

Divvy Terms of Service

Welcome to Divvy, an incentive program that combines proven methods with cutting edge technology to engage employees in driving business success (the “**Program**”). The Program is operated by Divvy Engagement Solutions, Inc. (“**Divvy**”, “**us**”, “**our**”, and “**we**”) through the website located at www.divvyengagement.com (the “**Site**”) and in mobile applications (the “**Applications**” and collectively with the Site and all services provided through the Site and Applications, the “**Services**”).

Certain features of the Services may be subject to additional guidelines, terms or rules, which will be posted in the Services in connection with such features. All such additional terms, guidelines and rules are incorporated by reference into these Terms of Service.

These Terms of Service (“**Terms**”) set forth the legally binding terms for your use of the Services whether you are simply a “**Visitor**” (which means you are just browsing the Services) or an “**Authorized User**” (which means you have registered to use them). Collectively, Visitors and Authorized Users are referred to as “**Users**” or individually as a “**User**” or “**you**”. BY ACCEPTING THESE TERMS, YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY AND CAPACITY TO ENTER INTO THESE TERMS. YOU MAY NOT ACCESS OR USE THE SERVICES OR ACCEPT THE TERMS IF YOU ARE NOT AT LEAST 18 YEARS OLD. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, DO NOT ACCESS AND/OR USE THE SERVICES.

PLEASE BE AWARE THAT SECTION 11 OF THIS AGREEMENT CONTAINS PROVISIONS GOVERNING HOW CLAIMS BETWEEN YOU AND US ARE RESOLVED, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS THAT AROSE OR WERE ASSERTED PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. IN PARTICULAR, IT CONTAINS AN ARBITRATION AGREEMENT THAT WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND (2) YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS.

THE TERMS ARE SUBJECT TO CHANGE BY DIVVY AT ANY TIME AS PROVIDED IN SECTION 1.8 BELOW.

1. Divvy Incentive Program.

1.1 The Program. Program Enrollees (as defined in Section 1.2 below) may access, use and participate in the Program, brought to you by Divvy and the entity that is identified as your sponsor through the Services (e.g., your employer, academic institution or insurance provider) (your “**Sponsor**”). The Program is a service that allows participants to earn Points for participating in certain company programs and activities. The Points can then be redeemed for Rewards. The specifics of the Program,

including specifics regarding the redemption of Points, are determined by your Sponsor, and your Sponsor, not Divvy, shall be responsible for communicating these specifics to you as well as for providing Rewards. BY ACCEPTING THESE TERMS, you agree to transact with us electronically and confirm that you have read the description of the information practices disclosed in our Privacy

Policy: <http://www.divvyengagement.com/legal/#divvyPP>

1.2 Eligibility. Any current employee, plan participant or student, as applicable, (a) who is offered the Program by his or her Sponsor, (b) whose name and email address are provided to Divvy by his or her Sponsor and (c) who registers an account on the Site or Application (an “**Account**”) is eligible to participate in the Program (each such individual, a “**Program Enrollee**”). As determined by your Sponsor, family members of a Program Enrollee may be eligible to participate in the Program. Family members who are eligible to become, and do become, Program Enrollees, are referred to as “**Family Enrollees**”. The individual who is the employee, plan participant or student is referred to as the “**Primary Program Enrollee**”.

1.3 Enrollment. In order to enroll, you must provide certain information about yourself, including your name and email address, and you must agree to these Terms, acknowledge the Privacy Policy <http://www.divvyengagement.com/legal/#divvyPP> and agree to the HIPAA Authorization <http://www.divvyengagement.com/legal/#divvyHIPAA>. You agree to provide only accurate and true information to us during enrollment and to update that information as needed. When you enroll, you will create a user name and password that will allow you access to your Sponsor’s Divvy website (the “**Rewards Site**”) and the Application. It is your responsibility to keep your password confidential. You will also create a profile that includes certain limited personal information like your email address. Your email address is needed so we and your Sponsor can send you emails about the Program and your Points. We reserve the right at any time to limit Program enrollment. We may discontinue your participation in the Program and void or cancel your entire Point balance if any Points in your Account are issued, received or redeemed through fraud or theft, or otherwise illegally, or not as authorized in these Terms or in other applicable rules instituted by your Sponsor. These rights are in addition to any other legal or equitable remedy which may be available to us under applicable law.

