

XO Pay Terms of Service
Effective Date: December 5, 2023
Last Updated Date: February 23, 2024

PLEASE READ THESE TERMS OF SERVICE (THE “**TERMS**”) CAREFULLY AS THEY FORM A BINDING LEGAL AGREEMENT BETWEEN YOU AND OSMIUM LLC (“**XO PAY**”, “**WE**”, “**US**”, OR “**OUR**”). THIS SITE AND ANY OTHER SITES OF XO PAY (COLLECTIVELY, THE “**SITE**”) AND INFORMATION ON IT ARE CONTROLLED BY XO PAY. THESE TERMS GOVERN THE USE OF THE SITE AND APPLY TO ALL VISITORS TO THE SITE AND THOSE WHO USE THE XO PAY SOFTWARE FROM THE SITE, AS WELL AS OTHER SERVICES AND RESOURCES CONTROLLED BY XO PAY THAT ARE AVAILABLE OR ENABLED VIA THE SITE (EACH A “**SERVICE**” AND COLLECTIVELY, THE “**SERVICES**”, WHICH TERM INCLUDES THE SOFTWARE AND SITE UNLESS EXPLICITLY SET FORTH BELOW). IMPORTANTLY, AS DISCUSSED IN THE SECTION LABELED “**THIRD PARTY SERVICE PROVIDERS**” BELOW, THESE TERMS DO NOT GOVERN ANY INTERACTIONS YOU MAY HAVE WITH OUR THIRD PARTY PROVIDERS, EACH OF WHICH HAS ITS OWN TERMS OF SERVICE THAT APPLY. BY CLICKING THE “**I ACCEPT**” BUTTON, COMPLETING THE REGISTRATION PROCESS, UTILIZING THE SERVICES AND/OR BROWSING THE SITE, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS HEREIN AS WELL AS OUR PRIVACY POLICY, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH XO PAY, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THE TERMS PERSONALLY. THE TERM “**YOU**” REFERS TO YOU INDIVIDUALLY. **IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS, YOU MAY NOT ACCESS OR USE THE SERVICES.**

SECTION 10 OF THE TERMS CONTAINS AN ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN YOU AND XO PAY 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.

XO Pay may modify these Terms at any time and in our sole discretion. If we do so, we will change the “Last Updated” date at the beginning of these Terms. By continuing to use the Site and/or Services following the release of updated Terms you consent to such Terms. We invite you to check the page regularly for updates.

- 1. Use of the Services. You acknowledge and agree that XO Pay is not a money services business, nor does it engage in money transmission, and therefore XO Pay does not hold any**

money transmitter licenses. All money transmission activities are performed by regulated third party service providers as outlined below. In addition, you acknowledge and agree that XO Pay is not a bank or financial institution and does not provide investment or financial advice, or consulting services to users of the Services.

- a. License for Services:** Subject to your compliance with these Terms, XO Pay grants you a non-assignable, non-transferable, non-sublicensable, revocable, and non-exclusive license to use the Services on devices you own or control solely for your personal purposes.
- b. License for Content:** The Site, the Services, and the information and content available therein (“XO Pay Content”) are protected worldwide by copyright laws. Subject to the Terms, XO Pay grants you a limited license to reproduce portions of XO Pay Content solely as required to use the Services for your personal purposes. Unless otherwise specified by XO Pay in a separate license, your right to use any XO Pay Content is subject to these Terms.
- c. Updates:** The Services are evolving and you may be required to accept or install updates to the Services or update third party software (e.g. browsers or operating systems) in order to keep using the Services or access the latest features. We may update the Services at any time without providing notice.
- d. Security:** You are responsible for the security of the device on which you utilize the Services, including ensuring that you keep anti-virus software current and otherwise protect the device against malware. XO Pay is not responsible for any loss or damages including loss of funds or lockout from accounts accessed via the Services - resulting from your failure to keep the device on which the Services are accessed safe and free of any malware.
- e. Onboarding Documentation:** To use the Services, you will need to satisfy the requirements of our onboarding process. You may be required to provide and verify certain information (“Onboarding Documentation”) according to applicable laws and regulations relating to you, us, and any third party service providers, including but not limited to: Coinme Inc. (“**Coinme**”) and SardineAI Corporation (“**Sardine**”). We may request information for Coinme to verify your identity, such as your name, email address, telephone number, physical address, social security number or other information we may deem helpful to satisfy our legal obligations. We may also use the Onboarding Documentation you provide to monitor and prevent fraud via Sardine. By providing the Onboarding Documentation, you represent and warrant that it is accurate and agree to update it in the event of any changes. If you fail to provide correct Onboarding Documentation, or keep it updated, we reserve the right to terminate your access to the Services. You also represent and warrant that you are not located in, or a resident of, any country, US state or territory not supported by XO Pay.

