or controversy involving you (or persons claiming through or connected with you), on the one hand, and us on the other hand, relating to or arising out of this Agreement, and/or the activities or relationships that involve, lead to, or result from this Agreement, including (except to the extent provided otherwise in the last sentence of **Section 14.f** below) the validity or enforceability of this Arbitration Provision, any part thereof, or the entire Agreement. Claims are subject to arbitration regardless of whether they arise from contract; tort (intentional or otherwise); a constitution, statute, common law, or principles of equity; or otherwise, except that both you and Earnin retain the right: (a) to bring an individual action in small claims court (a “**Small Claims Action**”); or (b) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, the misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents or other intellectual property rights (an “**IP Protection Action**”). Claims include matters arising as initial claims, counter-claims, cross-claims, third-party claims, or otherwise. The scope of this Arbitration Provision is to be given the broadest possible interpretation that is enforceable.

b. Opt-Out of Arbitration Provision.

You may opt out of this Arbitration Provision for all purposes by sending an arbitration opt out notice to at legal-notices@earnin.com or regular mail at ActiveHours Inc. dba Earnin, Legal Department, 200 Portage Ave, Palo Alto, California USA 94306, **within thirty (30) days of the date of your electronic acceptance of the terms of this Agreement (such notice, an “Arbitration Opt-Out Notice”) or within thirty (30) days of any update.** The opt out notice must clearly state that you are rejecting arbitration; identify the Agreement to which it applies by date; provide your name, address, and social security number; and be signed by you. If you don’t provide Earnin with an Arbitration Opt-Out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any Claim except with regard to a Small Claims Action or an IP Protection Action, as expressly set forth above.

c. Judicial Forum for Disputes.

In the event that (i) you or we bring an IP Protection Action; (ii) you timely provide Earnin with an Arbitration Opt-out Notice; or (iii) this Arbitration Provision is found not to apply, the exclusive jurisdiction and venue of any Claim will be the state and federal courts located in Santa Clara, California and each of the parties hereto waives any

objection to jurisdiction and venue in such courts. You and we both further agree to waive our right to a jury trial.

d. Informal Dispute Resolution.

If a Claim arises, our goal is to learn about and address your concerns and, if we are unable to do so to your satisfaction, to provide you with a neutral and cost effective means of resolving the dispute quickly. You agree that before filing any claim in arbitration, you will try to resolve the Claim informally by contacting us using live chat via the mobile app. Similarly, Earnin will undertake reasonable efforts to contact you (if we have contact information for you) to resolve any claim we may possess informally before taking any formal action. If a Claim is not resolved within thirty (30) days after the email noting the Claim is sent, you or Earnin may initiate an arbitration proceeding as described below.

e. Waiver of Right to Litigate.

Unless you timely provide Earnin with an Arbitration Opt-out Notice, YOU ACKNOWLEDGE THAT YOU HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT HAVE THAT RIGHT IF ANY PARTY ELECTS ARBITRATION PURSUANT TO THIS ARBITRATION PROVISION. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO LITIGATE SUCH CLAIMS IN A COURT BEFORE A JUDGE OR JURY UPON ELECTION OF ARBITRATION BY ANY PARTY.

f. No Class Actions.

You and Earnin agree that the arbitration of any Claim shall proceed on an individual basis, and neither you nor Earnin may bring a claim as a part of a class, group, collective, coordinated, consolidated or mass arbitration (each, a “**Collective Arbitration**”). Without limiting the generality of the foregoing, a claim to resolve any Claim against Earnin will be deemed a Collective Arbitration if (i) two (2) or more similar claims for arbitration are filed concurrently by or on behalf of one or more claimants; and (ii) counsel for the claimants are the same, share fees or coordinate across the arbitrations. “**Concurrently**” for purposes of this provision means that both arbitrations are pending (filed but not yet resolved) at the same time.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER YOU NOR EARNIN SHALL BE ENTITLED TO CONSOLIDATE, JOIN OR COORDINATE CLAIMS BY OR AGAINST OTHER INDIVIDUALS OR ENTITIES, OR ARBITRATE OR LITIGATE ANY CLAIM IN A REPRESENTATIVE CAPACITY, INCLUDING AS A REPRESENTATIVE MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. IN CONNECTION WITH ANY CLAIM (AS DEFINED ABOVE), ANY AND ALL SUCH RIGHTS ARE HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVED. ANY CHALLENGE TO THE VALIDITY OF THIS Section 15.f SHALL BE DETERMINED EXCLUSIVELY BY THE ARBITRATOR.

g. Arbitration Rules.

The arbitration will be administered by the American Arbitration Association (“**AAA**”) in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the “**AAA Rules**”) then in effect, except as modified by this Arbitration Provision. In the case of a conflict between the rules and policies of the administrator and this “Arbitration Provision, this Arbitration Provision shall control, subject to countervailing law, unless all parties to the arbitration consent to have the rules and policies of the administrator apply. (The AAA Rules are available at <https://www.adr.org/active-rules>).

This Arbitration Provision shall be construed under and be subject to the Federal Arbitration Act, notwithstanding any other choice of law set out in this Agreement.

h. Arbitration Process.