1.4 Earning Points. You can earn Divvy points (“**Points**”) by participating in programs and activities your Sponsor has designated as point earning opportunities. Your Sponsor will provide you with additional information about the activities that qualify. Once you have completed an eligible activity, you can log such activity using the Application and earn a number of Points for such activity as determined by us and your Sponsor. To check your Point balance, log into the Rewards Site and click the Point Balance link or log in to the Application and click the Rewards link. If you believe your Point balance is incorrect, please contact Divvy at support@divvyengagement.com.

1.5 Redeeming Points.

- (a) Divvy Points may be redeemed in accordance with the value that your Sponsor has designated (each such payment, a “**Reward**”). Only you may redeem the Points you have earned; Points may not be sold, exchanged, bartered, transferred or given away. Your Sponsor may require that Points

redeemed by Family Enrollees be paid to, and be deemed redeemed by, Primary Program Enrollees.

- **(b)** Your Sponsor, not Divvy, shall be responsible for the redemption of your Points. Please note that Divvy only administers and displays your Points in the Services on behalf of your Sponsor.
- **(c)** Your redemption of Points is governed by these Terms, any additional rules imposed by your Sponsor and any additional rules and restrictions included on the Rewards Site. Points will be subtracted from your Account once you have redeemed them.
- **(d)** Only current Program Enrollees may earn and redeem Points. If your employment, enrollment or affiliation, as applicable, with the Sponsor offering the Program ends, any Points that remain unredeemed will be handled in a manner determined by your Sponsor.

1.6 Your Obligations.

- **(a)** You must comply at all times with these Terms and all laws, rules and regulations that are applicable to you. You hereby acknowledge that you may only participate in the Program if and to the extent that such participation is permitted by these Terms and all applicable laws, rules and regulations. We may refuse at any time to enroll you, or we may restrict, modify or terminate your participation in the Program without liability to you or any other party, if you violate these Terms or any law, rule or regulation, or if your participation in the Program violates any law, rule or regulation. Such a termination or restriction may result in a forfeiture of your accrued Points.
- **(b)** The receipt or redemption of Points may be subject to tax liability. Any tax liability, including reporting of tax liability to the Internal Revenue Service or other taxing authorities, with respect to the receipt or use of Points is solely your responsibility. Your Sponsor may withhold and/or report taxes associated with earned and redeemed Points. Sponsors may require that Rewards resulting from Points redeemed on behalf of Family Enrollees, may be required to be paid or handed out to Primary Program Enrollees and may be deemed the income of the applicable Primary Program Enrollee for tax purposes. Divvy reserves the right to report the receipt or redemption of Points to the Internal Revenue Service and other taxing authorities. We recommend that you check with your tax advisor regarding possible tax implications of earning and redeeming Points.
- **(c)** Your Sponsor may have additional rules regarding the Program with which you must comply, and there may be certain restrictions associated with the Rewards for which you can redeem your Points. Such restrictions will be noted on the Rewards Site.

1.7 Your Health. ALWAYS CONSULT WITH YOUR PHYSICIAN BEFORE STARTING ANY EXERCISE PROGRAM. If you participate in a health behavior incentive Program, you certify that your physical condition allows you to perform moderate to intense exercise. If you experience any physical symptoms such as abnormal or sudden blood pressure changes, fainting, dizziness, or irregular heart beat or any other physical symptoms which seem abnormal to you while participating in the Program, stop

exercising immediately and consult your doctor without delay. The information provided by Divvy is for educational and informational purposes only and should not be considered medical advice, diagnosis or treatment. YOU SHOULD NEVER DISREGARD MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING YOU HAVE READ ON ANY DIVVY WEBSITE OR APPLICATION, OR LEARNED THROUGH YOUR PARTICIPATION IN THE PROGRAM. If you have any healthcare-related questions, please call or see your physician or other qualified health care provider without delay. Divvy will not be liable for any diagnostic or treatment decision made by you in reliance on any information provided by Divvy (e.g., on the Site or Application or through the Program). Should any unexpected medical event occur while you are participating in the Program, please seek medical advice, diagnosis or treatment without delay.

