

Percapita

Terms of Use

Last Updated: December 17, 2024

These Terms of Use (the “**Agreement**”) set forth a legal agreement between you (“**you**” or “**your**”) and Percapita Group, Inc., (“**Percapita**”) and its affiliates (collectively, “**Percapita**”, “**we**”, “**us**”, and “**our**”) regarding your use of our mobile application (“**Mobile App**”), and/or website (unless otherwise designated, collectively, the “**App**”) and the products and services available through the App (the “**Services**”).

Percapita is not a financial institution and is not the provider of any of the banking products or services that may be available to you via the App or of any other product or service provided by a third party, as set forth below. Nothing in this Agreement, or any information or content shared or provided to you through App or the Services constitutes financial or investment advice from us. The Services include (i) Percapita’s technology platform available through the App; (ii) financial education content and related services provided by Percapita or by third party service providers on our behalf (such third party services providers are hereinafter “**FE Providers**”); and (iii) when available, access to financial products and services provided to you by the financial services providers we work with (“**FS Providers**”). Products and services provided by our FE Providers (“**FE Provider Services**”) and our FS Providers (“**FS Provider Service(s)**”) may be subject to additional terms and conditions, as set forth below. To be clear, FE Provider Services and FS Provider Services are included in the definition of “**Services**” under this Agreement. Percapita deposit accounts provided under this Agreement are provided by Sutton Bank, Member FDIC.

THESE TERMS INCLUDE A BINDING ARBITRATION PROVISION THAT INCLUDES A WAIVER OF THE RIGHT TO TRY ANY CLAIM IN COURT BEFORE A JUDGE OR JURY OR PARTICIPATE IN ANY CLASS, COLLECTIVE, OR OTHER REPRESENTATIVE ACTION. PLEASE REFER TO THE “DISPUTE RESOLUTION” SECTION BELOW FOR MORE INFORMATION.

As noted above, we are offering you the Services through one or more service providers that we have engaged to render some or all of the Services to you on our behalf. However, notwithstanding that we have engaged such a service providers to render some or all of the Services to you, we are the sole party liable to you for performance of the Services and we are solely responsible to you to the extent any liability attaches in connection with the Services. You agree that we have the right under this Agreement to delegate to service providers all of the rights and performance obligations that we have under this Agreement, and that the service providers will be third party beneficiaries of this Agreement and will be entitled to all the rights and protections that this Agreement provides to us.

1. Acceptance of Agreement, Privacy Policy and Esign Consent

By creating a User Profile (defined below), accessing the App, or otherwise using any of the Services, you acknowledge that you have read, understood and agree to be bound by the terms and conditions of: (a) this Agreement; (b) our Privacy Policy, (“**Privacy Policy**”), =: <https://www.percapita.com/privacy>, which explains how Percapita collects, uses and discloses your personal information; and (c) the Consent to Use of Electronic Records and Signatures, (the “**Esign Consent**”): <https://www.percapita.com/esign>. If you do not agree with this Agreement, the Privacy Policy or the Esign Consent you may not access or use the Services.

2. Use of Percapita Services

You may not use the Services in any manner that may impair, overburden, damage, disable or otherwise compromise (i) the Services; (ii) any other party's use and enjoyment of the Services; or (iii) the services and products of any third parties. You agree to comply with all applicable laws and regulations governing your use and receipt of the Services and the accessing, downloading, installation and/or use of the App, including, without limitation, any usage rules set forth in the online application store terms of service.

3. Updates to App

From time to time, Percapita may provide periodic updates for the App, including updates like patches or bug fixes, enhanced functionality and offerings, and new versions of the App ("**Updates**"). By using the App, you agree and authorize Percapita to make automatic Updates to the App and agree to download and install any manual Updates where necessary. Your use of the App and any Updates are governed by this Agreement, including as they may be amended in connection with any Updates. Updates become part of the App once installed in the App. We reserve the right to temporarily disable or permanently discontinue any and all functionality of the App at any time without notice to you and with no liability to us.

4. Eligibility

You must be at least sixteen (16) years old to open a User Profile (defined below). To access and use the FS Provider Services you must either (i) be at least eighteen (18) years old; or (ii) be at least sixteen (16) years old and apply for joint use with an individual who is at least eighteen (18) years old, (the "**Eligibility Requirements**"). By agreeing to this Agreement you represent and warrant to us that: (i) you meet the Eligibility Requirements; (ii) that you have not previously been suspended, removed or deactivated from the Services; (iii) that you are a legal resident of the United States; and (iv) that your registration and use of the Services is in compliance with any and all applicable laws and regulations. If you are opening a User Profile to jointly use the FS Provider Services together with an individual who is not eighteen (18) or older, you acknowledge and agree that you are liable pursuant to this Agreement for all use of the FS Provider Services by such individual.

Additional eligibility criteria may apply to products and services provided by FE Providers or FS Providers.

5. Opening a User Profile

To use the Services, you will need to access the App and create a user profile through the App (a "**User Profile**"). Your User Profile will be established based on your mobile telephone number. By creating a User Profile you thereby consent to our use of your mobile telephone number for purposes of establishing your User Profile. Once your User Profile is created, you will have the option of adding your name and email address to your User Profile, and you will be able to manage your communication preferences.