- f. **Fees:** XO Pay may charge a fee for your use of the Services and we may modify this fee at any time. By utilizing the Services, you agree to pay any associated fees.
- g. **Third Party Service Providers:** XO Pay utilizes third party service providers to process your orders when using the Services. When you submit an order, you will be directed away from the Site or Services to a third party website or to third party software, in which case you will be solely responsible for any actions taken thereon. XO Pay utilizes: (i) the services of Worldpay (UK) Limited, Worldpay Limited, Worldpay AP LTD, and Worldpay, LLC (collectively, “**Worldpay**”) for transaction authorization and settlement; (ii) Coinme’s services for identity verification, digital asset price quotes and digital asset order processing for users, which includes exchanges of fiat currency and digital assets, as well as transmission of the same to users; (iii) Sardine’s services for fraud monitoring and prevention; and (iv) other third parties that XO Pay deems helpful in providing the Services. In each instance that a third party service is used, the terms of service of that particular third party govern your interactions and XO Pay will not be able to provide support for those services. **You understand and agree that digital asset order pricing information and execution is provided by third party service providers, and that XO Pay does not itself directly exchange fiat currency and digital assets or provide data on prices. Furthermore, you acknowledge and agree that XO Pay shall not be liable for any damages or losses arising, in whole or in part, from any such services or websites of any third party service providers, whether or not they are specifically listed here.**

i. **COINME TERMS OF SERVICE**

As part of the services, you may have access to services or products (collectively, the “Coinme Services”) offered by Coinme Inc. or one of its affiliates (collectively, “Coinme”). By accessing or using the Coinme Services, you specifically acknowledge and agree (a) to be bound by and comply with the Coinme Terms of Service (available at <https://coinme.com/legal/>), Coinme’s Privacy Policy (available at www.coinme.com/privacy), and such other terms which Coinme designates as terms and conditions for the Coinme Services (all of which together are referred to as the “Coinme Terms”), (b) that to the extent of any conflict between the Coinme Terms and the other terms and conditions in these Terms the Coinme Terms shall apply with respect to your use of the Coinme Services, and (c) that Coinme does not have any responsibility or liability related to compliance or non-compliance by XO Pay or you (or any other user) under these terms or the Coinme Terms. Additional disclaimers, limitations of liability, and indemnification obligations applicable to your use of the Coinme Services are set forth in the Coinme Terms.

- h. Communication:** We may communicate with you via the Services, as well as using the email address or telephone number you provide us. By providing us with your email address and telephone number, you consent to us contacting you using those forms of communication.
- i. Access:** We may block access to any or all of the Services in our sole discretion. We do not guarantee that the Services will be available in all jurisdictions or on all devices or operating systems.
- j. Records:** XO Pay reserves the right to create and maintain certain records of your activity and communications while using the Services. Furthermore, XO Pay may respond to requests from law enforcement, courts, regulatory agencies and other third parties by producing certain records when required by applicable law.