1.8 The Program and These Terms May be Suspended, Changed or Terminated. We and / or your Sponsor reserve the right to: (a) suspend, change or terminate the Program, in whole or in part; (b) add, delete or change available Points or Rewards; (c) modify, limit or suspend the use of or redemption of Points or the availability of Rewards in any respect; (d) modify or change redemption procedures; and (e) modify, limit or suspend the collection of Points, including, but not limited to, imposing time limits and changes in Point values. We may make these changes even though the changes may affect the value of Points already accumulated at any time and from time to time. You should not rely upon the continued availability of the Program, any earning or redemption offers, or other offers made in connection with the Program. If we make changes that we believe will have a material impact on your use of the Program, we will let you know by sending you an email if we have a current email address for you, and by noting on the Rewards Site that the Terms have been updated. The effective date of any change in these Terms will be the date specified in the notice. If you disagree with the changes to these Terms, you may opt out of the Program by terminating these Terms as provided in Section 9. Your ongoing use of the Program and Services after the changes take effect signifies your agreement to the new Terms.

1.9 Termination of Your Enrollment. We may cancel and/or suspend your enrollment in the Program at any time, without cause and/or without notice. We may terminate and/or suspend your enrollment immediately, without notice, if there has been a violation of these Terms or other policies and terms that apply to the Program. Your right to use the Program will end once your enrollment is terminated.

1.10 Release. BY PARTICIPATING IN THE PROGRAM, YOU HEREBY AGREE: (A) TO RELEASE US AND ALL OF OUR AFFILIATES, SUBSIDIARIES, RETAILERS, SALES REPRESENTATIVES, DISTRIBUTORS AND PARTNERS, AND EACH OF THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY, LOSS OR DAMAGE INCURRED WITH RESPECT TO THE AWARDING, RECEIPT, POSSESSION AND/OR USE OR MISUSE OF ANY REWARD; (B) UNDER NO CIRCUMSTANCES WILL YOU BE PERMITTED TO OBTAIN AWARDS FOR, AND YOU HEREBY WAIVE ALL RIGHTS TO CLAIM, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR ANY OTHER DAMAGE OR LOSS, OTHER THAN FOR ACTUAL OUTF-OF-POCKET EXPENSES; (C) ALL CAUSES OF ACTION OR CLAIMS ARISING OUT OF OR CONNECTED WITH THE PROGRAM OR ANY AWARD SHALL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM

OF CLASS ACTION; AND (D) ANY AND ALL CLAIMS, JUDGMENTS AND AWARDS SHALL BE LIMITED TO ACTUAL OUT-OF-POCKET COSTS INCURRED, EXCLUDING ATTORNEYS' FEES AND COURT COSTS.

2. Use of the Services and Divvy Properties. The Application, the Site, the Services, the Program and the information and content available on the Site and in the Application and the Services (collectively, the “**Divvy Properties**”) are protected by copyright laws throughout the world. Subject to the Terms, Divvy grants you a limited license to reproduce portions of Divvy Properties for the sole purpose of using the Services for your personal purposes. Unless otherwise specified by Divvy in a separate license, your right to use any Divvy Properties is subject to the Terms.