If you apply for any of the FS Provider Services, you will be required to validate certain personal information and to provide additional information, which may include your birth date, Social Security Number or Tax ID Number and a government-issued identification. Consistent with the Privacy Policy, by creating a User Profile, you authorize Percapita to:

- Authorize a third-party to act as our agent to collect information from you.
- Directly or through third-parties, make any inquiries we consider necessary to validate your identity and/or authenticate your identity and User Profile information. This may include asking you for further information and/or documentation about your identity or requiring you to take steps to confirm ownership of your email address, mobile telephone number or financial instruments, and verifying your information against third-party databases or through other sources.
- Share your identifying information with our FE Providers and FS Providers for purposes of providing you Services you request.
- Take such other actions that are permitted under our Privacy Policy.

You may not create more than one (1) User Profile. Users who attempt to associate more than ten (10) devices with a single User Profile may be deemed to have violated this Agreement and to the extent the such users are deemed by Percapita to have abused the Services, may be subject to User Profile suspension or closure.

You also agree not to open additional (i.e., more than one (1)) individual User Profile in your name, which will be considered a violation of this Agreement and can result in us terminating our Agreement with you.

6. Services

You acknowledge and agree that none of the content, information or activities available through the Services constitutes (i) professional, financial, or investment advice or (ii) advice or assistance with regard to improving your credit card, credit history or credit rating. Percapita provides its App and related technology platform services to provide you with access to the following Services:

(a) FE Provider Services

Percapita provides access to the FE Provider Services through the App, as outlined below. Although the FE Provider Services are available through the App, Percapita is not responsible for their content and, unless otherwise stated in the FE Provider terms governing each FE Provider Service, Percapita is not responsible for any issues, errors or disputes related to the FE Provider Services or the activities of any FE Provider.

i. Percapita Plays

The App provides access to Percapita Plays, which offers financial education games to help you learn about financial terminology, services, skills and products. Points or other rewards accumulated while playing Percapita Plays have no monetary value or cash equivalent. Percapita Plays is provided by Zogo, Inc (“**Zogo**”) pursuant to Zogo’s Terms of Service. A copy of Zogo’s Terms of Service is available here: <https://zogo.com/terms-of-service>. This Agreement governs your use of the App and Services. In addition, the Zogo Terms of Service apply to your use of Percapita Plays. The information and educational content available through Percapita Plays is exclusively prepared and owned by Zogo, (“**Zogo Content**”). Percapita is not responsible for the Zogo Content, which is expressly provided for educational purposes only and does not constitute legal, financial, investment or other professional advice. You should consult your professional adviser(s) for legal, financial, investment or other advice.

(b) FS Provider Services

Percapita provides access to the following FS Provider Services through the App, as outlined below. Although the FS Provider Services are available through the App, Percapita is not a financial institution and **does not** provide these services and, unless otherwise stated in the FS Provider terms governing each FS Provider Service, Percapita is not responsible for any issues related to the FS Provider Services or the activities of any FS Provider. We do not charge any fees for the use of FS Provider Services, but the FS Provider may charge fees, as set forth in the terms and conditions applicable to each FS Provider Service. If you do not apply for or are unable to receive one or more of the FS Provider Services described below for any reason, this may impact your ability to receive or to make full use of the Services.

i. Percapita Pay

The App provides access to Percapita Pay, which is an earned wage access service provided by Immediate Solutions, Inc (“**Immediate**”). It allows you to view your estimated wages earned as they accrue during your current pay period (“**Wages**”), and to receive early disbursements of up to fifty percent (50%) of those Wages as of the date of the withdrawal you request through Immediate (such service, “**Percapita Pay**”).

Percapita Pay is available only to employees of participating Percapita channel partners and is subject to an Early Access Fee, which is the amount charged by your employer each time you request expedited payment of the Wages you have earned. A copy of the terms and conditions governing your use of Percapita Pay is available here: <https://www.percapita.com/ewaterms> (“Percapita Pay Terms of Use”). This Agreement governs your use of the App and Services. In addition, the Percapita Pay Terms of Use apply to your use of Percapita Pay.

ii. Cash Account

The App provides you with access to a bank to allow you to establish a deposit account (a “**Cash Account**”) and a linked debit card (“**Debit Card**”), as well as two optional companion account features, a “**Needs Account**” and a “**Goals Account**.” The Cash Account is provided by Sutton Bank, a FDIC insured, federally chartered savings bank (“**Bank**”) and Bank is the issuer of all Debit Cards associated with a Cash Account. Balances in Cash Accounts, Needs Accounts, and Goals Accounts are eligible for FDIC-pass through insurance. A copy of the Bank’s Demand Deposit Account Agreement, (the “**DDAA**”) which governs application, eligibility, and use of the Cash Account, Needs Account and Goals Account, is available here: <https://www.percapita.com/demanddepositaccount>. This Agreement governs your use of the App and Services. In addition, the DDAA applies to your use of the Cash Account, Needs Account and Goals Account. In the event of a conflict between the terms of this Agreement and the DDAA, the terms of the DDAA will prevail with respect to matters pertaining to the Cash Account, Needs Account and Goals Account.

To receive the FS Provider Services below, you must be eligible for and open a Cash Account. If your Cash Account is terminated for any reason, you will be unable to receive any of the FS Provider Services described below.

a. Cash Cushion Terms

You may be eligible to enroll in the Cash Cushion, an optional program provided by Percapita which requires you to opt-in if you wish to participate. By enrolling in Cash Cushion, you agree to be bound to the terms in this Section (“**Cash Cushion Terms**”). For any questions regarding these Cash Cushion Terms or use of the Cash Cushion feature, you may contact customer service using the chat feature in the App, by emailing customerservice@percapita.com or by calling (888) 302-5055.