2. **Restrictions on Use.** By accessing the Services, you agree not to use the Services to engage in any of the following:

- a. Unlawful Actions:** Any actions that would violate applicable laws and regulations related to you, us, or our third party service providers. This includes, but is not limited to, using the Services to engage in illegal activity and attempting to circumvent any filtering techniques we may employ to access the Services when you are not authorized.
- b. Fraud:** Any actions that defraud XO Pay, our users, our third party service providers, or any other person. This also includes providing false, inaccurate or misleading information to XO Pay.
- c. Intellectual Property Infringement:** Any actions that infringe on any intellectual property rights of any person or entity. You agree not to: (i) license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Services or XO Pay Content, or any portion thereof; (ii) frame or enclose any trademark, logo, or other XO Pay Content, (including images, text, page layout or form); (iii) use any metatags or other “hidden text” using XO Pay’s name or trademarks; (iv) modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Services (except to the extent this restriction is expressly prohibited by applicable law); (v) use any manual or automated software, devices or other processes (including spiders or other data mining tools) to “scrape” or download data from any web pages in the Site (except that we grant operators of public search engines revocable permission to do so for the sole purpose of creating publicly available searchable indices, but not caches or archives, of such content); (vi) access the Site or Service in order to build a similar or competitive Site or Service; (vii) copy, reproduce, distribute, republish, download, display, post or transmit any XO Pay Content except as expressly permitted herein; and (viii) remove or destroy any copyright notices

or other proprietary markings contained on or in the Services or XO Pay Content. **XO Pay, its affiliates and third party service providers reserve all rights not granted in the Terms. Any unauthorized use of the Services terminates the licenses granted by XO Pay herein.**

- d. **Harmful User Conduct:** Any actions directed against the Site and/or Services that could potentially be harmful or interfere with the proper functioning of the Site or Services. This includes but is not limited to violating security features and introducing viruses or similar harmful code. You also agree not to take any action or submit content that: (i) is unlawful, threatening, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, or offensive; (ii) could be characterized as unauthorized or unsolicited advertising, including the use of junk or bulk e-mail; (iii) involves commercial activities and/or sales, such as contests, sweepstakes, barter, advertising, or pyramid schemes; and (iv) impersonates any person or entity, including any employee or representative of XO Pay.

3. Service Overview.

- a. **Submitting Orders:** XO Pay may offer you the ability to submit orders to purchase digital assets for fiat currency through our on-ramp product, subject to these Terms. You agree that XO Pay is the merchant of record when you purchase digital assets as described in these Terms. Before submitting any orders, you must first successfully submit your Onboarding Documentation. Your access to the Services might not be available in all jurisdictions and XO Pay reserves the right to restrict or prohibit use of the Services in certain jurisdictions in our sole discretion.
- b. **Order Details:** It is your responsibility to review all order details prior to submitting the order, including the quantity and the offered price of the digital asset. The offered price will be provided by Coinme and XO Pay is not responsible for the accuracy of that information. You are bound by the terms of any order that you submit. If your order fails for any reason, your payment method will not be charged but you might still have applicable network fees.
- c. **Order Processing:** If you accept the offered price and submit an order to purchase digital assets, Worldpay will process the request and, if successful, charge your payment method before sending the appropriate funds to Coinme for further processing. Coinme will then execute the transaction for digital assets and send them to your designated wallet address. **You represent and warrant that you are in sole control of any wallet address that you use for the Services. You also agree that you are solely responsible for any access to and use of the Services from your device. XO Pay will assume that you authorized any such order and will not be liable for any unauthorized orders. You understand**

and acknowledge that all sales are final and XO Pay will not be responsible for any refunds.

- d. Order Delivery: Order Delivery:** Following the successful purchase of a digital asset, Coinme will deliver the digital assets to customers in a single installment as permitted under their own terms.
 - e. Payment methods:** XO Pay may only accept certain payment methods at any time in its sole discretion.
 - f. Canceled Orders:** XO Pay reserves the right to suspend, delay, reject or cancel any orders at any time and for any reason. For example, we may do so if we suspect any risk of fraud, crime, breach of these Terms or illicit activity.
 - g. Taxes:** You are solely responsible for determining what, if any, taxes apply based on your use of the Service and for reporting and remitting any applicable taxes to the appropriate authority.
 - h. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, XO PAY DOES NOT GUARANTEE ANY ORDER THAT YOU SUBMIT WILL BE EXECUTED AT ANY PARTICULAR TIME OR AT ALL AND WE WILL NOT BE RESPONSIBLE WHATSOEVER FOR ANY DELAYS OR ORDERS THAT ARE NOT EXECUTED.**
4. **Digital Asset Risk Overview.** The list below is by no means exhaustive and you acknowledge that you may be subject to other potential risks. By using the Services, you assume all related risks, whether stated or not, and XO Pay expressly disclaims any and all liability for any such risks.
- a.** The value of digital assets can fluctuate and there can be substantial risk that you will lose money buying and selling digital assets. You acknowledge that you are familiar with digital assets and have the experience required to use the Services. XO Pay does not recommend, advise or endorse any particular digital assets, nor any purchase or sale thereof.
 - b.** Digital asset network protocols might contain unknown vulnerabilities or be subject to unanticipated changes that may cause losses to you or others. XO Pay has no control over any digital asset network and shall not be liable for any damages or losses arising in connection therewith.
 - c.** The regulatory environment is constantly changing and legislative, judicial and regulatory actions in the future could adversely affect the use and value of digital assets. This could also directly or indirectly restrict your ability to use the Services.

