

# Terms of Service

Effective Date: Last Updated as of March 3, 2020

Welcome to directly.com, provided by Directly, Inc. (“**Directly**”, “**Company**”, “we”, “our”, or “us”). Directly's Customer Experience Automation (“**CXA**”) platform and services allow companies to build networks of independent third-party expert users (“**Experts**”) to provide best in class customer experience to our customers (“**Customers**”) and our Customers’ end users (“**End Users**”). Experts earn rewards for creating knowledge base content, answering Customer and End User questions or training AI systems (“**Expert Content**”).

This Terms of Service Agreement (“**Terms**”) is a legal contract that (a) is between Directly and each Expert, or a visitor to our website or a user of Services (as defined below), and (b) governs your access to and use of our website, www.directly.com, the tools we make available to you to interact with the Directly automation platform, software, mobile apps and services (“**Directly Platform**” or “**Platform**”) and Expert Content. Directly’s provision of the Directly Platform, Expert Content and associated automation services are referred to as “**Services**” in these Terms. You must read and agree to these Terms before you access or use the Services. These Terms do not bind Customers (except to the extent they are acting as Experts); each Customer enters into a separate “**Master Services Agreement**” with Directly.

**We can change these Terms at any time. If a change is material, we will provide notice before it takes effect. Please read [Section 15.1](#) for details.**

**BY ACCESSING OR USING ANY ASPECT OF OUR SERVICES, YOU ACCEPT AND AGREE TO THESE TERMS, WHICH INCLUDE AND LEGALLY INCORPORATE OUR [PRIVACY POLICY](#).**

**IF YOU DO NOT AGREE TO ALL OUR TERMS, YOU MAY NOT ACCESS OR USE THE SERVICES.**

**IMPORTANT NOTICE: PLEASE CAREFULLY REVIEW THE ARBITRATION AGREEMENT SET FORTH IN [SECTION 14](#) BELOW AS IT REQUIRES YOU TO RESOLVE DISPUTES ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY ENTERING INTO THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE REVIEWED ALL ITS TERMS AND HAVE TAKEN TIME TO UNDERSTAND THE CONSEQUENCES.**

## **1. Platform, Services and Experts**

**1.1. Account Registration, Privacy Policy and Other Terms.** To apply to become an Expert, you must be at least 18 years of age, capable of entering into legally binding contracts and register for a Directly account (“**Directly Account**”) by providing certain personal information about yourself (“**Registration Information**”), as detailed in and subject to our Privacy Policy which is [available here](#) and incorporated into these Terms. By registering for a Directly Account, you authorize us and/or our Third-Party Providers (See [Section 2.5](#) below) to verify all Registration Information. Please see our [Privacy Policy](#) for additional details. Should Directly or Customers impose additional requirements on you and your eligibility, you will be given an opportunity to review and consent to any applicable terms.

**1.2. Expert Qualification and Responsibilities.** Once your Directly Account and Registration Information are verified (if required), you are eligible to take skills, language and communications tests to determine your qualifications, skills and expertise to be routed specific tasks to provide Expert Content. You represent and warrant that: (a) your Directly

Account and Registration Information are truthful and accurate; (b) you will maintain the accuracy and completeness of such information; and (c) your use of the Services and provision of Expert Content does not violate any applicable law or these Terms. You may delete your Directly Account at any time and for any reason by following the instructions in the Services. (See Directly's Privacy Policy, [Section 5](#) "Choices and Rights" for details.) We reserve, at all times, the right to accept or reject your application for a Directly Account as well as your initial and ongoing participation in the Services. You are responsible for maintaining the confidentiality of your Directly Account login information and are fully responsible for all activities that occur under your Directly Account. You must notify Directly at [security@directly.com](mailto:security@directly.com) immediately if you suspect that your Directly Account has been compromised, your account information stolen or used by someone else or any other breach or suspected breach of security. Please carefully read [Section 7](#), "Confidential Information."