- (i) **Cash Cushion Program.** Cash Cushion is an optional, no-fee advance service provided by Percapita that provides you a limited ability to draw more than you available balance in your Cash Account solely in connection with certain eligible transactions, subject to these Cash Cushion Terms. “**Eligible Transactions**” include only purchases made with your Debit Card or via the Bill Pay Service (defined below), and do not include ATM transactions, peer to peer payments, ACH payments, lines of credit, or External Account Transfers (described below). Enrolling in Cash Cushion does not require a check of your credit score.
- (ii) **Qualifications.** In order to qualify and enroll in the Cash Cushion feature, you must:
- Have maintained your Cash Account in good standing for at least 60 days;
 - Have an activated Debit Card;
 - Have received a direct deposit into your Cash Account within the last 30 days.

Percapita may add to or adjust these requirements at its discretion. Percapita may suspend or terminate your use of Cash Cushion if you fail to fulfill any of these qualification requirements before, during, or after enrollment. Percapita may also terminate your access to Cash Cushion if you are in violation of any of the terms of Percapita’s Terms of Use. Any termination or suspension of your access to Cash Cushion may continue until you cure the disqualification or violation, or Percapita may terminate your access indefinitely. If your enrollment is terminated, Percapita will not approve any further transactions for Cash Cushion until you meet the qualifications and re-enroll in Cash Cushion.

- (iii) **Your Cash Cushion Limit.** Your ability to overdraw your Cash Account and have a negative balance is restricted to the amount for which you qualify (the “**Limit**”), which is determined by Percapita in its sole discretion. Percapita may adjust your Limit from time to time at its sole discretion, subject to any restrictions required by law. Any changes Percapita makes to your Limit will be communicated to you by email and within the App (“**Notifications**”). You can find your current Limit at any time by logging into the App. Any attempt to conduct a transaction that would otherwise qualify as an Eligible Transaction will be restricted to the amount of your Limit that is available.
- (iv) **Using Cash Cushion.** If you use the Cash Cushion feature, your Cash Account balance will remain negative until the balance is brought to a positive or \$0 balance through a deposit. By using Cash Cushion, you authorize Percapita to apply any deposit to your Cash Account to cure any negative balance. Each time you conduct an Eligible Transaction that accesses the Cash Cushion, you will receive Notification that Percapita approved the transaction, including the amount of the Eligible Transaction and the updated Limit you have remaining. Percapita does not charge any additional interest or fees for using Cash Cushion. If a negative balance is not repaid within fifteen (15) days

of the first Eligible Transaction that caused the negative balance, Percapita may terminate your access to the Cash Cushion feature. If your negative balance remains for sixty (60) days, your Cash Account and any associated products may be closed permanently.

(v) **Our Rights to Repayment.** You hereby authorize Percapita to take funds due to Percapita to cure any negative balance under the Cash Cushion program. If Percapita is unable to cure the negative balance from your Cash Account, you may be prohibited from obtaining another product from Percapita or our third party. Percapita will not place the amount advanced as a debt with or sell it to a third party or report any failure to repay to a consumer reporting agency if the advance is not repaid on the scheduled date. However, Percapita may engage in debt collection activities. Neither Bank nor Percapita will furnish information about your use of the Cash Cushion to credit reporting agencies. However, Percapita may exercise other legal options available to it in order to collect the money you owe Percapita.

(vi) **Cancellation of Cash Cushion.** You may cancel your enrollment in Cash Cushion at any time. To do so, please contact customer service through the chat feature in the App or call 1-888-302-5055. If you cancel your enrollment in Cash Cushion, Percapita will not approve otherwise Eligible Transactions that would cause you to overdraw your Cash Account. Cancelling your enrollment in Cash Cushion does not impact your obligation to repay any negative balance in your Cash Account and you agree Percapita may continue to exercise our rights to cure any negative balance. If you continue to meet the eligibility criteria, you may re-enroll at any time. Percapita may terminate your access to the Cash Cushion program or suspend or terminate your use of Cash Cushion if you fail to maintain your Cash Account in good standing or for any reason at any time upon notice required by applicable law. This may happen if Percapita finds out you are violating the Account Agreement or the terms of Percapita's Terms of Use. You agree that Bank and Percapita are not and will not be liable to you or any third party for any costs, fees, or losses associated with the termination of your access to Cash Cushion, including but not limited to, inability to complete a purchase, insufficient funds fees, late fees, legal fees, third party charges, or any other charges.

b. Digital Wallet

Once you have activated your Cash Account, you can add an eligible Debit Card to a digital wallet ("**Digital Wallet**") by following the instructions of the Digital Wallet provider. When you add a Debit Card to the Digital Wallet, the Digital Wallet allows you to use the Debit Card to enter into transactions where the Digital Wallet is accepted. The Digital Wallet may not be accepted at all places where your Debit Card is accepted. Bank issues the Debit Card that may be added to a Digital Wallet, but Digital Wallets are provided by third parties and neither we nor Bank are responsible for any Digital Wallet you may choose to use. A copy of the terms and conditions governing your use of the Debit Card in connection with a Digital Wallet ("**Digital Wallet Terms**") are available here: <https://www.percapita.com/digitalwallet>. This Agreement governs your use of the App and Services. In addition, the Digital Wallet Terms apply to your use of a Digital Wallet.

c. Bill Payment

The App provides access to bill payment services ("**Bill Pay Service(s)**").