- d. Transactions in digital assets are often irreversible and losses due to fraudulent, accidental or unauthorized transactions might not be recoverable. It is your responsibility to ensure that you are using the correct address for each order.
- e. The general nature of digital assets might lead to an increased risk of fraud, theft or hack.

5. **Intellectual Property Right Ownership.**

- a. **Generally:** XO Pay owns all right, title and interest in and to the XO Pay Content contained within the Site and Services. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the XO Pay Content.
- b. **Trademarks:** XO Pay and other related graphics, logos, service marks and trade names used on or in connection with the Services are the trademarks of XO Pay and may not be used without permission in connection with any third party products or services. Other trademarks, service marks, and trade names that may appear on or in the Site or Services are the property of their respective owners.
- c. **User Content:** You are responsible for all data and information provided or uploaded by you to the Services (“User Content”), whether publicly posted (i.e., in a user forum, if applicable) or privately transmitted (i.e., to us in connection with a support request). You are solely responsible for the accuracy and completeness of User Content you submit, and represent and warrant that you have all rights required in order to post such User Content. We may, in our sole discretion, delete any User Content that we determine violates these Terms. You own your User Content. By posting, displaying, sharing or distributing User Content on or through the Site or Services, you grant us, and any third party service provider used in connection with the Services, a non-exclusive license to use the User Content solely for the purpose of operating the Services. Except as prohibited by applicable law, we may disclose any information in our possession (including User Content) in connection with your use of the Services, to: (i) comply with applicable laws and regulations; (ii) enforce these Terms; (iii) respond to your requests for customer service; or (iv) protect the rights, property or personal safety of XO Pay, our employees, directors or officers, partners and agents, or members of the public.
- d. **Feedback:** You may provide ideas, suggestions, documents, and/or proposals about the Services to XO Pay through any means (“Feedback”), and you grant XO Pay a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and sublicensable right and license to use Feedback for any legitimate purpose.

6. **Indemnification.** You agree to indemnify and hold XO Pay harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of: (i) your use of, or inability to use, the Site or Services; (ii) your violation of these Terms; (iii) your violation of any rights of another party, including any other users of the Site or Services; (iv) your violation of any applicable laws, rules or regulations; and (v) any false, incomplete, or misleading information XO Pay may rely upon to verify your identity. XO Pay may, at its own cost, assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with us in asserting any available defenses. This provision does not require you to indemnify XO Pay for any fraud, gross negligence or willful misconduct in connection with the Services.

7. **Disclaimer of Warranties.**

a. **As Is.** THE SITE, SERVICES, AND ANY INFORMATION DISPLAYED THEREIN ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS, AND XO PAY EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND ARISING FROM OR RELATED TO THESE TERMS OR YOUR USE OF THE SITE, SERVICES, OR ANY INFORMATION DISPLAYED THEREIN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, XO PAY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE CONTENTS OF THE SERVICES, INFORMATION AND FUNCTIONS MADE ACCESSIBLE VIA THE SERVICES, ANY THIRD PARTY WEBSITES OR THIRD PARTY SERVICES, ANY TRANSMISSION OF INFORMATION THROUGH THE SERVICES, OR THAT ACCESS TO THE SERVICES WILL BE CONTINUOUS, TIMELY OR ERROR-FREE. YOU ACKNOWLEDGE THAT, TO THE EXTENT ALLOWED BY APPLICABLE LAW, ALL RISK OF USE OF THE SITE AND SERVICES RESTS ENTIRELY WITH YOU.

b. **Beta Releases.** FROM TIME TO TIME, XO PAY MAY OFFER NEW "BETA" FEATURES OR TOOLS WITH WHICH ITS USERS MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR EXPERIMENTAL PURPOSES, WITHOUT ANY WARRANTY OF ANY KIND, AND MAY BE MODIFIED OR DISCONTINUED AT XO PAY'S SOLE DISCRETION.