**1.3. Conduct, Confidentiality and Data Protection.** You are responsible for maintaining a high level of professionalism, including understanding your conduct and confidentiality responsibilities, as referenced in the [Section 4](#) "Conduct" and [Section 7](#) "Confidential Information" below as well as in the restricted access "Expert Hub" webpages of [directly.com](http://directly.com). For privacy, data protection and security purposes, you also agree to comply with additional duties and safeguards, including those described in the Expert Data Protection Addendum, located in the Directly Privacy Policy and incorporated into these Terms. Please take time to read and understand the Expert Data Protection Addendum as it specifically calls out, among other protections, that you may not copy, use, share or store restricted information (e.g., "personal data"). We may suspend or limit use of the Services at any time for any reason at our sole discretion, including any use of the Services in violation of these Terms.

**1.4. Independent Expert.** You are an independent contractor and solely responsible for your Expert Content and activity on, through and related to the Services. The Services help to optimize the routing and resolution of tasks to provide Expert Content, but Directly does not assume responsibility for any Expert Content or for actions by any independent third parties, including but not limited to Experts, Customers or End Users.

## **2. Licenses, Restrictions and Disclaimers**

**2.1. Grant.** Subject to these Terms, we grant you a non-transferable, non-exclusive license to access and use the Services for the purpose of viewing requests for and generating Expert Content.

**2.2. Restrictions.** You will not: (a) license, sublicense, sell, rent, lease, transfer, assign, distribute, host or otherwise commercially exploit the Services or technology thereunder; (b) modify, copy, distribute, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Services or related technology; (c) access the Services in order to build a similar or competitive service or technology; or (d) share any of your passwords, access protocols or other methods of accessing the Services.

**2.3. Modification.** We reserve the right, at any time, to modify, suspend or discontinue the Services, or any part thereof with or without notice. You agree that we will not be liable to you or to any third party for any modification, suspension or discontinuance of the Services or any part thereof.

**2.4. Ownership.** You acknowledge that all of the intellectual property rights in the Services are owned by us or our licensors. The provision of the Services does not transfer to you or any third party any rights, title or interest in or to such intellectual property rights. We and our

licensors reserve all rights not granted in these Terms. Without limiting the generality of the foregoing, all trademarks, logos and service marks ("**Marks**") displayed on the Services are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Marks.

**2.5. Third Party Providers.** Certain features of the Services may be operated by Third-Party Providers ("**Third Party Providers**"). To use the features of Third-Party Providers, you may be required to create an account with, or otherwise login to, the applicable Third-Party Provider. Any information provided through a Third-Party Provider feature is collected by the applicable Third-Party Provider on its servers and is governed by its terms of service and privacy policy. That information may be shared with Directly; and you hereby consent to the Third-Party Provider sharing that information with Directly.

**2.6. Not Part of the Services.** The Services may be made available through independent Customer websites, help desks and other online properties and digital customer service channels. Our Customers are responsible for these independent properties and configuration of Directly technology that offers requests to provide Expert Content. None of the activities of Experts, Customers or any Expert Content is provided by Directly or is the responsibility of Directly.

### **3. Content**

**3.1. General.** You are solely responsible for your Expert Content and any activity related to Expert Content or use of the Services. You assume all risks associated with provision of Expert Content and activity related to providing Expert Content, including any reliance on its accuracy, completeness or usefulness by others. You hereby affirm, represent and warrant that: (a) you own, or have the necessary licenses, rights and/or consents to transmit your Expert Content via the Services and to license or assign the rights in the Expert Content (which Directly may then sublicense or assign to a Customer), and (b) your Expert Content, activity related to Expert Content and use of the Services does not violate the Acceptable Use Policy below.

**3.2. Assignment.** You agree to (and hereby do) assign all of your intellectual property rights in and to your Expert Content to Directly. To ensure that we are able to acquire, perfect and use such rights, you further agree to (i) sign any documents to assist in the documentation, perfection and enforcement of our rights; and (ii) provide reasonable access to information for recording, perfecting, securing, defending and enforcing such proprietary rights in any and all countries. Your obligations under this section will continue even after you deregister from or cease use of Directly. You appoint Directly as your attorney-in-fact to execute documents on your behalf for the purposes set forth in this section. You agree to waive irrevocably (and cause to be waived), and agree never to assert, any claims and assertions of moral rights or attribution with respect to your work.

**3.3. Feedback.** We will treat any feedback or suggestions you provide to us as non-confidential and non-proprietary. Thus, in the absence of a written agreement with us to the contrary, you agree that you will not submit to us any information or ideas that are, or you consider to be, confidential or proprietary.