Once you have activated a Cash Account, you can request access to the Bill Pay Services through the App to receive, view, and pay bills using your Cash Account or Needs Account. The terms and conditions governing your use of the Bill Pay Services are set forth in the Bank's DDAA; a copy of which is available here: <https://www.percapita.com/demanddepositaccount>. This Agreement governs your use of the App and Services. In addition, the Bill Payment Services Terms and Conditions of the Bank's DDAA apply to your use of the Bill Pay Services.

d. External Account Transfers

The App provides access to services facilitating other transfers to/from your Cash Account and a bank account or debit card you have through another financial institution ("**External Account**"). These services (the "**External Account Transfer Service**") are provided by Ingo Money, Inc.

Once you have activated a Cash Account, you can use the External Account Transfer Service to link your External Account and transfer money between your Cash Account and your External Account electronically. The terms and conditions governing your use of the External Account Transfer Service are set forth in the Bank's DDAA; a copy of which is available here: <https://www.percapita.com/demanddepositaccount>. This Agreement governs your use of the App and Services. In addition, the External Transfer Service Terms and Conditions of the Bank's DDAA apply to your use of the External Account Transfer Services.

e. Mobile Check Capture

The Mobile App provides access to services provided by Ingo Money, Inc., that allow you to capture the image of a check and transfer funds in the amount of the check to your Cash Account ("**Mobile Check Capture**").

Once you have activated a Cash Account, you can use Mobile Check Capture to transfer funds from eligible checks to your Cash Account through the Mobile App. A copy of the terms and conditions governing your use of the Mobile Check Capture services ("MCC Terms of Use") is available here: [Terms and Conditions | Ingo Money App](#). This Agreement applies to your use of the App and Services. In addition, the MCC Terms of Use apply to your use of Mobile Check Capture.

f. International Transfers

The App provides access to services known as "**ReadyRemit**", which are provided by Brightwell Payment, Inc., ("**Brightwell**"), together with Brightwell's financial institution partner, The Bancorp Bank, N. A. ("**Bancorp**") and Bancorp's third-party service providers, that facilitate international remittance transfers from your Cash Account to recipients you identify in permitted countries, ("**International Transfers**").

Once you have activated a Cash Account, you can use ReadyRemit to make International Transfers. A copy of the terms and conditions governing your use of ReadyRemit to make International Transfers ("ReadyRemit Powered by Bancorp User Agreement") is available here: [ReadyRemit Powered by Bancorp User Agreement](#). This Agreement applies to your use of the App and Services. In addition, the ReadyRemit Powered by Bancorp User Agreement applies to your use of ReadyRemit for International Transfers.

7. Communications

By providing us with a mobile telephone number and/or email address, you consent to receive recurring notifications from us or our FE Providers and FS Providers, including SMS text messages and emails through automated technology to the number and/or email address. You can opt out of receiving notifications through your device settings. Please note that opting out of receiving notifications may impact your use of the Services. By providing us with a mobile telephone number, you also agree to receive non-marketing, service-related calls and SMS/text messages from us or our FE Providers and FS Providers at the telephone number provided. Such calls and text messages may be autodialed and/or pre-recorded. You further consent to receive calls and SMS/text messages from us or our FE Providers and FS Providers at the number provided for marketing or promotional purposes. Such calls and SMS/text messages may be autodialed and/or pre-recorded. You understand that your consent to receive marketing-related calls and SMS/text messages is not a condition of any purchase or of using the Services. To stop receiving SMS/text messages, you may reply STOP to any SMS/text message you receive from us. After you text "STOP" to us, we will send you a SMS/text message to confirm that you have been unsubscribed. After this, you will no longer receive SMS/text messages from us. Your carrier's standard message and data rates may apply to your receipt of both non-marketing and marketing-related messages. To stop receiving marketing and promotional email communications, send an email to optout@percapita.com from your enrolled email address.

8. Third Party Websites

The Services, including the App, may contain links to third-party websites, including those of the FE Service Providers and the FS Service Providers. The linked sites are not under our control, and we are not responsible for the contents of any linked site. We provide these links as a convenience only, and a link does not imply our endorsement of, sponsorship of, or affiliation with the linked site. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any of these third parties' services or websites.

9. User Content

Percapita does not claim ownership of the content that you provide, upload, submit or send through the Services or to Percapita ("**User Content**"). You understand and agree that all materials transmitted on or through the Services are the sole responsibility of the sender, not Percapita, and that you are responsible for all material you provide, upload, submit or send to or through the Services. When you provide content to Percapita or through the Services, you grant Percapita (and parties that we work with) a non-exclusive, irrevocable, royalty-free, transferable, and worldwide license to use your content and associated intellectual property and publicity rights in any manner and for any purpose, including to improve the Services and create other products and services. Percapita will not compensate you for any of your content. You acknowledge that Percapita's use of your content will not infringe any intellectual property or publicity rights. Further, you acknowledge and warrant that you own or otherwise control all of the rights to the content you provide, and you agree to waive your moral rights and promise not to assert such rights against Percapita.

10. Feedback

If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Services (“**Feedback**”), then you hereby grant Percapita an unrestricted, perpetual, irrevocable, non-exclusive, fully paid, royalty free right to exploit the Feedback in any manner and for any purpose, including to improve the Services and create other products and services.