- **Application License.** Subject to your compliance with the Terms, Divvy grants you a limited non-exclusive, nontransferable, non-sublicensable, revocable license to download, install and use a copy of the Application on a single mobile device or computer that you own or control and to run such copy of the Application solely for your own personal purposes. Furthermore, with respect to any Application accessed through or downloaded from the Apple App Store (an “**App Store Sourced Application**”), you will only use the App Store Sourced Application (a) on an Apple-branded product that runs the iOS (Apple’s proprietary operating system) and (b) as permitted by the “**Usage Rules**” set forth in the Apple App Store Terms of Service.
- **Updates.** You understand that the Divvy Properties are evolving. As a result, Divvy may require you to accept updates to Divvy Properties that you have installed on your computer or mobile device. You acknowledge and agree that Divvy may update Divvy Properties with or without notifying you. You may need to update third-party software from time to time in order to use Divvy Properties.
- **Certain Restrictions.** The rights granted to you in the Terms are subject to the following restrictions: (a) you will not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Divvy Properties or the Rewards Site or any portion thereof; (b) you will not frame or utilize framing techniques to enclose any trademark, logo or other Divvy Properties (including images, text, page layout or form); (c) you will not use any metatags or other “hidden text” using Divvy’s name or trademarks; (d) you will not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of Divvy Properties or Rewards Site, except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you will not use any manual or automated software, devices or other processes (including spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from any web pages contained in the Site or Rewards Site (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Site for the sole purpose of, and solely to the extent necessary for, creating publicly available searchable indices of the materials, but not caches or archives of such materials); (f) you will not access Divvy Properties or the Rewards Site in order to build a similar or competitive website, application or service; (g)

except as expressly stated herein, no part of Divvy Properties or Rewards Site may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (h) you will not remove or destroy any copyright notices or other proprietary markings contained on or in Divvy Properties or the Rewards Site. Any future release, update or other addition to Divvy Properties will be subject to the Terms. Divvy, its suppliers and service providers reserve all rights not granted in the Terms. Any unauthorized use of Divvy Properties entitles Divvy to terminate the licenses granted by Divvy pursuant to the Terms.

3. Ownership.

- **Divvy Properties.** All of the written and visual materials, design elements and trademarks appearing on the Divvy Properties are owned by us and our suppliers and are protected by U.S. and international copyright, trademark, patent and trade secret laws and treaties. You may print out your Points balance for your own personal use. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Divvy Properties or Rewards Site.
- **Feedback.** You agree that submission of any ideas, suggestions, documents and/or proposals to Divvy through its suggestion, feedback, wiki, forum or similar pages (“**Feedback**”) is at your own risk and that Divvy has no obligations (including obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Divvy a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive and fully sublicenseable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of and otherwise commercially or non-commercially exploit in any manner, any and all Feedback in connection with the operation and maintenance of Divvy Properties.

4. Third-Party Services.

- **Third-Party Websites, Applications & Ads.** Divvy Properties and/or the Rewards Site may contain links to third-party websites (“**Third-Party Websites**”) and applications (“**Third-Party Applications**”) and with the Third-Party Websites, the “**Third-Party Properties**”). When you click on a link to a Third-Party Property, we will not warn you that you have left Divvy Properties or the Rewards Site, as applicable, and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Properties are not under the control of Divvy. Divvy is not responsible for any Third-Party Properties. Divvy provides these Third-Party Properties only as a convenience and does not review, approve, monitor, endorse, warrant or make any representations with respect to Third-Party Properties, or their products or services. You use all links in Third-Party Properties at your own risk. When you leave our Site, our Terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Websites or Third-Party Applications, and should make whatever investigation you

feel necessary or appropriate before proceeding with any transaction with any third party.

- **App Stores.** You acknowledge and agree that the availability of the Application and the Services is dependent on the third party from whom you received the Application license, e.g., the Apple App Store or Google Play (“**App Store**”). You acknowledge that the Terms are between you and Divvy and not with the App Store. Divvy is solely responsible for Divvy Properties, including the Application, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the Application, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with Divvy Properties, including the Application. You agree to comply with, and your license to use the Application is conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store’s terms and policies) when using Divvy Properties, including the Application. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Terms and will have the right to enforce them.

