

# Backpack Marketplace Terms and Conditions

Please read these Backpack Marketplace Terms and Conditions (“Terms and Conditions”) carefully. These Terms and Conditions affect your rights.

Backpack Group, Inc. (“Backpack” or “we”) make available reward programs (“Programs” or “Program”) through [www.backpacknetworks.com](http://www.backpacknetworks.com) and related software applications (“Backpack Marketplace”) under these Terms and Conditions.

These Terms and Conditions constitute a legally binding agreement between each entity that enrolls in any of the Programs, is a Seller in the Backpack Marketplace, is a Purchaser of products in the Backpack Marketplace, or otherwise uses Backpack Marketplace. All such entities shall be referred to as a “Member” herein. If you are a Member, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO THESE TERMS AND CONDITIONS.

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DISCONTINUE PARTICIPATION IN THE BACKPACK MARKETPLACE, USE OF THE PROGRAMS, AND TERMINATE YOUR PROGRAM ACCOUNT IMMEDIATELY.

YOU AGREE TO THE MANDATORY ARBITRATION, CLASS ACTION, AND JURY TRIAL WAIVER PROVISIONS DESCRIBED FULLY HEREIN TO RESOLVE ANY DISPUTES WITH BACKPACK.

## 1. CHANGES TO THESE TERMS AND CONDITIONS

1.1 Backpack may at its discretion modify, update, add to, discontinue, remove, or otherwise change these Terms and Conditions at any time. Each such modification will take immediate effect upon publication on the Backpack website. Backpack may, in addition, but is not obligated to, provide you with notices, including those regarding changes to these Terms and Conditions, by website, email, regular mail, text message, in-app messaging, or other reasonable means now known or hereinafter developed.

1.2 Your continued use of the Backpack Marketplace or any other Programs following any such modifications or notifications constitutes your acceptance of such modifications and your agreement to be bound by these Terms and Conditions. If you do not agree to any modification of these Terms and Conditions, your sole remedy is to discontinue your participation in the Program. The most current version of these Terms and Conditions will be available on our website and supersedes previous versions.

## 2. PROGRAM ACCOUNT RULES FOR ALL MEMBERS, INCLUDING SELLERS AND PURCHASERS

2.1 Availability of Programs. Our Programs are not available to and should not be accessed or used by residents outside of the 50 United States or Washington D.C. Each person or entity is limited to one Account. To redeem certain offers and promotions and use services offered by our Programs, you may elect to provide us with additional information. Any and all information collected from you shall be subject to our Privacy Policy, located on our website at [backpacknetworks.com](http://backpacknetworks.com), which is incorporated herein by reference.

2.2 Right to Participate in the Backpack Marketplace; Registration. Any Member's participation in the Backpack Marketplace is subject to our prior written approval, which may be withheld in our sole discretion. Eligibility requirements for participation in the Backpack Marketplace are determined in our sole discretion.

2.3 Member Representations and Warranties. You represent and warrant that: (i) you have the right, power, and authority to enter into these Terms and Conditions; (ii) that all information you share, submit for a Rebate, or input into the Marketplace in any manner, is true and correct to the best of your knowledge and belief, and (iii) these Terms and Conditions are a valid and binding obligation enforceable in accordance with their terms, subject to the effects of applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and general principles of equity.

2.4 Information may not be Secure. You acknowledge and agree that any information you transmit through Backpack Marketplace may not be secure, even if such information is encrypted, and that we are neither responsible nor liable for any resulting loss or damage.

2.5 Your IP and Third-Party IP. You hereby grant to us for the Term and thereafter, a non-exclusive, worldwide, royalty free, fully-paid, irrevocable, transferable and sublicensable right and license to possess, use, publicly display, distribute, broadcast, transmit, stream, publish, reproduce, sublicense, share and publicly perform: (i) your names, business names, images, likenesses, logos, trademarks, service marks, domain names, audiovisual contents, video recordings, audio recordings, photographs, graphics, artworks, texts, and any other content provided, specified, recommended, directed, authorized or approved by you for use with the Backpack Marketplace (collectively "Your IP"); and (ii) any third-party's names, business names, images, likenesses, logos, trademarks, service marks, domain names, audiovisual contents, video recordings, audio recordings, photographs, graphics, artworks, texts, and any other content provided, specified, recommended, directed, authorized or approved by you for use with the Backpack Marketplace (collectively, "Third Party IP"), in all media or formats now known or hereafter developed. Our use of Your IP and Third-Party IP is within our sole discretion.

