

# The clearXchange.com User Service Agreement

*Last Updated: September 12, 2017*

## 1. Description of Service

- a. clearXchange, LLC provides a network directory service (the “Network Directory”) to U.S. financial institutions who participate in the Network Directory (our “Network Banks”) to enable convenient transfers of money between their deposit account holders registered with their respective payment services (each, a “Network Bank Customer”) using email addresses or mobile phone numbers. clearXchange provides a service for individuals who have no deposit account with our Network Banks to enable such clearXchange.com Users (each “User”) to receive money from a Network Bank Customer using the User’s email address or mobile phone number (the “Service”).
- b. clearXchange provides no deposit account or other financial services. clearXchange neither transfers, moves nor initiates the transfer or movement of money. You may not establish a financial account with clearXchange of any kind and your agreement to be a User relates to your registration of an email address or mobile phone number as your profile identification in the Network Directory and your permission for clearXchange to share your personal information (including your bank account number provided to clearXchange) with our Network Banks for the purpose of completing money transfers between Network Bank Customers and you. Our Service to you as a User will be provided at all times subject to the terms and conditions of this Service Agreement.

## 2. Accepting this Service Agreement

You must have a U.S. checking or savings account to be a User and your financial institution must permit electronic funds transfers to that account. When you register to use the Network Directory and the Service or establish a profile on clearXchange.com (the “Site”) or access your profile on the Site or permit others to use or access the Service, you agree to the terms and conditions of this Service Agreement. You represent that you are at least 18 years of age, you have the authority to authorize credits to the registered bank account, and you agree that you will not use the Service for any unlawful purpose. Subject to applicable law, we may amend or change this Service Agreement (including any applicable fees and service charges) from time to time, in our sole discretion, by posting the updated terms on the Site. Please access and review this Service Agreement regularly. If you find the Service Agreement unacceptable to you at any time, promptly cancel your profile and enrollment with clearXchange and immediately discontinue your use of the Service. Your continued access of our Site or use of our Service after any amendment, modification or change to the terms and conditions of this Service Agreement shall constitute your agreement and acceptance to such amendment, modification or change.

You may register a profile with clearXchange with multiple email addresses or mobile phone numbers; however, you may register one bank account only. You understand that you will be ineligible to register as a User with a bank account at a Network Bank.

## 3. Consent to Share Personal Information (Including Account Information)

By accepting this Service Agreement, you consent to our disclosure of your personal information (including bank account information) to our Network Banks or other third parties for the following purposes:

- As necessary for our Network Banks to complete money transfers between Network Bank Customers and you;
- As necessary to resolve a problem related to a transfer or payment between you and a Network Bank Customer;
- To verify the existence of your bank account for our Network Banks;

- To verify your identity for purposes of compliance with applicable laws, including without limitation the USA PATRIOT Act;
- To comply with inquiries in connection with fraud prevention or any investigation; For our general business purposes, including without limitation data analysis and audits; or
- As otherwise permitted by the terms of our Privacy and Information Security Notice.

**Further, if you register an account at a financial institution and that financial institution later becomes a Network Bank, you authorize us to share relevant information about you and your account with that financial institution.**

**Except as otherwise provided above, clearXchange will neither disclose nor share any of your personal information with our Network Banks, affiliates or any third party for purposes of marketing their or clearXchange's products or services to you.**

#### **4. Privacy and Information Security**

clearXchange makes security and the protection of your information a top priority. You can access our Privacy and Information Security Notice at <https://www.clearxchange.com/legal>, which Privacy and Information Security Notice is incorporated into and made a part of this Service Agreement by this reference.

#### **5. Registering Your Emails or Mobile Numbers; Consent to Email or Automated Text Messages**

- To participate as a User, you must first register your email address or mobile phone number as a profile ID in the Network Directory. You must provide us with an email address that you regularly use and intend to use regularly (i.e., no disposable email addresses) and a permanent mobile phone number that you intend to use for an extended period of time (i.e., no "burner" numbers).
- You must register through the Site from your personal computer or a web-enabled tablet or mobile device.
- We require you to use an email address as your username for access and to establish a password that meets the security requirements described on our Site.
- At registration, we will collect information from you necessary to verify your identity, which we will do to protect you and us from fraud and to comply with applicable laws. We reserve the right to deny your registration or request additional information from you if you do not provide us with this information, if we cannot verify your identity, or if we have concerns about fraud or security.
- We also may request additional information about you from time to time. We may cancel or suspend your registration or block a transaction if you do not provide us with this information, if we cannot verify your identity with the information you provide, or if we have concerns about fraud or security. Once registered, you may receive money from any Network Bank Customer at that customer's initiation.
- By participating as a User, you represent to clearXchange that you are the owner, or that you have the authority to act on behalf of the owner, of the email address or mobile phone number you register as a profile ID in the Network Directory. You consent to the receipt of emails or text messages from clearXchange, a Network Bank or their agents regarding our Service or related transfers between our Network Banks and you. You agree that clearXchange or its agents may use automatic telephone dialing systems in connection with text messages sent to any mobile phone number you register. You further acknowledge and agree:
  - You are responsible for any fees or other charges that your wireless carrier may charge for any related data, text or other message services, including without limitation for short message service.