11. Prohibited Conduct

BY USING THE APP OR THE SERVICES, YOU AGREE NOT TO:

- (a) breach this Agreement or any other agreement between you and Percapita or violate any Percapita policy published in or on the App;
- (b) access or use any part of the Services for any non-personal, commercial purpose;
- (c) access or use the Services for any illegal purpose or violate any law, statute, ordinance, or regulation;
- (d) attempt to gain unauthorized access to any other user’s User Profile;
- (e) modify or attempt to modify or in any way tamper with, circumvent, disable, damage or otherwise interfere with the Services;
- (f) access or use the Services in a way that may infringe upon the intellectual property or other rights of any third party, including, without limitation, trademark, copyright, privacy, or publicity rights; or
- (g) provide false, inaccurate or misleading information;
- (h) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Services or any part thereof (including the App), except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
- (i) modify, adapt, translate or create derivative works based upon the Services or any part thereof, except and only to the extent the foregoing restriction is expressly prohibited by applicable law;
- (j) copy, distribute, transfer, sell or license all or part of the Services;
- (k) intentionally interfere with or damage the operation of the Services or any user’s enjoyment of it, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code.
- (l) take any action to circumvent, compromise or defeat any security measures implemented in the Services;
- (m) use the Services to access, copy, transfer, retransmit or transcode information, Percapita logos, marks, names or designs or any other content in violation of any law or third-party rights; or
- (n) remove, obscure, or alter Percapita’s (or any third party’s) copyright notices, trademarks, or other proprietary rights notices affixed to or contained within or accessed through the Services.

12. Modification of Agreement

Percapita reserves the right, in its sole discretion, at any time to modify, augment, limit, suspend, discontinue, or terminate any or all of the Services without advance notice. All modifications and additions to the Services shall be governed by this Agreement, unless otherwise expressly stated by Percapita in writing. Percapita may, from time to time, modify the Agreement. Please check this Agreement periodically for changes. Your continued use of the Services after the changes become effective constitutes your binding acceptance of such changes. In the event that a change to this Agreement

materially modifies your rights or obligations, we will make an effort to notify you of the change, such as by sending you an email to the address we have on file for you, or presenting a pop-up window or other notification to you through the App when you log in, and we may require that you accept the modified Agreement in order to continue to use the Services. Immaterial modifications are effective upon publication, and material changes will be effective upon the earlier of (a) continued use of the Services, or (b) thirty (30) days following the change. For the avoidance of doubt, disputes arising hereunder will be resolved in accordance with the Agreement in effect at the time the dispute arose. You can determine when this Agreement was last revised by referring to the “LAST UPDATED” legend at the top of the then-current version of this Agreement.

13. Term

This Agreement is effective beginning when you accept the Agreement or first download, install, access, or use the Services, and ending when terminated as described in the Termination Section.

14. Termination

- (a) Termination by Percapita. If you fail to comply with any provision of this Agreement, any rights granted to you herein will automatically terminate. Without limiting other remedies, Percapita may immediately terminate or suspend your access to and/or use of the Services and remove, subject to any regulatory retention requirements, any material from the Services or our servers, in the event that you breach this Agreement. Notwithstanding the foregoing, we also reserve the right to terminate, limit or suspend your access to or use of the Services at any time and for any reason or no reason, including: (i) where we determine in our sole discretion that such action is reasonable in order to comply with legal requirements or to protect the rights or interests of Percapita, a FS Provider, a FE Provider or any third party; or (ii) in connection with any general discontinuation of the Services. We also reserve the right to modify the Services at any time without notice to you. If we terminate your access to and/or use of the Services for any reason or no reason, you agree: (a) to continue to be bound by this Agreement; (b) to immediately stop using the Services; (c) that any license or rights provided by us under this Agreement shall end; and (d) that we shall not be liable to you, or to any third party, for compensation, reimbursement, or damages in connection with your access to and/or use of the Services or the termination thereof. We will have no liability whatsoever on account of any change to the Services or any suspension or revocation of your access to or use of the Services.
- (b) Termination by You. If you have not opened a Cash Account or engaged any other FS Provider Services, you may terminate acceptance of this Agreement at any time by closing your User Profile through the App or by contacting us at customerservice@Percapita.com, whereupon (and without notice from Percapita) any rights granted to you herein will automatically terminate. Otherwise, please contact customer service by telephone at (888) 302-5055 to cancel all other Services and FS Provider Services. If you do not use the Services or App for a period of twelve (12) months, we reserve the right to terminate your access to the Services until you update your User Profile.

15. Effect of Termination

- (a) Upon termination of this Agreement: You understand and acknowledge that we will have no further obligation to provide or allow access to your User Profile or the Services, including the FS Provider Services. Upon termination, all licenses and other rights granted to you by this Agreement will immediately cease. Percapita is not liable to you or any third party for termination of the Services or termination of your use of the Services, including the FS Provider Services.
- (b) Impact on Cash Account. Closing your User Profile or otherwise terminating this Agreement does not close any Cash Account you have opened with the Bank. To close your Cash Account, please contact (888) 302-5055. YOU UNDERSTAND AND ACKNOWLEDGE THAT SUSPENSION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON, INCLUDING CLOSING YOUR USER PROFILE, WILL RESULT IN A TEMPORARY OR PERMANENT LOSS OF ACCESS TO THE CASH ACCOUNT AND THE FS PROVIDER SERVICES. IN THE EVENT THIS AGREEMENT IS TERMINATED, THE BANK MAY CLOSE YOUR CASH ACCOUNT. Please refer to the terms of the <https://www.percapita.com/demanddepositaccount> and any other applicable FS Provider Service for further information.
- (c) Information. UPON ANY TERMINATION OR SUSPENSION UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, YOU WILL NO LONGER BE ABLE TO ACCESS ANY INFORMATION THAT YOU HAVE SUBMITTED, UPLOADED OR OTHERWISE MADE AVAILABLE ON, TO OR THROUGH THE SERVICES OR THAT IS RELATED TO YOUR USER PROFILE. Furthermore, except as may be required by applicable law or as provided in our Privacy Policy, Percapita will have no obligation to store or maintain (or delete or destroy) any information stored in our database or to forward any information to you or any third party.