#### 2.6 Backpack IP and Usage Data.

a. The Backpack Marketplace and its contents, Usage Data, Customer Data, and our trade dress graphics, page headers, icons, names, business names, images, likenesses, logos, trademarks, service marks, domain names, audiovisual contents, video recordings, audio recordings, photographs, graphics, artworks, texts, and any other content (collectively the "Backpack IP") are protected by copyright, trademark and other intellectual property laws. Any unauthorized reproduction, modification, distribution, transmission, republication, display or performance of the Backpack IP is strictly prohibited. You agree that nothing in these Terms and Conditions or on or in the Backpack Marketplace shall be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Backpack IP or other copyrighted, trademarked or otherwise legally protected property displayed on the Backpack Marketplace, except that during the term of your participation in the Program (the "Term"), you may use the Backpack IP in accordance with these Terms and Conditions.

b. We may collect and analyze information related to our website's visitors, customers, and your usage of the Backpack Marketplace, including without limitation, the time spent using the Backpack Marketplace, browser types and language, Internet Protocol addresses, device-specific information, including hardware models, operating systems and versions, unique device identifiers, mobile network information, information about the locations of device and customers and other software running in connection with the Backpack Marketplace (collectively the "Usage Data"). As between you and us, we own all right, title and interest in and to any and all Usage Data, and we reserve the right to use and share Usage Data with third parties for business purposes.

2.7 Monitoring Your Activities on this Site. We have the right to monitor your activities on this site, including without limitation any marketing methods, purchase activity, procedures, and communications, but we have no right to control them.

2.8 No Liability for Third Party Content. We are not responsible for content, or any other information posted to our website by third parties. We neither warrant the accuracy of such postings nor exercise any control over such posts, and we assume no legal or other obligation for them, including, without limitation, any responsibility or liability for investigating or verifying the accuracy of any content or any other information contained in such postings.

### 3. PROGRAM ACCOUNT RULES SPECIFIC TO SELLERS

#### 3.1 Use of the Backpack Marketplace.

a. We will work with you to create criteria to determine the best candidates for your offering. We will then direct your offerings to interested participating building subscribers in the Backpack Marketplace on an appropriate frequency determined by us.

b. We will work with you to provide you with any feedback or interest received by us as a result of your offerings. However, we expect that many interested Purchasers may express interest, request quotes, or initiate purchase orders, through their established purchasing channels or third-party installers, instead of through us. Therefore, all purchases by Purchasers for products covered by your Rebate Agreement will result in a Rebate payment, no matter the channel used to purchase such product.

c. All sales efforts, except for our efforts outlined in sections 3.1.a, and 3.1.b, shall be between you and the Purchaser.

d. We will use commercially reasonable efforts to provide you with receipts for products purchased by Purchasers. You will use commercially reasonable efforts to provide us with any missing receipts or transaction evidence for Purchasers who did not submit evidence of receipts thereof to Backpack.

e. All ad copy, artwork, and branding to be used by you on the Backpack Marketplace is subject to our prior review and approval, but our approval right does not mean that we assume any responsibility for your compliance with all applicable laws and the intellectual property and other rights of third parties, all of which are your sole responsibility.

f. You are not authorized to use or display pornography, images of children, sexually provocative content, racially, sexually, or ethnically discriminatory content, political information or advocacy, pyramid schemes, franchise or business opportunities or any content that in our sole discretion is illegal, immoral, defamatory, objectionable, or inappropriate.

g. You agree not to use any marketing or advertising that is false, misleading, or otherwise in violation of any applicable laws or regulations, including without limitation, the Federal Trade Commission Act and regulations promulgated thereunder, state consumer protection laws and any federal, state, local and foreign laws regarding spam and text messages.

h. You are solely responsible for the legality of your content on the Backpack Marketplace.

i. We have the sole right to determine whether a product is an acceptable product and therefore eligible to be offered and sold on the Backpack Marketplace. If we determine that a product being offered for sale on the Backpack Marketplace is not an acceptable product, it must be immediately removed from the Backpack Marketplace, and any such determination by us is final, binding and not subject to appeal or discussion. Failure to so remove such a product will constitute a breach of these Terms and Conditions.

3.2 Product Display. Backpack may display your Products and promotional messages on the Backpack Marketplace in accordance with our policies. You will provide us with an accurate description of any such Product including item description, item condition and item photos.

3.3 Remittance Amounts, Returns, and Refunds. For each completed sale of your Products transacted through the Backpack Marketplace, you will process all payments, deliveries and returns. You are solely responsible for handling all Product returns. Any Product which is returned pursuant to the return period stipulated in your Return Policy, shall not count toward the Rebate calculation.

3.4 Taxes. You are solely responsible for all federal, state, local and foreign taxes levied on Sales, including without limitation all applicable sales taxes. You shall register for sales and use tax collection purposes with all applicable governmental authorities. You are solely responsible for ensuring that all taxes and related charges relating to sales of your Products are paid timely and in full. We assume no responsibility for any taxes and related charges.