### **4. Conduct**

**4.1. Acceptable Use Policy.** The following sets forth our "**Acceptable Use Policy**:" You understand that content provided by any user, including Expert Content, whether publicly posted or privately transmitted, is the sole responsibility of the person who created the respective content. This means that you, and not we, are entirely responsible for content

that you upload, post, email, transmit or otherwise make available via the Services, including any task you view or complete. Without limiting the generality of the foregoing, you must not use the Services to:

- Upload, post, email, transmit or otherwise make available Expert Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, objectionable or infringing of any patent, trademark, trade secret, copyright or other proprietary rights;
- Upload, post, email, transmit or otherwise communicate or post Expert Content that is disparaging of any Customer's products, services, brands, policies, operations, staff or the like.
- Upload, post, email, transmit, or otherwise make available any Expert Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements);
- State or imply that your Expert Content is in any way provided, sponsored or endorsed by us, a Customer or any other company, organization or association;
- Impersonate any person or entity, including but not limited to, a forum leader, guide or host or falsely state or otherwise misrepresent your affiliation with a person or entity;
- Collect or store personal data about other Experts, Customer personnel or End Users;
- Harm minors in any way;
- Upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes" or any other form of solicitation, except in those areas (such as shopping) that are designated for such purpose;
- Upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- Provide material support or resources (or to conceal or disguise the nature, location, source or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act;
- Violate any applicable local, state, national or international law;
- Forge headers or otherwise manipulate identifiers in order to disguise the origin of any Expert Content transmitted through the Services;
- Create multiple Directly Accounts or "game" the system in order to falsely earn points, rewards or reputation, including without limitation by getting friends to submit tasks or using crowd labor platforms to boost results;
- Interfere with or disrupt our servers or networks, or disobey any requirements, procedures, policies or regulations of networks, including using any device, software or routine to bypass our robot exclusion headers;

- Attempt to gain unauthorized access to the Services, or other computer systems or networks connected to or used together with the Services, through password mining or other means.
- Violate any documented standard, rule, code of conduct or the like as posted in Directly's *Expert Hub*, which Experts agree to check regularly for updates.

**4.2. Codes of Conduct and Training Rules.** To participate in responding to a request to provide Expert Content, you will comply with all codes of conduct, training rules and security standards provided to you by Directly.

## **5. Relationship**

**5.1. General.** You represent and warrant that, unless otherwise agreed in writing by Directly or the Customer for which you provide Expert Content, you are not an employee or agent of Directly or such Customer. You expressly disclaim any employment relationship with Directly and such Customer. You agree to act as an independent contractor. Nothing about your participation with Directly, its Customers or other Experts is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship.

**5.2. Control When Completing Tasks.** In the event you elect to respond to requests to provide Expert Content, in no event shall Directly or our Customers have control over your work or methods of contribution or provision. You will: set your hours of work and amount of time worked; determine your own patterns and methods of work; use your own devices, supplies, tools and equipment, including internet access; perform work for any third parties of your choosing; and perform all work independently. You will not: use any property or equipment of Directly or Customers; perform any services on any premises of Customers; be required to provide any reports, written or oral, to Customers; or be integrated into the business operations or dealings of Directly's Customers. Customers will not: pay for your expenses; provide instructions or direction to you on the location, time, methods or means of performance of services; or supervise you in any form, fashion or manner.

## **6. Rewards**

**6.1. Rewards.** As a qualified Expert, you will be able to earn rewards for performing tasks, including but not limited to, providing Expert Content. Directly and/or the applicable Customer shall have complete discretion to determine the completeness of all tasks and Expert Content for the purpose of reward eligibility and amount. Please consult the Expert Hub area for guidance on rewards and other details.

**6.2 Payment.** Directly will instruct the processing of payments to you, in accordance with Directly's and the applicable Customer's acceptance policy and rewards for Expert Content generated and delivered to Customer. In order to direct payment to you as an Expert, we require information to verify your identity and to combat fraud. See Section 2 of the Privacy Policy for details. We also may institute a threshold of reward amounts that you must meet in your Directly Account in order to effectuate the cash transfer (e.g., paying you only after the sum of your unpaid rewards is more than a minimum amount). In the event that you earn rewards for providing Expert Content, Directly will undertake reasonable efforts to release to you those rewards each week, month or at an interval determined by us or the applicable Customer. We reserve the right (but do not assume an obligation) at our election or upon request from the applicable Customer or upon notice of any potential fraud, unauthorized charges or other misuse of the Services, to place on hold or cancel any payment. We, in our sole discretion, will select a payment processor and you must create an account with this payment processor to receive payment. We may deduct any payment processing fees from any payments to you.