- ii. You and clearXchange are solely responsible for the content transmitted through the text messages sent to and from clearXchange.
- iii. In addition, in the case of any messages that you may send through clearXchange or that clearXchange may send on your behalf to an email address or mobile phone number, you represent to clearXchange that you have obtained the consent of the recipient of such emails or automated text messages to send such emails or text messages to the recipient.
- iv. **To cancel text messaging from clearXchange, send STOP to 31061.** For help or information regarding text messaging, send HELP to **31061** or contact clearXchange customer service at 1-866-839-3488 or 1-501-748-8506. You expressly consent to receipt of a text message to confirm your "STOP" request.

## **6. Consumer Reports**

By using the Service, you authorize clearXchange and the Network Bank that is processing a transfer between you and the Network Bank Customer, to obtain consumer reports about you from a consumer reporting agency. This information is used to process your registration, to verify your identity, to verify your bank account information and to protect against or prevent actual or potential fraud or unauthorized use. We reserve the right to decline your registration if we are unable to verify your identity or your bank account information.

## **7. Receiving Money; Money Transfers by Network Banks; Liability for Failed Transactions**

All transfers of money to you shall be performed by a Network Bank per the direction of that Network Bank Customer and at all times subject to the terms and conditions of the relevant service agreement between that Network Bank and its customer, including without limitation any restrictions or prohibitions on permissible transactions. Once a Network Bank Customer initiates a transfer of money to an email address or mobile phone number registered in the Network Directory, you have no ability to stop it. By using the Service, you agree and authorize our Network Banks to initiate credit entries to the bank account you have registered with clearXchange. Credit entries to your account and the transmission and issuance of data related to such entries shall be processed pursuant to the terms of this Service Agreement and the rules of the National Automated Clearing House Association ("NACHA") and the applicable automated clearing house ("ACH Operator") (collectively, the "Rules") and you, we and the Network Banks agree to be bound by such Rules.

Except as otherwise provided below in Section 10, clearXchange shall have no liability to you for any such transfers of money by our Network Banks, including without limitation, (i) any failure by a Network Bank to complete a transaction to your bank account in the correct amount or (ii) any related losses or damages.

## **8. Transaction Errors**

If you have a question about a transfer that you received or expected to receive, then you should contact the sender first and attempt to resolve the issue. **ALL QUESTIONS ABOUT TRANSFERS FACILITATED BY CLEARXCHANGE SHOULD BE DIRECTED TO US AND NOT TO THE FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT.**

We will not send you a periodic statement listing transfers facilitated through clearXchange. Those transfers will appear only on the statement issued by your financial institution. **PLEASE RETAIN THE RECORDS FROM YOUR USE OF THE SERVICES AND CHECK THEM AGAINST THE STATEMENT YOU RECEIVE FROM YOUR FINANCIAL INSTITUTION.**

In case of errors or questions about your transactions facilitated through clearXchange, please contact us by telephone at 866-839-3488 or +1 501-748-8506 or by e-mail at [TransactionError@clearXchange.com](mailto:TransactionError@clearXchange.com) as promptly as you can. **You understand that clearXchange hosts a centralized database of information to facilitate payments, but neither initiates nor processes electronic payments or**

**transfers directly.**

Please contact us immediately if:

- YOU BELIEVE THAT YOUR CLEARXCHANGE PASSWORD HAS BEEN STOLEN OR COMPROMISED OR THAT SOMEONE USING THE SERVICE HAS TRANSFERRED OR MAY TRANSFER MONEY FROM YOUR BANK ACCOUNT WITHOUT YOUR PERMISSION.
- Your bank statement or transaction record reflects an error in a money transfer using the Service.
- You need more information about a money transfer using the Service.
- An unauthorized person has discovered your clearXchange password and may divert money meant for you to their account.
- You believe that someone has transferred money to you using the Service but you did not receive it.