3.5 Costs and Expenses. You are solely responsible for all of your costs and expenses associated with the promotion of Products through the Backpack Marketplace, including without limitation, costs of advertising, mailing, marketing and website operations.

3.6 Your Indemnification. You will defend, indemnify and hold harmless Backpack and its officers, directors, agents, and employees, from and against any claims, investigations, lawsuits, damages, losses, expenses, penalties and other liabilities, including without limitation attorney's fees and costs, arising out of or relating to any of the following: (i) any breaches or alleged breaches by you of your Rebate Agreement or any of your representations and warranties contained therein or herein; (ii) any tax obligations arising from the sale of your Products; (iii) any claims arising out of your violation or alleged violation of any law or regulation; (iv) any claims regarding infringement of intellectual property rights, including without limitation infringement claims arising out of Your IP and Third Party IP; and (v) any claims arising out of or relating to your Products, including without limitation, any claims for false advertising, product defects, personal injury, death, or property damages. Your obligation to us defined in this section 3.6 shall survive termination of your Rebate Agreement.

3.7 Confidentiality. All Customer Data received by or available to you, as well as the terms of your Rebate Agreement, are confidential, and you agree to not disclose any Customer Data or the terms described in your Rebate Agreement to any person other than your officers, directors, employees and shareholders on a need-to-know basis and only after undertaking reasonable precautions to preserve the confidentiality of the information made available to such persons. Any breach of this Section by you shall be considered a material breach of these Terms and Conditions and your Rebate Agreement and will result in irreparable and continuing damage to us for which there will be no adequate remedy at law. In the event of such breach, we will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief, including monetary damages, as a court, arbitrator or arbitrators may provide. The confidentiality obligations described in this section 3.7 shall survive termination of your Rebate Agreement.

3.8 Customer Data. You must use and process all Customer Data in your possession in accordance with all applicable laws and employ appropriate and effective security with respect to such Customer Data. You must notify us immediately if you become aware of or suspect any unauthorized access to or use of Customer Data in your possession, and you must cooperate with us in the investigation of such breach and the mitigation of any damages.

3.9 Termination. Upon the termination of your Rebate Agreement for any reason, you will immediately cease use of, and remove from your site, all links to our website and all of our trademarks, trade dress and logos and all other materials provided by or on behalf of us to you in connection with the Backpack Marketplace, and you may no longer indicate that you are a Seller in the Backpack Marketplace. Upon termination of your Rebate Agreement, you shall, as directed by us, destroy or return to us all Customer Data in your possession.

**3.10 Your Representations and Warranties.** You represent and warrant that: (i) you have the right, power and authority to enter into your Rebate Agreement and these Terms and Conditions; (ii) your Rebate Agreement and these Terms and Conditions are a valid and binding obligation enforceable in accordance with their terms, subject to the effects of applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and general principles of equity; (iii) you have legal title to and the right to offer for sale and sell all Products listed by you on the Backpack Marketplace; (iv) all Products listed by you on the Backpack Marketplace will be genuine, authentic and accurately described; (v) you are registered for sales and use tax collection purposes in all states in which your Products will be sold on the Backpack Marketplace; (v) your marketing and sale of Products on the Backpack Marketplace will comply with all applicable Laws; (vi) you own all right, title and interest in Your IP and have the right to grant the licenses in Your IP and Third Party IP; (vii) your advertising and promotion of Products on the Backpack Marketplace will not constitute false, deceptive or unfair advertising or disparagement under any Laws or otherwise be in violation of any Laws; and (viii) Your IP and Third Party IP do not and will not violate any copyright, trademark or other intellectual property right or right of privacy or publicity of any third-party or any laws.

#### **4. DISPUTE RESOLUTION BY BINDING ARBITRATION; CLASS ACTION WAIVER**

4.1 All Members and Backpack agree to arbitrate any and all disputes, claims, or controversies arising out of, in connection with, or relating to these Terms and Conditions or any applicable Rebate Agreement, Backpack's business, any of the Programs, Backpack Marketplace, or Backpack's relationship with Members, including any claims that may arise after the termination of any applicable Rebate Agreement, these Terms and Conditions, or any other agreement with us. This agreement to arbitrate includes any claims against Backpack's employees, officers, directors, agents, or any subsidiaries of Backpack. Arbitration is a method of claim resolution that is less formal than a traditional court proceeding in state or federal court. It uses a neutral arbitrator instead of a judge or jury and the arbitrator's decision is subject to limited review by courts.

4.2 All disputes concerning the arbitrability of a claim (including disputes about the scope, interpretation, breach, applicability, enforceability, revocability or validity of these Terms and Conditions) shall be decided by the arbitrator. The arbitrator shall also decide whether any claim is subject to arbitration. Members further agree that the commercial arbitration rules then in effect of the American Arbitration Association shall govern the interpretation and enforcement of this agreement to arbitrate.