**6.3. Taxes.** If you provide Expert Content, you are solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to receipt of rewards in connection with completing tasks and receiving payments therefor. Directly, the payment processor or the applicable Customer will report (and may withhold withholding taxes with respect to (to the extent required by law)) payments to you to the Internal Revenue Service (or other taxing authorities) as required by law.

## **7. Confidential Information**

**7.1. Confidential Information Scope.** You acknowledge and agree that any information you receive in connection with a request to provide Expert Content constitutes proprietary, confidential information of (a) the applicable Customer, or (b) applicable End Users, whether or not marked as proprietary, confidential, personal or other reference (collectively, “**Confidential Information**”). Confidential Information does not include information that demonstrably (a) is or becomes generally available to the public other than as a result of disclosure by you; (b) was possessed by you prior to being furnished by the Services; or (c) becomes available to you from a source other than the Services. Further, it shall not be a violation for you to disclose Confidential Information or Personal Data (as that term is defined in the Privacy Policy) in response to a subpoena or other legal process served upon you, or where applicable law or regulation requires the disclosure of such information; provided that, if not prohibited under applicable law, you give reasonable prior written notice to Directly sufficient to permit Directly to inform the applicable Customer, so the applicable Customer can seek a protective order if it so chooses, and you disclose only the information that is legally required to be disclosed.

### **7.2. Confidential Information Duties.**

**7.2.1.** You will keep all Confidential Information in strictest confidence and will not collect, use, store, disclose or otherwise process any Confidential Information, except as instructed to do so in writing by Directly, or to provide Expert Content, and in accordance with Directly instructions and applicable law.

**7.2.2.** You will not disclose, process or otherwise use any Confidential Information in a manner that violates any applicable law and you agree to notify Directly in writing immediately if you believe that any instruction given by Directly would violate any applicable law.

**7.2.3.** You agree to notify Directly in writing immediately if you learn of any collection, use, storage, disclosure or other processing of any Confidential Information in a manner not permitted by this Section or these Terms.

**7.2.4.** You agree to notify Directly in writing immediately if you learn of any collection, use, storage, disclosure or other processing of any Confidential Information in a manner not permitted by this Section or these Terms.

**7.2.5.** You will not engage any other individual or entity to assist in providing Expert Content unless you are instructed to do so in writing by Directly.

**7.2.6.** You agree to make available to the Directly all information necessary to demonstrate compliance with the obligations set forth in this Section and applicable law regarding the Confidential Information and to allow Directly to conduct audits, including inspections, of your compliance with the obligations set forth in this Section.

**7.2.7.** Upon the termination, cancellation or expiration of your Directly Account for any reason, or upon Directly’s request at any time, you will destroy all Confidential Information together with any copies that may be authorized herein.

**7.2.8.** Nothing herein is intended to or shall grant to you any license or other right of any nature to the use of any Confidential Information except as permitted in this Section. Nothing in these Terms shall be deemed to restrict you from providing the same or similar services in connection with third-party platforms, regardless of whether any such third party directly or indirectly competes with Directly, except that you shall not use, in the provision of such services, any Confidential Information or other non-public information pertaining to Directly's business that is either designated and/or marked as confidential when disclosed to you, or which you knew or reasonably should have known, under the circumstances, was considered confidential or proprietary by Directly even if not designated or marked as such.