16. Intellectual Property Rights

All other marks and logos related to the Services are either trademarks or registered trademarks of us or our licensors. In addition, all page headers, custom graphics, button icons, and scripts are our service marks, trademarks, and/or trade dress or those of our licensors. You may not copy, imitate, or use any of the above without our prior written consent, which we may withhold in our sole discretion, and you may not use them in a manner that is disparaging to us or the Services or display them in any manner that implies our sponsorship or endorsement. All right, title and interest in and to the Services, the portion of the App through which the Services are offered, the technology related to the App and Services, and any and all technology and any content created or derived from any of the foregoing, is our exclusive property or that of our licensors. Moreover, any suggestions, ideas, notes, drawings, concepts, or other information you may send to us through or regarding the App or Services shall be considered an uncompensated contribution of intellectual property to us and our licensors, shall also be deemed our and our licensors' exclusive intellectual property, and shall not be subject to any obligation of confidentiality on our part. By submitting any such materials to us, you automatically grant (or warrant that the owner of such materials has expressly granted) to us and our licensors a perpetual, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, publicly perform and display, create derivative works from and distribute such materials or incorporate such materials into any form, medium, or technology now known or later developed, and you warrant that all so-called "moral rights" in those materials have been waived, and you warrant that you have the right to make these warranties and transfers of rights.

17. Indemnification

To the fullest extent permitted by law, you agree to indemnify, defend and hold Percapita, the FS Providers, the FE Providers, the Bank, third-party service providers, banks, licensors and agents and all of its and their successors, parents, subsidiaries, affiliates, officers, directors, stockholders, investors, employees, agents, representatives and attorneys and their respective heirs, successors and assigns (collectively, the “**Indemnified Parties**”), harmless from and against any and all claims, actions, proceedings, suits, liabilities, losses, damages, costs and expenses, including, without limitation, reasonable attorneys’ fees, incurred by the Indemnified Parties arising out of or relating to (i) your access to, use of or alleged use of the App or Services; (ii) your violation of this Agreement or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; (iii) your violation of any third party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or (iv) any disputes or issues between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim. You shall cooperate as fully as reasonably required in the defense of any such claim. You agree not to settle any matter subject to this indemnification obligation without the prior written consent of Percapita, the FS Providers, the FE Providers, or the Bank.

18. Disclaimers; No Warranties

TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, THE APP, THE SERVICES AND ALL ACCOUNTS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. EXCEPT AS REQUIRED BY LAW, AND EXCEPT FOR ANY EXPRESS WARRANTIES MADE BY PERCAPITA, ANY SERVICE PROVIDER, AND ALL BANKS, AGENTS, CONTRACTORS, OR OTHER VENDORS, PERCAPITA DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS REGARDING THE APP, THE SERVICES AND ANY SUBJECT MATTER OF THIS AGREEMENT OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, QUIET ENJOYMENT, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, FREEDOM FROM VIRUSES OR OTHER HARMFUL CODE, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. SPECIFICALLY, BUT WITHOUT LIMITATION, PERCAPITA DOES NOT WARRANT THAT: (1) THE INFORMATION PROVIDED IN, OR THAT MAY BE OBTAINED FROM USE OF, THE APP OR SERVICES WILL MEET YOUR REQUIREMENTS OR BE CORRECT, COMPLETE, ACCURATE, UP-TO-DATE, OR RELIABLE; (2) THE SERVICES BE UNINTERRUPTED OR ERROR-FREE; (3) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED BY OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS; OR (4) ANY ERRORS IN THE TECHNOLOGY WILL BE CORRECTED. YOU ASSUME ALL RISK FOR ALL DAMAGES, INCLUDING DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE DEVICE OR LOSS OF DATA THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE APP OR ANY OF THE SERVICES. YOU HEREBY ACKNOWLEDGE THAT USE OF THE APP OR ANY OF THE SERVICES IS AT YOUR SOLE RISK. IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY ACKNOWLEDGE AND WAIVE YOUR RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542 WHICH PROVIDES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

19. Limitation of Liability

THE FOREGOING SHALL CONSTITUTE YOUR EXCLUSIVE REMEDIES AND THE ENTIRE LIABILITY OF US AND OUR AFFILIATES AND SERVICE PROVIDERS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, FOR THE SERVICES AND THE PORTION OF THE APP THROUGH WHICH THE SERVICES ARE OFFERED. YOU ACKNOWLEDGE AND AGREE THAT FROM TIME TO TIME, THE SERVICES MAY BE DELAYED, INTERRUPTED OR DISRUPTED PERIODICALLY FOR AN INDETERMINATE AMOUNT OF TIME DUE TO CIRCUMSTANCES BEYOND OUR REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO ANY INTERRUPTION, DISRUPTION OR FAILURE IN THE PROVISION OF THE SERVICES, WHETHER CAUSED BY STRIKES, POWER FAILURES, EQUIPMENT MALFUNCTIONS INTERNET DISRUPTION OR OTHER REASONS. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE SERVICES CAUSED BY OR ARISING OUT OF ANY SUCH DELAY, INTERRUPTION, DISRUPTION OR SIMILAR FAILURE. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF GOODWILL OR LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE SERVICES OR THE PORTION OF THE APP THROUGH WHICH THE SERVICES ARE OFFERED, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND NOTICE WAS GIVEN REGARDING THEM. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE SERVICES OR THE PORTION OF THE APP THROUGH WHICH THE SERVICES ARE OFFERED THAT YOU DO NOT STATE IN WRITING IN A COMPLAINT FILED IN A COURT OR ARBITRATION PROCEEDING AS DESCRIBED IN SECTIONS 20 AND 21 WITHIN TWO (2) YEARS OF THE DATE THAT THE EVENT GIVING RISE TO THE CLAIM OCCURRED. THESE LIMITATIONS WILL APPLY TO ALL CAUSES OF ACTION, WHETHER ARISING FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. OUR AGGREGATE LIABILITY, AND THE AGGREGATE LIABILITY OF OUR AFFILIATES AND SERVICE PROVIDERS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, TO YOU AND ANY THIRD PARTY FOR ANY AND ALL CLAIMS OR OBLIGATIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO DIRECT OUT OF POCKET DAMAGES UP TO A MAXIMUM OF \$500 (FIVE HUNDRED DOLLARS).SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THIS AGREEMENT. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 19 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