**4.3 CLASS ACTION WAIVER: MEMBERS AND BACKPACK ALSO AGREE THAT EACH IS GIVING UP THE RIGHT TO A JURY TRIAL AND THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION LAWSUIT OR REPRESENTATIVE PROCEEDING, CONSOLIDATED ACTION, OR PRIVATE ATTORNEY GENERAL ACTION.** This means that neither a Member nor Backpack can seek to assert class or representative claims against each other either in court or in arbitration and no relief can be awarded on a class or representative basis. The arbitrator also may not consolidate or join another person's claim with your claim or issue an order that would achieve the same result.

4.4 Members and Backpack agree that any and all claims and controversies arising out of these Terms and Conditions or any applicable Rebate Agreement that cannot be amicably resolved by the parties will, upon the request of either the Member or Backpack, be submitted to, and settled by, binding arbitration in the County of Miami-Dade, State of Florida, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association, by an arbitrator agreed upon by the parties. Any award rendered shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest state or federal court of the forum having jurisdiction. The expenses

of the arbitration shall be borne equally by the parties. These Terms and Conditions constitute the entire agreement between the parties regarding the subject matter stated herein, and supersede all: (i) previous communications, representations, understandings, and agreements, either oral or written and (ii) other documents issued by or to you.

4.5 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR ANY REBATE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THESE TERMS AND CONDITIONS OR ANY REBATE AGREEMENT.

## 5. PROGRAM LICENSE

5.1 Subject to these Terms and Conditions, we hereby grant you a non-exclusive, non-transferable license (without the right to sublicense) to access and use the Backpack Marketplace for your personal use to access the Programs. You agree that you obtain no rights other than the rights and licenses expressly granted in these Terms and Conditions. Backpack reserves the right to change, upgrade or discontinue the Programs, and any feature of the Program or the Backpack Marketplace, at any time, with or without notice. All rights not expressly granted under these Terms and Conditions are reserved by Backpack or its licensors.

## 6. PROGRAM RESTRICTIONS

6.1 You agree that you will not, and will not permit others to: (i) damage, interfere with or unreasonably overload the Programs or the Backpack Marketplace; (ii) introduce into the Backpack Marketplace any code intended to disrupt the Program; (iii) alter or delete any information, data, text, links, images, software, chat, communications and other content available through the Programs or the Backpack Marketplace (collectively, "Content"); (iv) access the Programs or the Backpack Marketplace by expert system, electronic agent, "bot" or other automated means or frame the program or the Backpack Marketplace within any applications; (v) use scripts or disguised redirects to derive financial benefit from Backpack; (vi) modify, reverse engineer, reverse assemble, decompile, copy or otherwise derive the source code of any Program or Backpack Property for any reason; (vii) rent, sell or sublicense any of the Programs or Backpack Marketplace; (viii) provide any unauthorized third party with access to the Program; (ix) access or attempt to access confidential Content through the Programs or Backpack Marketplace or attempt to circumvent any security, Content protection, or authentication measure associated with the Programs or Backpack Marketplace; (x) interfere with the operation of the Programs, including, but not limited to, distribution of unsolicited advertising or mail messages and propagation of computer worms and viruses; (xi) post any material in any form whatsoever on the Backpack Marketplace or within the Programs that is defamatory, obscene or otherwise unlawful or violates any third party's right of privacy or publicity; (xii) infringe any third party's patent, copyright, service mark, trademark or other intellectual property right of any kind or misappropriate the trade secrets of any third party in connection with your use of the Programs or the Backpack Marketplace; (xiii) engage in any activity that does not comply with applicable law and regulations or otherwise engage in any illegal, manipulative or misleading activity through the use of the Programs; (xiv) use the manual or automated software, devices or other processes to "scrape," "crawl," "spider" or index any page of content from the Programs or Backpack Marketplace; (xv) attack the Programs or Backpack Marketplace via a denial-of-service attack, distributed denial-of-service attack,

flooding, mailbombing or crashing; or (xvi) otherwise attempt to interfere with the proper working of the Programs or Backpack Marketplace.

## **7. PROGRAMS**

7.1 Rebates. We offer the ability for Purchasers to earn Rebates (“Rebates”) on their purchases completed with participating Sellers in the Backpack Marketplace. Backpack receives compensation for completed sales for having referred Purchasers to the Sellers participating in this Program. Backpack may at times give a portion of this fee to Purchasers as Rebates. Compensation received by Backpack may play a part in whether Sellers appear on our site, where they are placed, and how we promote Sellers to you. Participation in this Program and the opportunity to earn Rebates are offered at the sole discretion of Backpack and subject to your compliance with these Terms and Conditions.