5. Indemnification. Upon a request by us, you agree to defend, indemnify and hold harmless us, our employees, contractors, officers, directors, agents, parent, other affiliated companies, suppliers and distributors from all liabilities, claims and expenses, including attorneys’ fees, relating to or arising out of: (a) your use of, or inability to use, Divvy Properties; (b) your violation of the Terms; (c) your violation of any rights of another party, including your Sponsor and/or any other Program Enrollee(s); or (d) your violation of any applicable laws, rules or regulations. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

6. We Make No Warranties. WE PROVIDE THE DIVVY PROPERTIES, INCLUDING THE PROGRAM AND APPLICATION, “AS IS”, “WITH ALL FAULTS” AND “AS AVAILABLE”. WE AND OUR SUPPLIERS AND DISTRIBUTORS MAKE NO EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES ABOUT THE DIVVY PROPERTIES. TO THE EXTENT PERMITTED BY LAW, WE AND OUR SUPPLIERS AND DISTRIBUTORS DISCLAIM IMPLIED WARRANTIES THAT THE DIVVY PROPERTIES ARE MERCHANTABLE, OF SATISFACTORY QUALITY, ACCURATE, FIT FOR A PARTICULAR PURPOSE OR NEED OR NON-INFRINGEMENT. WE AND OUR SUPPLIERS AND DISTRIBUTORS DO NOT GUARANTEE THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE DIVVY PROPERTIES WILL BE EFFECTIVE, RELIABLE, ACCURATE OR MEET YOUR REQUIREMENTS. WE DO NOT GUARANTEE THAT YOU WILL BE ABLE TO ACCESS OR USE THE DIVVY PROPERTIES (EITHER DIRECTLY OR THROUGH THIRD-PARTY NETWORKS) AT TIMES OR LOCATIONS OF YOUR CHOOSING. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AN DIVVY REPRESENTATIVE OR THE REPRESENTATIVE OF YOUR SPONSOR SHALL CREATE A WARRANTY. You may

have additional consumer rights under your local laws that this contract cannot change. You use the Divvy Properties, including the Program, at your own risk.

7. Limitation of Liability.

YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH US OR OUR SUPPLIERS OR DISTRIBUTORS IS THE CANCELLATION OF YOUR ENROLLMENT.

WE, OUR PARENT AND OUR SUPPLIERS AND DISTRIBUTORS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING FROM YOUR USE OF OR INABILITY TO USE THE DIVVY PROPERTIES. THESE EXCLUSIONS APPLY TO ANY CLAIMS FOR LOST PROFITS, LOST DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF WE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, OUR LIABILITY, AND THE LIABILITY OF OUR PARENT, SUPPLIERS AND DISTRIBUTORS, SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

UNDER NO CIRCUMSTANCES WILL DIVVY, OUR PARENT OR OUR SUPPLIERS OR DISTRIBUTORS BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (A) THE REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES, AND (B) ONE HUNDRED DOLLARS (\$100 USD).

THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN DIVVY AND YOU.

8. Remedies.

- **Violations.** If Divvy becomes aware of any possible violations by you of the Terms, Divvy reserves the right to investigate such violations. If, as a result of the investigation, Divvy believes that criminal activity has occurred, Divvy reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. Divvy is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in Divvy Properties or in Divvy 's possession in connection with your use of Divvy Properties to: (a) comply with applicable laws, legal process or governmental request; (b) enforce the Terms; (c) respond to your requests for customer service; or (d) protect the rights, property or personal safety of Divvy , its Users or the public, and all enforcement or other government officials, as Divvy in its sole discretion believes to be necessary or appropriate.
- **Breach.** In the event that Divvy determines, in its sole discretion, that you have breached any portion of the Terms, or have otherwise demonstrated conduct inappropriate for Divvy Properties, Divvy reserves the right to: (a) warn you via email that you have violated the Terms; (b) discontinue your

registration(s) with the any of Divvy Properties, including any Services; (c) notify and/or fully cooperate with the proper law enforcement authorities for further action; and/or (d) pursue any other action which Divvy deems to be appropriate.

