

## TERMS AND CONDITIONS

PARTICIPANT ATTESTS IT HAS THE POWER TO BIND AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS (THESE **TERMS**). IF PARTICIPANT DOES NOT AGREE TO THE TERMS AND CONDITIONS STATED HEREIN, PLEASE FOLLOW THE OPT OUT PROCEDURE PROVIDED BY FDC.

**ACCESS:** Furniture.com America LLC (**FdC**) has entered into an agreement with Upgrade, Inc. (together with its affiliates in their capacities hereunder, **Upgrade**) to enable customers of Participant to apply for consumer financing. Such financing is available solely to residents of the United States and Canada.

**CUSTOMER RELATIONSHIP:** Participant may only use messaging mentioning Upgrade or the Services that has been approved by Upgrade. Participant agrees to refer customers with inquiries related to Upgrade or the Services to Upgrade.

Upgrade may enter separate agreements with Participant's customers (**Upgrade Customer Agreement(s)**) and Participant may enter separate agreements with Participant's customers (**Participant Customer Agreement(s)**). Upgrade is not a party under any Participant Customer Agreement and Participant is not a party under any Upgrade Customer Agreement. When a customer finances purchases using the Services, Upgrade assumes all responsibility for processing loan underwriting and management.

**FRAUD; CANCELLATION FOR FRAUD:** Participant will cooperate with Upgrade to prevent fraud and use reasonable efforts to share best practices, share information regarding fraudulent acts and those committing such acts, and meet as necessary to discuss fraud-related issues. Participant agrees to promptly notify Upgrade after detecting fraud associated with customer transactions related to the Services. Participant will work with Upgrade and FdC to cancel any affected Upgrade loan(s), transaction(s), and booking(s) related to the fraud and to return to Upgrade the full amount of payment(s) (including without limitation, virtual card payment(s)) made to Participant with respect to such transaction(s).

**CANCELLATION FOR DELINQUENCY:** If a customer has been delinquent on a loan serviced by Upgrade for 31 days or more and the customer's purchase has not yet been delivered, Participant agrees to take commercially reasonable efforts to cancel the purchase upon Upgrade's request and, if such cancellation is successful, to refund Upgrade in full within 30 days of Upgrade making such request.

**PAYMENT PROCESSING:** Participant hereby appoints Upgrade as Participant's payment collection agent solely for the purpose of accepting downpayments from Participant's customers on behalf of Participant. Participant agrees that a downpayment made by a customer to Upgrade for goods or services shall be considered the same as a payment made directly to Participant, and Participant will provide the purchased goods or services to the customer in the agreed-upon manner as if Participant had received the payment directly from the customer. Participant understands that Upgrade's obligation to transmit such a downpayment to Participant is subject to and conditional upon successful receipt of the associated payment from a customer. In accepting this appointment as limited payment collection agent, Upgrade assumes no liability for any of Participant's acts or omissions. Participant acknowledges that Participant is responsible for the security of payment card account data to the extent that Participant could impact the security of Upgrade's systems.

**USAGE RESTRICTIONS:** Participant agrees not to (i) require, add, or charge any fees, finance charges, or interest to prices charged to customers for the use of the Service or otherwise in connection with applying for or receiving financing pursuant to the Service; (ii) charge a different price or provide varying terms and conditions for goods or services for those customers using the Service as compared to those customers that are not using the Service, or otherwise discriminate among customers in any unlawful way; (iii) use the Services in any unlawful manner, for any unlawful purpose or in violation of applicable laws; or (iv) sell or offer for sale illegal, obscene, dangerous or drug-related materials or firearms or ammunition or any similar material.

Upgrade retains all right, title and interest in the Services and all work developed or created by Upgrade during the course of providing support or services to Participant. To the extent Participant acquires any right, title or interest in any component of the Services, Participant hereby irrevocably assigns, transfers and conveys to Upgrade all of its right, title and interest therein. Upgrade shall own any

suggestions, enhancement requests, recommendations or other feedback provided by Participant or Participant's customers relating to the operation of the Services.

**DATA PRIVACY AND SECURITY:** Participant agrees that any personally identifiable financial information of customers ("Customer Information") shall be collected solely by FdC. Upgrade shall not share, and Participant shall not be entitled to request, any Customer Information.

These Terms are governed exclusively by the internal laws of the State of California, without regard to its conflicts of law rules. Any dispute between Upgrade and Participant arising hereunder shall be brought exclusively in the courts located in San Francisco County, California and the parties hereto will only refer any dispute to the court after having done their utmost to resolve the dispute in mutual consultation. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to these Terms.

**LIABILITY:** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR PENALTIES (INCLUDING LOST PROFITS AND LOST SAVINGS) ARISING OUT OF THESE TERMS, DUE TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR PENALTIES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THIS LIMITATION OF LIABILITY WILL BE APPLICABLE ONLY TO THE EXTENT PERMITTED BY LAW IN THE EVENT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, OR IN THE EVENT OF PERSONAL INJURY OR DEATH. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THESE TERMS OR OTHERWISE ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UPGRADE DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. IN NO EVENT SHALL ANY PARTY'S AGGREGATE LIABILITY ARISING OUT OF THESE TERMS, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED TEN THOUSAND DOLLARS (\$10,000). UPGRADE HAS NO LIABILITY UNDER ANY PARTICIPANT CUSTOMER AGREEMENTS, AND PARTICIPANT HAS NO LIABILITY UNDER ANY UPGRADE CUSTOMER AGREEMENTS.