## **8. REBATE EXCLUSIONS**

8.1 REBATES ARE EARNED ON A PURCHASER’S NET PURCHASE AMOUNT, WHICH EXCLUDES TAXES, FEES, SHIPPING, DISCOUNTS, CREDITS, RETURNS OR CANCELLATIONS, AND EXTENDED WARRANTIES. REBATE AMOUNTS VARY BY SELLER AND PRODUCT CATEGORY, AND MAY CONTAIN TERMS THAT ARE DIFFERENT THAN THOSE STATED HEREIN, OR, EXCLUSIONS IN THE TERMS OF THE OFFER OR THE APPLICABLE SELLER PAGE. PLEASE REVIEW ALL TERMS CAREFULLY.

## **9. SELLER POLICIES**

9.1 A product purchased from any Seller, whether online or in store, is governed by and subject to the applicable Seller policies, including applicable exchange and shipping policies. You agree that we are not agents of any Seller and that Sellers operate independently and are not under our control. Accordingly, your participation in offers or promotions of, or correspondence with, any Seller is solely between you and that Seller. We do not assume any liability, obligation or responsibility for any part of such correspondence, offer or promotion, including, without limitation, the withdrawal or modification of any such offer or promotion. Backpack is not responsible for changes to, or discontinuance of, any Seller, or for any Seller withdrawal from the Program, or for any effect on accrual of Rebates caused by such changes, discontinuance or withdrawal.

## **10. PAYMENT OF REBATES AND OTHER REWARDS**

10.1 Requirements. As a condition of payment of accrued Rebates or other rewards, Members must: (i) choose whether (a) to receive Rebates in cash only, or, (b) to receive a combination of cash and credit toward the next year renewal of your Backpack Subscription, if applicable, with the first Rebate dollars going towards subscription renewal and the remainder, if any, toward cash ; (ii) submit receipts for your Backpack Marketplace Program purchases to Backpack via the Backpack Marketplace portal or other agreed upon electronic transmission; (iii) provide a valid email address that you own and are able to receive email; and (iv) provide your physical address. Additionally, Purchasers must not be a resident of a country subject to economic or trade sanctions by the U.S. State Department or U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), be listed as a “Specially Designated National,” a “Specially Designated Global Terrorist,” a “Blocked Person” or similar designation under the OFAC

sanctions regime, or be a resident outside of the 50 United States or Washington D.C.. Members further agree to provide additional information we may reasonably request to verify your identity as a condition for receiving payment.

**10.2 Rebate Payments.** The minimum payment amount for Rebates and other Rebates Program rewards is \$250.00. Balances below \$250.00 will accrue for potential payment during the next payment period. Backpack pays members in U.S. dollars via ACH processing. Purchasers must provide valid ACH instructions to Backpack in order to receive Rebate rewards. Backpack pays its Purchasers accrued Rebates on a quarterly basis on each of February 15, May 15, August 15, and November 15, unless any of such dates fall or occur on a United States bank holiday, in which case payment will be initiated to Members on the next applicable business day. Please note that accrual rates vary depending on the Seller policies and reporting schedules. Backpack reserves the right to delay payment for any purchase based on Backpack's suspicion or detection of fraud with your Account, the misattribution of your Rebates rewards by a Seller, any anomaly's detected by Backpack with your Account, your failure to provide adequate account information, or changes to Seller policies at any time. Backpack also reserves the right to modify the payment schedule at any time. Backpack is not responsible for payments delivered to the wrong address through no fault of Backpack or for payment errors made by payment partners. Rebate amounts do not accrue any interest.

**10.3 Account Adjustments.** In our sole discretion, we may deduct Rebates held on your behalf to make adjustments for returns and cancellations with respect to Rebate Program purchases. Any such adjustments will be made in accordance with these Terms and Conditions, any applicable Backpack policies and terms, the terms of the Seller offer and any and all applicable laws, rules and regulations. The determination of whether a purchase made through a Seller qualifies for Rebates is at the sole discretion of Backpack. If a Seller fails to report a transaction to Backpack or fails to make payment to Backpack for any reason, Backpack reserves the right to cancel the Rebates associated with that transaction. It is your responsibility to check your Account regularly to ensure that Rebates have been properly credited and paid and that your Account balance is accurate. If you believe that Rebates have not been correctly credited to your Account, you must contact Backpack within ninety (90) days of the transaction. In addition, Backpack may make Account adjustments for any Rebates that Backpack, in its sole discretion, deems as fraudulent, abusive, unethical, suspicious, or otherwise inconsistent with these Terms and Conditions, or any other applicable law or regulation. Backpack decisions are final. Should you disagree with any adjustments made to your Account or payments made to you, your sole remedy is to terminate your participation in the Program.

**10.4 Taxes.** You may be taxed on your receipt of Rebates depending on the tax laws of federal, state, and local jurisdictions. You will be solely responsible for any tax liability arising out of the consideration received.