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a general Demand for Arbitration and a separate Affidavit For Waiver of Fees for qualifying California residents.) The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA’s roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Notwithstanding any language to the contrary in this Section, if a party seeks injunctive relief that would significantly impact other Earnin users as reasonably determined by either party, the parties agree that such arbitration will proceed on an individual basis but will be handled by a panel of three (3) arbitrators. Each party shall select one arbitrator, and the two party-selected arbitrators shall select the third, who shall serve as chair of the arbitral panel. That chairperson shall be a retired judge or an attorney licensed to practice law and with experience arbitrating or mediating disputes. In the event of disagreement as to whether the threshold for a three-arbitrator panel has been met, the sole arbitrator appointed in accordance with this Section shall make that determination. If the arbitrator determines a three-person panel is appropriate, the arbitrator may – if selected by either party or as the chair by the two party-selected arbitrators – participate in the arbitral panel. Except as and to the extent otherwise may be required by law, the arbitration proceeding and any award shall be confidential.

i. Arbitration Location and Procedure.

Unless you and Earnin otherwise agree, the arbitration will be conducted in the county where you reside, or if you so elect and Earnin agrees, all proceedings can be conducted via videoconference, telephonically or via other remote electronic means. If

your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and Earnin submit to the arbitrator, unless you request a hearing or the arbitrator determines that a videoconference, telephonic or in-person hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

j. Arbitrator's Decision.

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim.

k. Fees.

If we elect arbitration, we shall pay all the administrator's filing costs and administrative fees (other than hearing fees). If you elect arbitration, filing costs and administrative fees (other than hearing fees) shall be paid in accordance with the AAA Rules, or in accordance with countervailing law if contrary to the AAA Rules. However, if the value of the relief sought is \$10,000 or less, at your request, we will pay all filing, administration, and arbitrator fees associated with the arbitration, unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). In such circumstances, fees will be determined in accordance with the AAA Rules. Each party shall bear the expense of its own attorneys' fees, except as otherwise provided by law. If a statute gives you the right to recover any of these fees, these statutory rights shall apply in the arbitration notwithstanding anything to the contrary herein.

l. Survival and Severability of Arbitration Provision.

This Arbitration Provision shall survive the termination of this Agreement. With the exception of Section 14.f "No Class Actions," if a court decides that any part of this Arbitration Provision is invalid or unenforceable, then the remaining portions of this Arbitration Provision shall nevertheless remain valid and in force. In the event that a court finds that all or any portion of Section 14.f "No Class Actions," to be invalid or unenforceable, then the entirety of this Arbitration Provision shall be deemed void and any remaining Claim must be litigated in court pursuant to Section 14.c.

m. Changes to the Arbitration Provision.

Notwithstanding the provisions of the “Modifications” section above, if Earnin changes this Arbitration Provision after the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement), you may reject any such change by sending us written notice (including by email to legal-notices@earnin.com) within 30 days of the date such change became effective, as indicated in the “Last Updated” date above or in the date of Earnin’s communication to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Earnin in accordance with the provisions of this Arbitration Provision as of the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement). If you do not reject any changes made by Earnin as outlined above, Earnin will assume you are accepting the changes.

n. Existing Litigation.

Nothing in this Arbitration Provision shall prohibit any party who is a proposed settlement class member in the proposed settlement agreement in *Perks v. Activehours, Inc. d/b/a Earnin*, Case No. 5:19-cv-05543-BLF (N.D. Cal.) from continuing to participate in that settlement agreement.

15. GOVERNING LAW; JURISDICTION

This Agreement shall be governed by, and all Disputes shall be resolved in accordance with, the laws of the State of California, United States of America without regard to its conflicts of law rules. You agree that any dispute arising from or relating to the subject matter of this Agreement shall be governed by the exclusive jurisdiction and venue of the state courts in Santa Clara County, or federal court for the Northern District of California.

16. MISCELLANEOUS

If any portion of this Agreement is deemed unlawful, void or unenforceable by any arbitrator or court of competent jurisdiction, this Agreement as a whole will not be deemed unlawful, void or unenforceable, but only that portion of this Agreement that is unlawful, void or unenforceable will be stricken from this Agreement.

You agree that if Earnin does not exercise or enforce any legal right or remedy which is contained in this Agreement (or which we have the benefit of under any applicable law), this will not be taken to be a formal waiver of our rights and that those rights or remedies will still be available to Earnin.

All covenants, agreements, representations and warranties made in this Agreement will survive your acceptance of this Agreement and the termination of this Agreement.

This Agreement represents the entire understanding and agreement between you and Earnin regarding the subject matter of the same, and supersedes all other previous agreements.

17. NOTICE TO CALIFORNIA CUSTOMERS

Earnin is not currently licensed by the Department of Financial Protection & Innovation. If the Department does decide in the future to license Earnin, and/or require Earnin make modifications to its advance pay product agreement, such developments may have no impact on your obligations under this Agreement. Although Earnin is not licensed by the Department, you are invited to share any comment or concerns about Earnin or its products and practices with the Department of Financial Protection & Innovation at (866) 275-2677 (toll-free) or at the following URL: <https://dfpi.ca.gov/file-a-complaint/>.

18. MODIFICATION TO SITE OR SERVICES

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently the Earnin Site or the Services with or without notice. We reserve the right to change the Services and Agreement, including applicable fees, in our sole discretion and from time to time. In such an event, if you are a member of the Service and such changes are material, we will provide notice to you. If you do not agree to the changes after receiving a notice of the change to the Services, you may stop using the Services. Your use of the Services after you are notified of any change(s) will constitute your agreement to such change(s). You agree that Earnin will not be liable to you or to any third party for any modification, suspensions, or discontinuance of the Site or the Services.

19. CONTACTING US

If you have questions regarding the Agreements or the practices of Earnin, please contact us using live chat with the Earnin team via the mobile app, or you can send us a letter at:

ActiveHours Inc., dba Earnin
Attn: CX Team
200 Portage Ave.
Palo Alto, California USA 94306