9. Term and Termination. The Terms commence on the date when you accept them (as described in the preamble above) and remain in full force and effect while you use Divvy Properties, unless terminated earlier in accordance with the Terms. Divvy may terminate these Terms and your access to the Services at any time, for any reason, including if you have materially breached any provision of the Terms or if Divvy is required to do so by law. You agree that Divvy will not be liable to you or any third party for any termination of your Account. If you want to terminate the Terms and your access to the Services, you may do so by (a) notifying Divvy at any time and (b) closing your Account for all of the Services that you use. Your notice should be sent via email to support@divvyengagement.com or such other method as we or your Sponsor provides to you. Upon termination of Terms, your right to use such Services will terminate immediately. If the Agreement is terminated for any reason other than your material breach, you may be allowed to redeem Points and receive the applicable Reward in accordance with a process established by your Sponsor. All provisions of the Terms that by their nature should survive, will survive termination of Services, including, without limitation, ownership provisions, warranty disclaimers and limitations of liability. If your registration(s) with or ability to access Divvy Properties is discontinued by Divvy due to your violation of the Terms, then you agree that you will not attempt to re-register with or access Divvy Properties through use of a different member name or otherwise.

10. International Users. Divvy Properties can be accessed from countries around the world and may contain references to Services and content that are not available in your country. These references do not imply that Divvy intends to announce such Services or content in your country. Divvy Properties are controlled and offered by Divvy from its facilities in the United States of America, Germany and Ireland. Divvy makes no representations that Divvy Properties are appropriate or available for use in other locations. Those who access or use Divvy Properties from other countries do so at their own volition and are responsible for compliance with local law.

11. Dispute Resolution. *Please read the following arbitration agreement in this Section (“Arbitration Agreement”) carefully. It requires you to arbitrate disputes with Divvy and limits the manner in which you can seek relief from us.*

- **Applicability of Arbitration Agreement.** You agree that any dispute or claim relating in any way to your access or use of the Site, to any products sold or distributed through the Site, or to any aspect of your relationship with Divvy, will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) you or Divvy may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement will apply, without limitation, to all claims that arose or were asserted before the Effective Date of these Terms or any prior version of these Terms. IF**

YOU AGREE TO ARBITRATION WITH DIVVY, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY LAWSUIT FILED AGAINST DIVVY ALLEGING CLASS, COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS ON YOUR BEHALF. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST DIVVY IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING WHETHER TO ACCEPT THIS AGREEMENT, INCLUDING THIS ARBITRATION AGREEMENT.

- **Arbitration Rules and Forum.** The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent: Richard McCartney, 701 Brazos St, Suite 1616, Austin, TX, 78701. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counterclaims under \$250,000, not inclusive of attorneys' fees and interest, will be subject to JAMS's most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims will be subject to JAMS's most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS's rules are also available at www.jamsadr.com or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. If the arbitrator finds that you cannot afford to pay JAMS's filing, administrative, hearing and/or other fees and cannot obtain a waiver from JAMS, Divvy will pay them for you. In addition, Divvy will reimburse all such JAMS's filing, administrative, hearing and/or other fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Divvy will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- **Authority of Arbitrator.** The arbitrator, and not any federal, state or local court or agency will have exclusive authority to resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to, any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Divvy . The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions

dispositive of all or part of any claim. The arbitrator will have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and the Terms (including the Arbitration Agreement). The arbitrator will 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 us.

- **Waiver of Jury Trial.** YOU AND DIVVY HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Divvy are instead electing that all claims and disputes will be resolved by arbitration under this Arbitration Agreement, except as specified in Section 11.1 above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow these Terms as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.
- **Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. In the event that this subparagraph is deemed invalid or unenforceable neither you nor we are entitled to arbitration and instead claims and disputes will be resolved in a court as set forth in Section 12.6.
- **30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to the Divvy address below or at support@divvyengagement.com, within thirty (30) days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Divvy username (if any), the email address you used to set up your Divvy Account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of these Terms will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.
- **Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts will be of no force and effect and will be severed and the remainder of the Arbitration Agreement will continue in full force and effect.
- **Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with Divvy .
- **Modification.** Notwithstanding any provision in these Terms to the contrary, we agree that if Divvy makes any future material change to this Arbitration

Agreement, it will not apply to any individual claim(s) that you had already provided notice of to Divvy.