## **11. ACCOUNT MAINTENANCE**

**11.1 Updating Your Account.** You agree to keep your Account information current, complete and accurate by periodically updating the information through the Backpack Marketplace. You must be logged into the Backpack website and enter your password to change your Account information and payment preferences. You may check your Account status and recent purchase and/or earning history at any time via the Backpack Marketplace. You will maintain the confidentiality of your Account information, including username and password by which you access the Program. Any use of your username and password will be deemed to be your use, and Backpack is entitled to act on

instructions received under your password and is not responsible for any credits or debits made to your Account by someone else who uses your password. If there is a breach of security through your Account, you should immediately change your password and notify us of such breach. You agree that, unless you have first notified us immediately of any such breach, we should assume that any instruction transmitted using your username and password is yours and has been authorized by you, and we will have no obligation to inquire into the propriety of such instruction.

**11.2 Fraudulent Activity.** We reserve the right to investigate any purchase transactions, referral activity, or interaction with the Backpack Marketplace that we believe, in our sole discretion, is abusing or has abused the Program. We reserve the right to rescind any Rebates, bar further Rebates and/or terminate your participation in the Program if we believe, in our sole discretion, you are abusing or have abused the Program, including, without limitation, by engaging in a pattern of returning products after the corresponding Rebate has been credited. Any failure to comply with these Terms and Conditions, any fraud or abuse relating to the accrual or receipt of Rebates or other rewards and bonuses, or any misrepresentation of any information furnished to Backpack by you or anyone acting on your behalf may result in the termination of your participation in the Program and forfeiture of any accrued Rebates rewards. If Backpack has any reason to suspect fraudulent activity is associated with your Account, Backpack reserves the right to delay or withhold payment of Rebates. Any suspected or actual cases of fraud activity will be escalated and reviewed in accordance with our fraud process. Backpack decisions are final.

## **12. RECEIVING COMMUNICATIONS**

12.1 By signing up to be a Member, you agree to receive communications and notices by electronic mail. Our communications may be Account related (e.g., that we've added money to your Account, that a purchase has been made, that we are transferring funds on a certain date, etc.) as well as periodic emails that highlight special deals available to Purchasers. We may communicate with you regarding the Program by electronic mail or direct mail using information you provide to us. Your consent to receive electronic communications includes any notices or other information that we may be required by law to provide you in writing or otherwise. You agree to keep us apprised of your current email address should the same change after the date you become a Member. We may also send you push notifications if you install a Backpack sponsored mobile application, should the Backpack create such option. You may opt out of receiving certain communications in accordance with our Privacy Policy.

## **13. BACKPACK APPLICATIONS**

13.1 Backpack may make available software applications ("Backpack Applications") to allow you to access our Programs without visiting [www.backpacknetworks.com](http://www.backpacknetworks.com). For purposes of these Terms and Conditions, references to Backpack Marketplace shall include Backpack Applications. Backpack Applications and their underlying information and technology may not be exported or re-exported into any country to which the U.S. has export restrictions, including U.S. embargoed goods or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. You represent and warrant that you are not located in, under the control of or a national or resident of any such country or on any such list of export restriction, and that you will otherwise comply with all applicable export control laws.

## **14. THIRD-PARTY PLATFORMS**

14.1 When you access or use the Backpack Marketplace, we may make available services from one or more third parties (“Third-Party Platforms”). The Backpack Marketplace may support Third-Party Platforms, such as Apple, Facebook, and Google to make it easier for you to sign in or create your Account. Any use of Third-Party Platforms to create and access your Account is subject to the terms and conditions and privacy policies of such third parties (“Third-Party Terms”).

## **15. YOUR FEEDBACK**

15.1 You may be invited to provide us feedback, comments, ideas, suggestions, reviews and other information about our Programs (“Feedback”) through the Backpack Marketplace, by our member services or through one of our service providers. You hereby grant to Backpack and its affiliates and agents a nonexclusive, royalty-free, perpetual, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, perform, translate, create derivative works from, distribute and display the Feedback in any media and for any legal purpose, including, without limitation, the right to use such Feedback in advertising and promotional materials and to enhance or improve our products and services and the products and services of its affiliates.

## **16. COMMUNITY STANDARDS**

16.1 By participating in the Program, you are becoming a Member of a community that depends on the goodwill and responsible behavior of each of our Members. Members are required to refrain from transmission or communication of images or text constituting ethnic slurs, obscenities, sexually explicit material, inflammatory or derogatory comments, or anything else that may be construed as harassing or offensive, which is targeted at the Program, the Backpack Marketplace, our employees, contractors or agents, our Sellers, or other Members. This includes communications by means of social media or other Internet posts that violate the above community standards or promote or encourage gaming or fraudulent behavior. Members who violate this provision, as determined by us in our sole discretion, may have their access to the Program suspended or terminated without prior notice.