## **8. Disclaimers**

**The Services are provided "as-is," and as available. We expressly disclaim any and all representations, warranties and conditions of any kind, whether express or implied, including those of merchantability, fitness for a particular purpose, title, quiet enjoyment, accuracy or non-infringement. We make no warranty that the Services or any content therein: (a) will meet your requirements; (b) will be available on an uninterrupted, timely, secure or error-free basis; or (c) will be accurate, reliable, complete, legal or safe. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you.**

## **9. Limitation of Liability**

**In no event shall we (and our Customers, Customer users or Third-Party Providers (collectively, "Partners")) be liable to you or any third party for any lost profit or any indirect, consequential, exemplary, incidental, special or punitive damages arising from these Terms or your use of, or inability to use, the Services, even if we have been advised of the possibility of such damages. Access to, and use of, the Services are at your own discretion and risk.**

**Notwithstanding anything to the contrary contained herein, our (and our Partners') liability to you for any damages arising from or related to the Services (for any cause whatsoever and regardless of the form of the action), will at all times be limited to the greater of: (a) Fifty U.S. Dollars (US \$50) or (b) amounts we have paid you in the prior 12 months (if any).**

**Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you and you may also have other legal rights that vary from jurisdiction to jurisdiction.**

## **10. Indemnities**

**10.1 By You.** You agree to indemnify and hold us, our parents, subsidiaries, affiliates, any related companies, our Partners, suppliers, licensors, and the officers, directors, employees, agents and representatives of each of them harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of: (i) your use of the Services, (ii) your Expert Content, or (iii) your violation of these Terms. We reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without our prior written consent. We will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

**10.2 By Us.** We will (1) defend, or at our option settle, any suit filed by a third party against you (a "Suit") to the extent such Suit claims that your use of the Services, as permitted in these Terms, constitutes infringement or misappropriation by you of such third party's intellectual property rights; and (2) pay (i) any final judgment or award directly resulting from such Suit or (ii) those damages agreed to by us in a monetary settlement of such Suit.

If any portion of the Services becomes, or in our opinion is likely to become, the subject of a claim of infringement, we may, at our option: (a) procure for you the right to continue using the Services; (b) replace the Services with non-infringing software or Services, which do not materially impair the functionality of the Services; (c) modify the Services so that it becomes non-infringing; or (d) terminate these Terms and refund any fees actually paid by you to us for the remainder of the term then in effect, and upon such termination, you will immediately cease all use of the Services. Notwithstanding the foregoing, we shall have no obligation under this section or otherwise with respect to any infringement claim that would not have arisen but for (x) any use of the Services not in accordance with these Terms; (y) any use of the Services in combination with other products, equipment, software, or data not supplied by us; or (z) any modification of the Services by any person other than us or our authorized agents. **This subsection states your sole and exclusive remedy and the entire liability of Directly, or any of our officers, directors, employees, shareholders, contractors or representatives, for infringement claims and activity.**

### **11. Release**

You hereby release Directly, our officers, employees, agents and successors from claims, demands any and all losses, damages, rights, claims, and activity of any kind including personal injuries, death and property damage, that is either directly or indirectly related to or arises from any interaction with, Expert Content from, or conduct of, Experts, Customers, users or Third-Party Providers. **You hereby waive California Civil Code section 1542 in connection with the foregoing, which states: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."**

### **12. Term and Termination**

We may (a) suspend or limit your rights to use or access the Services (including your Directly Account), or (b) terminate these Terms, at any time for any reason at our sole discretion, including (i) for any use of the Services in violation of these Terms; or (ii) if while providing Expert Content, you do not meet, or cease to meet, the guidelines set forth in your supplemental agreement with a Customer. Upon termination of these Terms, your Directly Account and right to access and use the Services will terminate immediately. You understand that any termination of your Directly Account may involve deletion of your content associated therewith. We will not have any liability whatsoever to you for any termination of these Terms, including for termination of your Directly Account or deletion of your content. Even after these Terms are terminated, the following provisions of these Terms will remain in effect: Sections 1.3, 2.2 - 2.6, 3 - 5, 6.3, and 7 -15.

### **13. Copyright Policy**

We respect the intellectual property of others and require that Partners who access and use our Services do the same. In connection with our Services, we have adopted and implemented a policy respecting copyright law that provides for the removal of any infringing materials and for the termination, in appropriate circumstances, of Experts who violate our terms or infringe on intellectual property rights, including copyrights. If you believe that one of our Experts is, through the use of our Services, unlawfully infringing the copyright(s) in a work and wish to have the allegedly infringing material removed, the following information in the form of a written notification (pursuant to 17 U.S.C. 512(c)) must be provided to us:

1. Your physical or electronic signature;
2. Identification of the copyrighted work(s) that you claim to have been infringed;

3. Identification of the material on our Services that you claim is infringing and that you request us to remove;
4. Sufficient information to permit us to locate such material;
5. Your address, telephone number and e-mail address;
6. A statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent or under the law; and
7. A statement that the information in the notification is accurate, and under penalty of perjury, that you are either the owner of the copyright that has allegedly been infringed or that you are authorized to act on behalf of the copyright owner.