8. **Limitation on Liability.**

a. **Disclaimer:** IN NO EVENT WILL XO PAY BE LIABLE FOR ANY LOST PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL

DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, WHETHER OR NOT XO PAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE THEORY OF LIABILITY ASSERTED.

- b. Cap on Liability:** UNDER NO CIRCUMSTANCES WILL XO PAY BE LIABLE TO YOU FOR DAMAGES ARISING OUT OF THE USE OF THE SITE OR SERVICES EXCEEDING ONE THOUSAND DOLLARS (\$1,000.00).
- c. Digital Asset Networks.** XO PAY SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED IN WHOLE OR IN PART BY: (I) THE FUNCTION, OR UNEXPECTED CHANGES THERETO, OF ANY DIGITAL ASSET NETWORK; (II) THE CHANGE IN VALUE OF ANY DIGITAL ASSET; (III) CHANGES IN LAWS, REGULATIONS OR POLICIES THAT AFFECT DIGITAL ASSETS OR THE SERVICES; OR (IV) ANY FORCE MAJEURE EVENT.
- d. Third Party Conduct.** XO PAY IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD XO PAY LIABLE, FOR THE CONDUCT OF THIRD PARTIES ON OR ACCESSED VIA THE SITE OR SERVICES, INCLUDING THE USE OF THIRD PARTY SERVICE PROVIDERS' SOFTWARE AND OR SERVICES. YOU ACKNOWLEDGE AND AGREE THAT THE RISK OF INJURY FROM USE OF SUCH THIRD PARTY SERVICES RESTS ENTIRELY WITH YOU.
- e. Exceptions:** The limitations in this Section 8 will not apply to damages caused by the fraud, gross negligence, or wilful misconduct of XO Pay, or to the extent such limitations are precluded by applicable law (in which case XO Pay's liability will be increased to the minimum amount required to comply with such law).

9. Term and Termination.

- a. Term:** The Terms commence on the date when you accept them (as described in the preamble above) and remain in full force and effect for so long as you access or use the Site or Services, unless terminated earlier in accordance with this Section 9.
- b. Termination by XO Pay:** XO Pay may, at any time and for any reason, cease providing any or all of the Site or Services, and/or terminate the Terms. Without limiting the foregoing, we may also terminate your access to any or all of the XO Pay Content.

- c. **Effect of Termination:** Upon termination, your right to use the Site and Service will automatically terminate immediately. XO Pay will not have any liability whatsoever to you for any suspension or termination. All provisions of the Terms which by their nature should survive termination of the Services will do so, including Sections 5, 6, 7, 8, 10 and 11.

10. Dispute Resolution. *Please read this Section 10 (the “Arbitration Agreement”) carefully. It requires you to arbitrate disputes with XO Pay and limits the manner in which you can seek relief.*

- a. **Applicability of Arbitration:** You agree that any dispute or claim relating in any way to your access or use of the Site or Services, or to any aspect of your relationship with XO Pay, will be resolved by binding arbitration, rather than in court, except that (i) 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 (ii) you or XO Pay 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 this Agreement or any prior version of this Agreement. IF YOU AGREE TO ARBITRATION WITH XO PAY, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY LAWSUIT FILED AGAINST XO PAY ALLEGING CLASS, COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS ON YOUR BEHALF. INSTEAD, YOU MAY BRING YOUR CLAIMS AGAINST XO PAY 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 THESE TERMS, INCLUDING THIS ARBITRATION AGREEMENT.**

- b. **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 Osmium LLC, 251 Little Falls Drive, Wilmington, DE 19808, with a copy to Osmium LLC, 15418 Weir Street, No. 333, Omaha, NE 68137. 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-comprehensivearbitration/>. 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, XO Pay will pay them for you. In addition, XO Pay will reimburse all such JAMS's filing, administrative, hearing and/or other fees for claims totalling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, XO Pay 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 New Castle County, Delaware. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. All arbitration pleadings and proceedings will be conducted in English.