## **17. OWNERSHIP**

17.1 All right, title and interest in the Program, the Backpack Marketplace and the content belong to Backpack or its licensors. Additionally, Backpack shall maintain all right, title and interest in the “Backpack” mark, the “Bractlet” mark, the Backpack logo, the Bractlet logo and any other marks, service marks, trademarks or logos of Backpack and its affiliates (“Backpack Marks”). The Backpack Marks may not be used in connection with any product or service that is not Backpack’s or in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits Backpack or implies a partnership, sponsorship, or endorsement by Backpack. You shall not by any means bid on any keywords with any search engine containing “Backpack,” “Bractlet” or anything substantially similar to “Backpack” or “Bractlet,” or any other Backpack Mark including, without limitation, Backpacknetworks.com or Bractlet.com. You shall not mention or use Backpack in any ad text, extensions or banner ads without the express written consent of Backpack. All other trademarks not owned by Backpack that are used in the Programs are the property of their respective owners, who may or may not be affiliated with, connected to or sponsored by Backpack.

## **18. PURCHASER INDEMNIFICATION**

18.1 Purchasers agree to indemnify Backpack, our Sellers, as well as their respective officers, directors, employees, successors, agents and affiliates, for any and all claims, damages, losses and causes of action (including attorneys' fees and court costs) arising out of or relating to your breach of these Terms and Conditions or for any materials in any form whatsoever that are provided by or to you (or by or through your username and/or password). You agree to cooperate as fully as reasonably required in our defense and/or settlement of any claim. We reserve the right, in our reasonable discretion, to assume exclusive control over the defense and settlement of any matter subject to indemnification by you.

## **19. WARRANTY DISCLAIMER**

19.1 THE PROGRAM, CONTENT, AND THE BACKPACK MARKETPLACE ARE PROVIDED "AS-IS" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WE MAKE NO WARRANTY AS TO THE QUALITY, ACCURACY, COMPLETENESS, RELIABILITY OR VALIDITY OF THE PROGRAMS, CONTENT OR THE BACKPACK MARKETPLACE, INCLUDING, WITHOUT LIMITATION, ANY PRODUCT SEARCH RESULTS, PRODUCT DESCRIPTIONS, PRODUCT AVAILABILITY, PRICING INFORMATION ADVICE, OPINION, STATEMENT, RECOMMENDATIONS, REVIEWS OR OTHER INFORMATION DISPLAYED, UPLOADED OR DISTRIBUTED IN CONNECTION WITH ANY PROGRAM. BACKPACK DOES NOT WARRANT THAT THE FUNCTIONALITY OF THE BACKPACK MARKETPLACE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THEY WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. FURTHER, BACKPACK DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE QUALITY OR ACCURACY OF ADVERTISEMENTS FOR ANY PRODUCTS OR SERVICES OFFERED OR PROVIDED BY ITS SELLERS IN CONJUNCTION WITH THE PROGRAMS.

## **20. LIMITATION OF LIABILITY**

20.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL BACKPACK BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES OR FOR ANY LOST PROFITS, LOST DATA OR LOSS OF USE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT BACKPACK'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF THESE TERMS AND CONDITIONS WILL NOT EXCEED ONE THOUSAND DOLLARS (\$1,000) OR THE MAXIMUM REBATES AMOUNT YOU RECEIVED IN THE LAST THIRTY DAYS FROM THE DATE OF ACCEPTANCE OF THESE TERMS, WHICHEVER IS LESS. THIS LIMITATION SHALL APPLY TO ANY AND ALL LIABILITIES OR CAUSES OF ACTION HOWEVER ALLEGED OR ARISING, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, BREACH OF CONTRACT, OR ANY OTHER CLAIM WHETHER IN TORT, CONTRACT, OR EQUITY.

## **21. TERMINATION**

21.1 These Terms and Conditions are effective immediately upon your participation in the Program and will remain in effect until you or we terminate your participation in the Program. You may terminate your Account at any time. We may terminate your agreement with us, your Account, and your use of or access to the Program at any time, for any reason or no reason. Any violation of these Terms and Conditions or the rules and conditions of the Program

may result in the termination of your Account and forfeiture of pending or prior Rebates and other rewards. We may, in our sole discretion, at any time and without prior notice, discontinue, cancel, suspend, change or limit access to all or any part of the Program or any functionality, feature or other component of any Backpack property. You agree that Backpack will not be liable to you or to any third party for any modification, suspension, or termination of the Program or your access to the Backpack Marketplace. If you are dissatisfied with any aspect of the Program at any time, your sole and exclusive remedy is to cease participating in the Program by terminating your Account. Upon any termination of the Program, your right to use and access the Program, and the Backpack Marketplace, and to receive Rebates and other rewards, will terminate. Termination will not prejudice either your or our remedies at law or in equity.