Please note that, pursuant to 17 U.S.C. 512(f), any misrepresentation of material fact (falsities) in a written notification automatically subjects the complaining party to liability for any damages, costs and attorney's fees incurred by us in connection with the written notification and allegation of copyright infringement.

**Our designated copyright agent to receive such claims can be reached as follows:**

By mail: Copyright Agent

c/o Directly, Inc.

333 Bryant Street #250

San Francisco, CA, 94107

United States

By email: [legal@directly.com](mailto:legal@directly.com)

#### **14. Agreement to Arbitrate: Arbitration Terms**

##### **14.1. Effect of Agreement to Arbitration Terms.**

- **By agreeing to the Terms, and unless you opt-out as provided immediately below, you agree that you are required to resolve any claim that you may have against Directly on an individual basis in arbitration, as set forth in this Section 14, "Agreement to Arbitrate: Arbitration Terms" (hereinafter "Arbitration Terms"). By agreeing to the Arbitration Terms both you and Directly waive the right to resolve any such disputes through a trial by jury or judge or through an administrative proceeding.**
- **Your agreement to the Arbitration Terms will preclude you from bringing any class, collective or representative action against Directly, and also preclude you from participating in or recovering relief under any current or future class, collective, consolidated or representative action brought against Directly by someone else.**

**14.2. Right to Opt Out of Arbitration Terms.** You may opt out of these Arbitration Terms and your agreement to arbitrate. If you do so, neither you nor Directly can require the other to participate in an arbitration proceeding. You may opt out by emailing us at [legal@directly.com](mailto:legal@directly.com) or sending us written notification at Directly Inc., Attention: Legal, 333 Bryant Street, Suite 250, San Francisco, CA 94107. You must notify us by emailing or posting within thirty (30) days of the date that you first became subject to this arbitration provision, and your notification must include your name and residence address, the email address you use for your account (if you have one) and a clear statement that you want to opt out of these Arbitration Terms. Your decision to opt out of these Arbitration Terms will have no adverse effect on your relationship with us. Unless you choose to opt out, this dispute resolution provision in Section 14 shall survive termination of the Terms.

**14.3. Waiver of Jury Trial and Class Actions.** You acknowledge and agree that you and Directly are each waiving the right to a trial by jury or to participate as a plaintiff or class member in

any purported class action or representative proceeding. Unless both you and Directly otherwise agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, consolidated or representative proceeding. This means the dispute will not be consolidated with any other matters or joined with any other cases or parties. However, you and Directly each retain the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

**14.4. Notices.** Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute ("**Notice**") describing the nature and basis of the claim or dispute and the requested relief. A Notice to Directly should be sent to: ATTN: Legal, Directly, Inc., 333 Bryant Street, Suite 250, San Francisco, CA 94107. Any Notice to the applicable Customer should be sent to that Customer's principal offices. After the Notice is received, you and Directly (or the applicable Customer) may attempt to resolve the claim or dispute informally. If you and Directly (or the applicable Customer) do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

**14.5. Arbitration Terms.** To ensure the timely and economical resolution of disputes that may arise between you and Directly, both you and Directly mutually agree that pursuant to the Federal Arbitration Act, 9 U.S.C. §1-16, and to the fullest extent permitted by applicable law, you will submit solely to final, binding and confidential arbitration any and all disputes, claims or causes of action arising from or relating to: (i) the negotiation, execution, interpretation, performance, breach or enforcement of the Terms; or (ii) your work with Directly and your Directly Account (including but not limited to all statutory claims); or (iii) the termination of your relationship with Directly and any Directly Account on the Services (including but not limited to all statutory claims); provided, however, that this Section shall not apply to any claim or cause of action brought in court by you pursuant to the California Private Attorneys General Act of 2004 as amended. Arbitration shall be initiated through JAMS, an established alternative dispute resolution provider that offers arbitration as set forth in this section, or if JAMS is not available to arbitrate, the parties shall agree to select an alternative provider ("**ADR Provider**"). The Terms and the rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms ("**Arbitration Rules**"). The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearing. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. If the arbitrator grants you an award that is

greater than the last settlement offer that Directly or the applicable Customer made to you prior to the initiation of arbitration, Directly (or the applicable Customer) will pay you the greater of the award or 130% of the settlement offer. Directly will pay any portion of the other party's arbitration costs in excess of those that you would have paid were the dispute brought in court.