IF YOU BELIEVE THAT THE SERVICE HAS BEEN USED TO MAKE AN UNAUTHORIZED WITHDRAWAL FROM YOUR ACCOUNT, THEN YOU SHOULD CONTACT YOUR FINANCIAL INSTITUTION IN ADDITION TO CLEARXCHANGE. FAILURE TO NOTIFY YOUR FINANCIAL INSTITUTION DIRECTLY AND PROMPTLY MIGHT LIMIT YOUR RIGHTS UNDER YOUR ACCOUNT AGREEMENT AND APPLICABLE LAW.

**9. Your Liability for Unauthorized Transfers**

**A. Consumer Accounts Only**

Telephoning is the best way of keeping your possible losses down.

If you tell us verbally, we may require you to send us your complaint or question in writing at [TransactionError@clearXchange.com](mailto:TransactionError@clearXchange.com) within ten (10) business days. When you contact us, please provide the following information to the extent known:

- Your name and the email address or mobile phone number you registered with clearXchange.
- The date and dollar amount of the transaction in question.
- If known, the name of the Network Bank Customer and the name of their bank.
- A description of the transaction about which you are unsure.

Please explain as clearly as you can why you believe there is an error or why you need more information.

We will work with the Network Bank that initiated the transfer to investigate your claim and we will determine whether an error occurred within ten (10) business days after we hear from you. Any error discovered as the result of the investigation will be promptly corrected. If more time is needed, up to forty-five (45) days may be taken to investigate your complaint or question. In this case, your consumer bank account will be credited within ten (10) business days for the amount you think is in error, so that you have the use of the money during the time it takes to complete the investigation. If you are asked to put your complaint or question in writing, and your letter is not received in ten (10) business days, your account may not be provisionally credited.

We will give you the results of our investigation within three (3) business days after completing the investigation. If the investigation concludes there was no error, you will receive a written explanation. In this case, any provisional credit made to your bank account may be reversed and you authorize our Network Banks to debit the bank account you have registered with clearXchange. You may request copies of the documents that were used in the investigation.

**B. Business Accounts Only**

You agree to: 1) keep your password secure and strictly confidential, providing it only to authorized signers on your account(s); 2) instruct each person to whom you give your password that he or she is not to disclose it to any unauthorized person; and 3) immediately notify us and select a new password if you believe your password may have become known to an unauthorized person. We will have no liability to you for any unauthorized payment or transfer made using your password that occurs before you have notified us of possible unauthorized use and we have had a reasonable opportunity to act on that notice. We may suspend or cancel your password even without receiving such notice from you, if we suspect your password is being used in an unauthorized or fraudulent manner.

We will have no liability to you for any errors or losses you sustain in using the Service except where we fail to exercise ordinary care in processing any transaction. Our liability in any case will be limited to the amount of any funds improperly transferred from your account less any amount which, even with the exercise of ordinary care, would have been lost.

Without regard to care or lack of care of either you or us, a failure on your part to report to us any unauthorized transfer or error from your account within thirty (30) days of your receipt of a bank statement showing such unauthorized transfer or error shall relieve us of any liability for any losses sustained after the expiration of such thirty-day period and you shall thereafter be precluded from asserting any such claim or error.

#### **10. Liability for Failure to Complete Transfers: Consumer Accounts Only**

If a transfer to or from your deposit account in the correct amount or according to our agreement with you is not completed, we will be liable for those damages as the law imposes in such cases. However, there are some exceptions, and clearXchange and its Network Banks have no liability for your losses or damages:

- If, through no fault of ours, the sender does not properly complete the transfer to your account.
- If our Service or Network Bank's services weren't working properly, and the sender knew about the malfunction when the sender initiated the transfer.
- If the financial institution holding your account mishandles or delays processing or posting a transfer facilitated by the Service.
- If circumstances beyond our control (such as fire or flood) prevented the transaction or transfer, despite reasonable precautions we've taken.

The list of examples set out in this paragraph is meant to illustrate circumstances under which we would not be liable for a transfer not being completed and is not intended to list all of the circumstances where we would not be liable.

#### **11. Notification of Change**

Your financial institution may send a Notification of Change ("NOC") to a Network Bank to indicate that your account information contained in an ACH entry is erroneous and needs to be changed. With respect to you receiving payments through the Service, our Network Banks will share any NOC messages from your financial institution with clearXchange. You agree that clearXchange may correct your account information in our User database promptly upon receipt of that NOC notification without further notice to you.

#### **12. Fees**

clearXchange charges no fees for your use of our Service to complete transfers between our Network Banks and you. However, clearXchange reserves the right to charge a fee in the future for any current Service, and clearXchange may develop new uses or other services for Users and a fee may apply for such other uses or services. You will be notified in advance of any fees in accordance with Section 2 above.

Fees, when applicable, will be displayed prior to each use of Service. Please note that clearXchange has no responsibility for any fees that your financial institution or your mobile carrier may charge you in connection with your transactions through clearXchange.