20. DISPUTE RESOLUTION

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE, EXCEPT AS PROVIDED BELOW, IT REQUIRES USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES RATHER THAN JURY OR OTHER COURT PROCEEDINGS, OR A CLASS ACTION OR REPRESENTATIVE ACTIONS OF ANY KIND.

You and we agree that any dispute between you and Percapita arising out of or relating to (i) the App, (ii) this Agreement, or (iii) one or more of the Services (each, a “**Dispute**”) will be resolved exclusively by arbitration under the American Arbitration Association’s Commercial Arbitration Rules and will be governed by the arbitration procedure outlined in this Section (the “**Arbitration Agreement**”).

(a) Governing Law. The Arbitration Agreement evidences a transaction in interstate commerce and thus the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (“**FAA**”) will govern the interpretation and enforcement of this section. If the FAA is found not to apply to any issue that arises under this section or the enforcement of the Arbitration Agreement, then that issue will be resolved under the laws of the State of New York. These laws will apply no matter where in the world you live, but if you live outside of the United States, you may be entitled to the protection of the mandatory consumer protection provisions of your local consumer protection law.

(b) Informal Dispute Resolution. We want to address your concerns and allow you to address our concerns without needing to file an arbitration. Before filing a claim in arbitration against Percapita, you agree to try to resolve the Dispute informally by sending written notice (“**Notice**”) to us at customerservice@Percapita.com. Before filing a claim in arbitration against you, Percapita will send Notice to you. The Notice must describe the nature and basis of the claim and specific relief sought. If the parties cannot resolve the Dispute within 30 days after receipt of the Notice, you or Percapita may initiate arbitration proceedings.

(c) We Both Agree to Arbitrate. You and Percapita agree to exclusively resolve any Disputes through final and binding arbitration, except as set forth under Exceptions to Agreement to Arbitrate below.

(d) Opt-out of Agreement to Arbitrate. You can decline this agreement to arbitrate by contacting customerservice@Percapita.com within 30 days of first accepting this Agreement and stating that you (include your first and last name) decline this arbitration agreement.

(e) Initiating Arbitration and Arbitration Procedures.

(i) A form to initiate arbitration proceedings is available on the American Arbitration Association (“**AAA**”) site at www.adr.org. In addition to filing this form with AAA, the party initiating arbitration must send a copy of the completed form to the opposing party. You must send such copy to Percapita at: 169 Madison Avenue, #2309, New York, New York 10016 and to: notices@percapita.com. Percapita will send such copy to the current address Percapita has in your User Profile. You agree to keep your contact information up to date in your User Profile at all times.

(ii) AAA will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes then in effect. Arbitration will be handled by a single arbitrator in accordance with those rules, unless the amount subject to the arbitral claim exceeds \$1,000,000 in which case there will be three (3) arbitrators. The arbitrator(s), and not any federal, state or local court or agency, shall have exclusive authority to resolve any dispute about the interpretation, validity, applicability, or enforceability of this Arbitration Agreement.

(iii) You may choose to have arbitration conducted solely on the basis of documents submitted to the arbitrator, via a telephone hearing, by an in-person hearing in the county of your residence, or as otherwise mutually agreed to by the parties.

(f) Arbitration Fees. For arbitral claims of \$100,000 (US Dollars) or less that you file with the AAA, you will pay the filing fee specified in the rules of the AAA. Percapita will pay any additional required filing fees, and all administration and arbitrator fees (collectively, “**Filing Fees**”) unless the arbitrator determines that your claim is frivolous in which case the arbitrator will determine the amount you should pay. For claims over \$100,000 (US Dollars), you will be responsible for the Filing Fees.

(g) Exceptions to Agreement to Arbitrate. Either you or Percapita may assert an individual claim in small claims court consistent with any applicable jurisdictional and monetary limits that may apply, provided it is brought and maintained as an individual action. Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Services, or infringement of intellectual property rights (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

(h) Jury Trial and Class Action Waiver.