## **22. GENERAL PROVISIONS**

22.1 Entire Agreement. These Terms and Conditions constitute the entire agreement between you and Backpack and govern your use of the Program or Backpack Marketplace superseding any prior agreements between you and Backpack with respect to the Program or Backpack Marketplace (including, without limitation, earlier versions of these Terms and Conditions that may have been accepted by you). Any other representations, statements, or agreements, relating to the subject matter of these Terms and Conditions, made or entered into elsewhere, whether directly or indirectly, written or oral or in advertising are not binding on Backpack. You may also be subject to additional terms and conditions that may apply when you use or purchase certain other Backpack services, Seller services, third party content or third-party software.

22.2 Interpretation. Headings under these Terms and Conditions are intended only for convenience and shall not affect the interpretation of these Terms and Conditions.

22.3 Notice. Any notice to you shall be given at the last email address or physical mailing address you have provided to us, for which we acknowledge receipt thereof. Any notice to us shall be given in writing to: Backpack Group, Inc., Attention: General Counsel, 201 Alhambra Circle, Suite 510, Coral Gables, FL 33134.

22.4 Force Majeure. No Party hereto shall be liable for delay or failure in the performance of its obligations hereunder if such delay or failure arises from the occurrence of events beyond the reasonable control of such Party, including but not limited to, fire, explosion, strike, riot, terrorist activity, war, insurrection, acts of nature, epidemics, pandemics, outbreaks of communicable disease, viral outbreaks, quarantines or national or regional emergencies, actions of any governmental authority, or acts of God. Notwithstanding the foregoing, any delay or failure exceeding thirty (30) days shall be grounds for termination.

22.5 Independent Contractor. The Parties are acting as independent contractors and no agency, partnership, joint venture or employer-employee relationship is created by these Terms and Conditions. No Party hereto will have the power to bind or obligate the other Party.

22.6 Severability. If any provision of these Terms and Conditions is invalid, illegal or incapable of being enforced by any law or public policy, all other provisions of these Terms and Conditions will nevertheless remain in full force and effect.

22.7 Waiver. Our failure at any time or times to require your performance of any provision hereof shall in no manner affect the right to enforce the same. No waiver by us of any condition, or the breach of any provision contained in these Terms and Conditions, whether by conduct or otherwise, in any one or more instances shall be deemed or

construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other provision herein or therein.

22.8 No Third Party Beneficiaries; Assignment. These Terms and Conditions shall be binding on the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in these Terms and Conditions shall create or be deemed to create any third-party beneficiary rights in any person. Except for any transfer or assignment by either Party in connection with the sale or transfer of all or substantially all the business or assets of such Party, whether by sale of stock, sale of assets, merger or otherwise, no transfer or assignment of these Terms and Conditions or of any rights or obligations under these Terms and Conditions may be made by either Party without the prior written consent of the other Party, and any attempted transfer or assignment without that required consent shall be void.

22.9 Governing Law. These Terms and Conditions will be governed by and interpreted in accordance with the laws of the State of Florida, excluding its conflicts of law principles and the intellectual property laws, regulations, and treaties of the United States of America.

## **DEFINITIONS**

“Account” means the account that a Purchaser maintains in order to receive Rebates in the Backpack Marketplace.

“Backpack Marketplace” means the service that permits Sellers to offer their Products for sale to Purchasers, which such transactions are processed for and on behalf of Sellers in exchange for Rebates in accordance with these Terms and Conditions.

“Customer Data” means all Personal Information and Usage Data.

“Laws” means all applicable federal, state, local and foreign laws, statutes, rules, regulations and orders.

“Party” means any party subject to these Terms and Conditions.

“Personal Information” means any information regarding any participant in the Backpack Marketplace, whether as Purchaser, Seller, or other activity, that may be used to identify them.

“Products” means any products sold by Sellers in the Marketplace that are acceptable and which may be legally sold to the general public in the United States.

“Purchaser” means a Member that purchases products from a Seller in the Backpack Marketplace.

“Rebate” means any form of buying discount or sales promotion offered to a Backpack Marketplace Purchaser for the sale or service of Seller’s Marketplace products which is paid by way of rebate, reduction, return, discount, or refund that is paid retrospectively.

“Rebate Agreement” means the Rebate Agreement in place between Backpack and a Seller.

“Return Policy” means the return policy specified by a Seller for the return of purchased Products.

“Sale” of a Product for purposes of payment of a Rebate means: (i) the initiation of a purchase transaction by a Purchaser, and (ii) payment in full for the purchased Product and receipt thereof by Seller.

“Seller” means an individual person or entity that is registered and authorized to participate in the Backpack Marketplace for the purpose of offering Products for sale to Purchasers.