**14.6. Additional Rules for Non-Appearance Based Arbitration.** If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

**14.7. Time Limits.** If you or Directly (or the applicable Customer) pursues arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the Arbitration Rules for the pertinent claim.

**14.8. Authority of Arbitrator.** If arbitration is initiated, the arbitrator shall have the sole and exclusive authority to determine whether a dispute, claim or cause of action is subject to arbitration under this Section 14 and to determine any procedural questions which grow out of such disputes, claims or causes of action and bear on their final disposition. Without limiting the generality of the foregoing, the arbitrator shall have the authority to grant motions dispositive of all or part of any claim; shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the ADR Provider's rules and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Directly (or the applicable Customer).

**14.9. Waiver of Jury Trial.** The parties hereby waive their constitutional and statutory rights to go to court and have a trial in front of a judge or a jury, instead electing that all claims and disputes shall be resolved by arbitration under these arbitration section terms. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and Directly (or the applicable Customer) in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, you and Directly (or the applicable Customer) waive all rights to a jury trial, instead electing that the dispute be resolved by a judge.

**14.10. Waiver of Class or Consolidated Actions.** All claims and disputes within the scope of this Arbitration Terms must be arbitrated or litigated on an individual basis and not on a class basis, and claims of more than one User cannot be arbitrated or litigated jointly or consolidated with those of any other user or third party (including but not limited to Experts, users or Customers).

**14.11. Severability.** If any provision of these Arbitration Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Arbitration Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

- 14.12. Right to Waive.** Any and all of the rights and limitations set forth in this section may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of these terms.
- 14.13. Survival of Terms.** The Arbitration Terms will survive the termination of your relationship with Directly (or the applicable Customer).
- 14.14. Small Claims Court.** Notwithstanding the foregoing, either you or Directly (or the Applicable Customer) may bring an individual action in small claims court.
- 14.15. Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Terms.
- 14.16. Courts.** In any circumstances where the foregoing Arbitration Terms permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within San Francisco County, California for such purpose.

## **15. General**

- 15.1. Changes to Terms.** These Terms are subject to revision, and if we make any substantial changes, we will notify you by sending you an email to the last e-mail address you provided to us (if any) and/or by prominently posting notice of the changes on our Services so it is visible when you visit and/or log-on to the Services for the first time after the change is posted. Such changes will not retroactively modify agreed dispute resolution provisions for any then-pending disputes. Your continued use of the Services after the changes have been posted shall constitute your acceptance of the changes. If you do not agree to the updated Terms, you must cease your use of the Services. Any changes to these Terms will be effective immediately following our posting of notice of the changes on our Services. You are responsible for providing us with your most current email address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice.
- 15.2. Electronic Communications.** The communications between you and us use electronic means, whether you visit the Services or send emails, or whether we post notices on the Services or communicate with you via email. For contractual purposes, you (a) consent to receive communications from us in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were in writing. The foregoing does not affect your statutory rights.
- 15.3. Entire Agreement.** These Terms (which include any other rules posted on the Services) constitute the entire agreement between you and us regarding the use of the Services. Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. The word “including” means “including without limitation.” If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. These Terms, and your rights and obligations herein, may not be assigned, subcontracted, delegated or otherwise transferred by you without our prior written consent, and any attempted assignment, subcontract, delegation or

transfer in violation of the foregoing will be null and void. We may freely assign these Terms. The terms of these Terms shall be binding upon assignees.

**15.4. System Outages and Changes to Services.** You acknowledge and agree there will be occasions when the Services will be interrupted for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and equipment that are outside of our control, and that we will have no liability for your inability to access and/or use the Services, or any portion thereof, during any of the foregoing events. We reserve the right to change, alter or vary the Services or Services offered on or through the Services at any time without notice.

**15.5. Third Party Beneficiary.** Directly and you acknowledge and agree that each Customer is a third-party beneficiary of these Terms, and that, upon you accepting the terms and conditions of these Terms, each such Customer will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary thereof.