(i) **YOU AND PERCAPITA ACKNOWLEDGE AND AGREE THAT THEY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY. THE PARTIES FURTHER AGREE THAT ANY ARBITRATION SHALL BE CONDUCTED IN THEIR INDIVIDUAL CAPACITIES AND NOT AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION, AND THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS BASIS. YOU AND PERCAPITA MAY NOT BE PLAINTIFFS OR CLASS MEMBERS IN ANY PURPORTED CLASS, COLLECTIVE, CONSOLIDATED, OR REPRESENTATIVE ACTION, AND MAY EACH BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY. THE ARBITRATOR MAY AWARD DECLARATORY OR INJUNCTIVE RELIEF ONLY ON AN INDIVIDUAL BASIS AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THE CLAIMANT’S INDIVIDUAL CLAIM.**

(ii) If there is a determination that any term in the immediately preceding paragraph is unenforceable for any reason as to any claim, then the Arbitration Agreement will be inapplicable to that claim, and that claim will instead proceed through litigation in court rather than by arbitration, but only after the conclusion of the arbitration of any claim or dispute that is subject to the Arbitration Agreement

(i) Arbitrator’s Decision. The arbitrator’s decision shall be written and binding on the parties and may be entered as a judgment in any court of competent jurisdiction. A party that prevails in arbitration will be entitled to an award of attorney’s fees and expenses to the extent provided under applicable law.

21. Choice of Law & Jury Waiver

Except as set forth in the Arbitration Agreement, all matters relating to your access to or use of the App and all matters arising out of or related to this Agreement will be governed by the applicable laws of the United States and the laws of the State of New York, without regard to New York's choice of law principles. As to any proceeding in court, you and Percapita both waive your right to a jury trial, unless such waiver is unenforceable.

22. General

This Agreement, together with the Privacy Policy, Esign Consent, and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Percapita regarding your use of and access to the Service, and except as expressly permitted above may only be amended by a written agreement signed by authorized representatives of the parties. You may not assign or transfer this Agreement or your rights hereunder, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign this Agreement or any of our rights or obligations under this Agreement at any time without notice. Our failure to require performance of any provision shall not affect our right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of paragraph headers in this Agreement is for convenience only and shall not have any impact on the interpretation of particular provisions. In the event that any part of this Agreement is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.

23. Survival

In the event of termination of this Agreement or the Services, the terms in this Agreement that by their nature are continuing shall survive such termination, including but not limited to the indemnification and hold harmless obligations, disclaimers, and limitations of liabilities.

24. Contact Information

If you have any questions regarding Percapita, the Services, or this Agreement please email us at customerservice@Percapita.com.

25. Notices to You

You agree that we may provide notice to you by posting it on the App, sending you an in-product message within the Services, emailing it to an email address that you have provided us, mailing it to any postal address that you have provided us, or by sending it as a text message to any mobile phone number that you have provided us, including but not limited to the mobile phone number that you have listed in your Service setup or customer profile. For example, users of the Services may receive certain notices (such as notices of processed payment Instructions, alerts for validation and notices of receipt of payments) as text messages on their mobile phones. All notices by any of these methods shall be deemed received by you no later than twenty-four (24) hours after they are sent or posted, except for notice by postal mail, which shall be deemed received by you no later than three (3) Business Days after it is mailed. You may request a paper copy of any legally required disclosures and you may terminate your consent to receive required

disclosures through electronic communications by contacting us as described in Section 24 above. We reserve the right to terminate your use of the Services if you withdraw your consent to receive electronic communications.

26. Acceptable Use.

You agree that you are independently responsible for complying with all applicable laws in all of your activities related to your use of the Services, regardless of the purpose of the use, and for all communications you send through the Services. We and our service providers have the right but not the obligation to monitor and remove communications content that we find in our sole discretion to be objectionable in any way. In addition, you are prohibited from using the Services for communications or activities that: (a) violate any law, statute, ordinance or regulation; (b) promote hate, violence, racial intolerance, or the financial exploitation of a crime; (c) defame, abuse, harass or threaten others; (d) include any language or images that are bigoted, hateful, racially offensive, vulgar, obscene, indecent or discourteous; (e) infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction; (f) impose an unreasonable or disproportionately large load on our infrastructure; (g) facilitate any viruses, trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; (h) constitute use of any robot, spider, other automatic device, or manual process to monitor or copy the Services or the portion of the App through which the Services are offered without our prior written permission; (i) constitute use of any device, software or routine to bypass technology protecting the App or Services, or interfere or attempt to interfere, with the App or the Services; or (j) may cause us or our service providers to lose any of the services from our internet service providers, payment processors, or other vendors. We encourage you to provide notice to us by the methods described in Section 25 above of any violations of the Agreement.

27. Passwords and Security

If you are issued or create any password or other credentials to access the Services or the portion of the App through which the Services are offered, you agree not to give or make available your password or credentials to any unauthorized individuals, and you agree to be responsible for all actions taken by anyone to whom you have provided such credentials. If you believe that your credentials have been lost or stolen or that someone may attempt to use them to access the App or Services without your consent, you must inform us at once at the telephone number provided in Section 14(b) above.

28. Remedies

If we have reason to believe that you have engaged in any of the prohibited or unauthorized activities described in this Agreement or have otherwise breached your obligations under this Agreement, we may terminate, suspend or limit your access to or use of the App or the Services; notify law enforcement, regulatory authorities, impacted third parties, and others as we deem appropriate; refuse to provide our services to you in the future; and/or take legal action against you. In addition, we, in our sole discretion, reserve the right to terminate this Agreement, access to the App and/or use of the Services for any reason or no reason and at any time. The remedies contained in this Section 28 are cumulative and are in addition to the other rights and remedies available to us under this Agreement, by law or otherwise.

29. Release

You release us and our service providers and the employees and contractors of each of these, from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with any dispute that may arise between you or one or more other users of the App or the applicable Services. In addition, if applicable to you, you waive California Civil Code §1542, which states that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if not known by him must have materially affected his settlement with the debtor.