- c. Authority of Arbitrator:** The arbitrator, and not any federal, state or local court or agency will have exclusive authority to: (i) determine the scope and enforceability of this Arbitration Agreement; and (ii) 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 XO Pay. 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 Agreement (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 XO Pay.
- d. Waiver of Jury Trial:** YOU AND XO PAY 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 XO Pay are instead electing that all claims and disputes will be resolved by arbitration under this Arbitration Agreement, except as specified in Section 10(a) above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement 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.

- e. **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 CONSOLIDATE WITH THOSE OF ANY OTHER CUSTOMER OR USER. Notwithstanding anything to the contrary herein, (i) representative action for public injunctive relief may be arbitrated on a class basis and (ii) in the event that the foregoing sentence is deemed invalid or unenforceable with respect to a particular class or dispute for recovery of damages, neither you nor we are entitled to arbitration and instead claims and disputes will be resolved in a court as set forth in Section 11(e).
- f. **30-Day Right to Opt Out:** You have the right to opt out of this Arbitration Agreement by sending written notice of your decision to opt out to the following address: Osmium LLC, 15418 Weir Street, No. 333 Omaha, NE 68137, or via email to support@xopay.ai, within 30 days after first becoming subject to this Arbitration Agreement. Notice must include your name and address 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 the 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.
- g. **Severability:** If any part of this Arbitration Agreement is found under the law to be invalid or unenforceable, then such part 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.
- h. **Survival of Agreement:** This Arbitration Agreement will survive the termination of your relationship with XO Pay.
- i. **Modification:** Notwithstanding any provision in this Agreement to the contrary, we agree that if XO Pay 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 XO Pay.

11. General Provisions.

- a. **Electronic Communications:** Communications between you and XO Pay use electronic means, whether made via the Site or Services or sent via email, or whether XO Pay posts notices on the Site or Services. For contractual purposes, you (i) consent to receive communications from XO Pay in an electronic form; and (ii) agree that all terms and conditions, agreements, notices, disclosures, and other communications that XO Pay 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.

- b. Assignment:** The Terms, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without XO Pay's prior written consent.
- c. Force Majeure:** XO Pay 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.
- d. Questions, Complains, and Claims:** If you have any questions, complaints or claims with respect to the Site or Services, please contact us at support@xopay.ai or at Osmium LLC, 15418 Weir Street, No. 333 Omaha, NE 68137. We will do our best to address your concerns.
- e. Exclusive Venue:** To the extent the parties are permitted under these Terms to initiate litigation in a court, both you and XO Pay agree that all claims and disputes arising out of or relating to the Terms will be litigated exclusively in the state or federal courts located in New Castle County, Delaware.
- f. Governing Law:** THE TERMS AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF DELAWARE, 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.
- g. Notice:** Where XO Pay requires that you provide an email address, you are responsible for providing XO PAY with your most current email address. In the event that the last email address you provided to XO Pay is not valid, or for any reason is not capable of delivering to you any notices required or permitted by the Terms, XO Pay's dispatch of the email containing such notice will nonetheless constitute effective notice. You may give notice to XO Pay at the following address: Osmium LLC, 15418 Weir Street, No. 333, Omaha, NE 68137. Such notice will be deemed given when received by XO Pay by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

- h. Waiver:** 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.
- i. Severability:** If any portion of these Terms is held invalid or unenforceable, that portion will be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions will remain in full force and effect.
- j. Export Control:** You may not use, export, import, or transfer the Services except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Services, and any other applicable laws. In particular, but without limitation, the Services may not be exported or re-exported (i) into any United States embargoed countries, or (ii) 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 the Services, 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 the Services 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 XO Pay 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 XO Pay products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.
- k. Consumer Complaints:** 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 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 9525210.
- l. Entire Agreement:** These Terms are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.