12. General Provisions.

- **Electronic Communications.** The communications between you and Divvy use electronic means, whether you visit Divvy Properties or send Divvy e-mails, or whether Divvy posts notices on Divvy Properties or communicates with you via e-mail. For contractual purposes, you (a) consent to receive communications from Divvy in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures and other communications that Divvy provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.
- **Release.** You hereby release Divvy, its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors and their successors (collectively, the “**Divvy Parties**”) from claims, demands, any and all losses, damages, rights and actions of any kind, including personal injuries, death and property damage, that is either directly or indirectly related to or arises from your use of Divvy Properties, including any interactions with or conduct of Third-Party Properties of any kind arising in connection with or as a result of the Terms or your use of Divvy Properties. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor.” The foregoing release does not apply to any claims, demands, or any losses, damages, rights and actions of any kind, including personal injuries, death or property damage, for any unconscionable commercial practice by an Divvy Party or for such party’s fraud, deception, false, promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the Site.
- **Assignment.** The Terms, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Divvy’s prior written consent, and any attempted assignment, subcontract, delegation or transfer in violation of the foregoing will be null and void. We may assign this contract at any time.
- **Force Majeure.** Divvy will not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.
- **Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to Divvy Properties or the Program, please contact us at: support@divvyengagement.com. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation. In accordance with California Civil Code §1789.3, you may report complaints to the Complaint

Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

- **Exclusive Venue.** To the extent the parties are permitted under these Terms to initiate litigation in a court, both you and Divvy agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the state or federal courts located in Suffolk County, Massachusetts.
- **Governing Law.** THE TERMS AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THESE TERMS.
- **Notice.** Where Divvy requires that you provide an e-mail address, you are responsible for providing Divvy with your most current e-mail address. In the event that the last e-mail address you provided to Divvy is not valid, or for any reason is not capable of delivering to you any notices required/permitted by the Terms, Divvy 's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Divvy at the following address: support@divvyengagement.com.
- **Export Control.** You may not use, export, import, or transfer Divvy Properties except as authorized by U.S. law, the laws of the jurisdiction in which you obtained Divvy Properties and any other applicable laws. In particular, but without limitation, Divvy Properties may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using Divvy Properties, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use Divvy Properties for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Divvy are subject to the export control laws and regulations of the United States. You will comply with these laws and regulations and will not, without prior U.S. government authorization, export, re-export or transfer Divvy products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.
- **Accessing and Downloading the Application from iTunes.** The following applies to any App Store Sourced Application accessed through or downloaded from the Apple App Store:

- **(a)** You acknowledge and agree that (i) the Terms are concluded between you and Divvy only, and not Apple, and (ii) Divvy, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.
- **(b)** You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.
- **(c)** In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between Divvy and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Divvy.
- **(d)** You and Divvy acknowledge that, as between Divvy and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- **(e)** You and Divvy acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Divvy and Apple, Divvy, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.
- **(f)** You and Divvy acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

- **(g)** Without limiting any other terms of the Terms, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.
- **Entire Agreement.** These Terms and any supplemental terms, policies, rules and guidelines provided by your Sponsor or posted on the Rewards Site constitute the entire agreement between you and us and supersede all previous written or oral agreements. If any part of these Terms is held invalid or unenforceable, that portion will be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions will remain in full force and effect. Any waiver or failure to enforce any provision of the Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. The Program is void where prohibited.
- **Contact.** You may contact Divvy at any time by email: support@divvyengagement.com or via mail at:
 - Divvy Engagement Solutions, Inc.
7345 164th Ave NE, STE 145 - 1457
Redmond, WA 98052-7846
Attn: Support