### **13. Limitations on Transfers**

Our Network Banks may impose limitations on transfers between their customers and you. Such limitations remain subject to the terms and conditions of the respective service agreements of our Network Banks with their customers.

### **14. Use of Our Site**

You agree to access our Site in compliance with our Terms of Use, which are available at <https://www.clearxchange.com/legal> and incorporated into and made part of this Service Agreement by this reference.

### **15. Cancellation**

You may cancel your use of the Service at any time by notifying us of your intent to cancel by calling us at 1-866-839-3488 or 1-501-748-8506. Canceling your use of the Service means clearXchange will inactivate your access to our Site, as well as your profile ID in the Network Directory. At the time you instruct clearXchange to cancel your use of the Service, any transfers in process using the Service will be completed to or from your bank account that was associated with your profile ID, but no new transfers will be initiated to or from that bank account through clearXchange. You must re-enroll with clearXchange, or enroll with a P2P service at one of the Network Banks to receive any subsequent payments that a Network Bank customer sends to you after you cancel your use of the Service.

### **16. clearXchange Right to Terminate Access**

Subject to applicable law, clearXchange may terminate or suspend this Service Agreement and your use of our Site and our Service, in whole or in part, at any time for any reason without cause and without prior notice. Any obligations or liabilities incurred by you prior to the date of termination shall survive the termination of this Service Agreement.

You understand that at any time during the term of this Service Agreement your financial institution may become a Network Bank and you may become ineligible to continue as a User. Subject to the terms and conditions of an agreement between clearXchange and your financial institution, we will provide you notice and further instructions relating to the termination of this Service Agreement, access to our Site and our Service and instructions on how to enroll with your financial institution for similar services.

### **17. Disclaimer of Warranties**

EXCEPT AS OTHERWISE PROVIDED HEREIN, AND SUBJECT TO APPLICABLE LAW, CLEARXCHANGE MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER WITH RESPECT TO OUR SERVICES ON THIS WEBSITE. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WITH REGARD TO ANY SERVICE DESCRIBED OR PROVIDED. CLEARXCHANGE DOES NOT WARRANT THAT OUR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

### **18. Limitation of Liability**

EXCEPT AS OTHERWISE PROVIDED HEREIN AND SUBJECT TO APPLICABLE LAW, IN NO EVENT WILL CLEARXCHANGE, ITS OWNERS, DIRECTORS, OFFICERS, AGENTS OR NETWORK BANKS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT

LIMITED TO ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES ARISING OUT OF (I) ANY TRANSACTION CONDUCTED THROUGH OR FACILITATED BY OUR SERVICE; (II) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SERVICES DESCRIBED OR PROVIDED, (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, OR (IV) ANY OTHER MATTER RELATING TO THE SERVICES DESCRIBED OR PROVIDED, EVEN IF CLEARXCHANGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH OUR SERVICE OR WITH THE TERMS OF THIS SERVICE AGREEMENT YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES.

IN THOSE STATES WHERE THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES MAY NOT APPLY, ANY LIABILITY OF CLEARXCHANGE, ITS OWNERS, DIRECTORS, OFFICERS AND AGENTS LIABILITY IN THOSE STATES IS LIMITED AND WARRANTIES ARE EXCLUDED TO THE GREATEST EXTENT PERMITTED BY LAW, BUT SHALL, IN NO EVENT, EXCEED \$100.00.

#### **19. Indemnification**

You acknowledge and agree that you are personally responsible for your conduct while using our Site and our Service and agree to indemnify, defend and hold harmless clearXchange, its owners, directors, officers, agents and Network Banks from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable attorneys' fees, resulting from or arising out of your use, misuse, or inability to use the Service, or any violation by you of the terms of this Service Agreement.

#### **20. Governing Law; Choice of Law; Severability**

This Service Agreement will be governed by and construed under the laws of the State of Delaware, excluding only its conflict of law provisions, and shall inure to the benefit of our successors and assigns, whether by merger, consolidation or otherwise. By using the Site, you hereby submit to the exclusive jurisdiction of the courts within the State of Delaware, and waive any jurisdictional venue or inconvenient forum objections to such courts. You further agree to comply with any applicable federal, state and local laws in your use of the Service. If any provision of this Service Agreement is found to be unenforceable for any reason by a court of competent jurisdiction, that provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law. The remaining provisions of this Service Agreement will not be affected thereby, and each of those provisions will be valid and enforceable to the full extent permitted by law.

#### **21. Miscellaneous**

The Service is available 24 hours, seven days a week with the exception of outages for maintenance. Live customer service generally will be available seven days a week, excluding US bank holidays. Please consult our Site for exact customer service hours.