



Last Modified: February 16, 2024

### WELCOME TO SMARTPAY

Welcome to the SmartPay website, owned and operated by SmartPay Solutions, LLC and any of its subsidiaries or affiliates (“**SmartPay**,” “**we**,” “**us**” or “**our**”). These Terms of Service (“**Terms of Service**”) govern your use of the website located at [www.smartpayllc.com](http://www.smartpayllc.com) (the “**Site**”) and all related products, services, tools, mobile applications, web applications, and any other technology platforms or tools located at any SmartPay websites, including without limitation, successor website(s) or application(s) thereto (collectively, the “**Services**”). The terms “**you**,” “**your**” or “**user**” refers to you, the user. If you are using the Services on behalf of a business, association, or other entity, “**you**” or “**your**” will also refer to such business, association, or other entity, unless the context clearly dictates otherwise. You agree that you are authorized to consent to these terms on behalf of such business, association, or other entity, and we can rely on this.

### IMPORTANT NOTICES

PLEASE READ THESE TERMS OF SERVICE CAREFULLY, AS THEY CONTAIN AN AGREEMENT TO ARBITRATE AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THE AGREEMENT TO ARBITRATE REQUIRES (WITH LIMITED EXCEPTION) THAT YOU SUBMIT CLAIMS YOU HAVE AGAINST US TO BINDING AND FINAL ARBITRATION, AND FURTHER (a) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST SMARTPAY ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, (b) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, AND (c) YOU MAY NOT BE ABLE TO HAVE ANY CLAIMS YOU HAVE AGAINST US RESOLVED BY A JURY OR IN A COURT OF LAW.

#### *These Terms Set Forth a Legally Binding Agreement*

Please read these Terms of Service very carefully before accessing or using our Services. By using/continuing to use our Services, you acknowledge you have read and understand and agree to be bound by the Terms of Service, including those additional terms and conditions and policies referenced herein and/or available by hyperlink. Please print a copy of this agreement for your records. If you do not agree to all the terms and conditions of these Terms of Service, then you may not access or use any Services. If these Terms of Service are considered an offer, acceptance is expressly limited to these Terms of Service.

#### *Eligibility to Use the Services*

To use the Services you must be, and represent and warrant that you are, at least the age of majority in your state, province or jurisdiction of residence, or if you are under the age of majority in your state, province, or jurisdiction of residence, you represent and warrant that your parent or legal guardian has reviewed these Terms of Service with you and accepts them on your behalf; parents or legal guardians are responsible for the activities of their minor dependents while using the Services. You warrant and represent that you (a) have all necessary rights, power, and authority to

agree to these Terms of Service and perform your obligations hereunder, and (b) nothing contained in these Terms of Service or in the performance of such obligations will place you in breach of any other contract or obligation.

### ***Privacy Policy***

Please refer to our Privacy Policy for information about how we collect, use, store and disclose your personal information. [https://smartpayllc.com/forms/SmartPay\\_Privacy%20Policy.pdf](https://smartpayllc.com/forms/SmartPay_Privacy%20Policy.pdf)

#### **1. THE SERVICES ARE NOT AN OFFER TO SELL ANY INSURANCE PRODUCT OR SERVICES.**

THE INFORMATION CONTAINED ON THIS SITE IS NOT AN OFFER TO SELL OR A SOLICITATION TO BUY ANY INSURANCE PRODUCT OR SERVICE. THE PRECISE COVERAGE PROVIDED TO YOU BY ANY INSURER IS SUBJECT TO THE TERMS AND CONDITIONS OF THE INSURANCE POLICY AS ISSUED. THE INSURANCE POLICY PURCHASED, AND NOT THE GENERAL INFORMATION IN THIS SITE, FORMS THE CONTRACT BETWEEN YOU (THE INSURED) AND THE INSURANCE COMPANY. NO INSURANCE PRODUCT OR SERVICE IS OFFERED OR WILL BE SOLD BY SMARTPAY. USING, ACCESSING, AND/OR BROWSING THE SERVICES AND/OR PROVIDING PERSONAL INFORMATION TO SMARTPAY DOES NOT CREATE A PROFESSIONAL-CLIENT, OR SIMILAR RELATIONSHIP BETWEEN YOU AND SMARTPAY. NOTHING CONTAINED IN THE SERVICES IS INTENDED TO CREATE A PROFESSIONAL-CLIENT, OR SIMILAR RELATIONSHIP TO REPLACE THE SERVICES OF A LICENSED, TRAINED PROFESSIONAL, OR TO BE A SUBSTITUTE FOR ADVICE OF A LICENSED, TRAINED PROFESSIONAL. SMARTPAY MAKES NO REPRESENTATION THAT THE SERVICES, INFORMATION AND MATERIALS ON THIS SITE ARE APPROPRIATE OR AVAILABLE FOR USE IN ANY LOCATION. ANYONE WHO ACCESSES THIS SITE DOES SO VOLUNTARILY AND IS RESPONSIBLE FOR COMPLIANCE WITH ALL LAWS AND REGULATIONS.

#### **2. THE SERVICES**

- A. *Services.*** We reserve the right, but are not obligated, to limit the sales of our Services to any person, geographic region, or jurisdiction. We may exercise this right on a case-by-case basis, in our sole discretion. We reserve the right to limit the quantities of any Services that we offer. All descriptions of Services are subject to change at any time without notice, at the sole discretion of us. We reserve the right to discontinue any Service at any time. Any offer for any Service is void where prohibited.
- B. *Intellectual Property Ownership.*** All content on the Services (including, for example, text, designs, graphics, logos, icons, images, audio clips, downloads, interfaces, information, code and software, and the selection and manner of compilation and presentation) (collectively, the “**Content**”), is owned by SmartPay, our content providers, or our licensors (as applicable), and may be protected by copyright, trademark, and other applicable laws.

Your access to and use of the Services does not grant you any license or right to use any copyrighted materials or any trademark, logo, or service mark displayed on the Services. SmartPay, our content providers, or our licensors (as applicable) retain full and complete title to and reserve all rights in the material on the Services, including all



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associated intellectual property rights. SmartPay neither warrants nor represents that your use of materials on the Services will not infringe rights of third parties.

You may access the Services only for your permitted use under these Terms of Service, and you may not modify or delete any copyright, trademark, or other proprietary notice relating to any material you access. You agree not to display or use in any manner the SmartPay marks without SmartPay's advance written permission.

All software used on the Services is the property of SmartPay or our licensors and protected by United States and international copyright laws, and subject to separate license terms, in which case those license terms will govern such software. You agree not to reproduce, duplicate, copy, sell, resell, or exploit any portion of the Services, use of the Services, or access to the Services or any contact on the website through which the Services are provided, without express written permission by us.

All rights not expressly granted herein are reserved by SmartPay, our affiliates, and licensors. You agree to abide by all additional restrictions displayed on the Services as they may be updated from time to time.

- C. *Feedback.*** By sending us any feedback, comments, questions, ideas, proposals, or suggestions concerning SmartPay or any of our Services whether online, by email, by postal mail, or otherwise (collectively, “**Feedback**”), you represent and warrant (i) that you have the right to disclose the Feedback, (ii) that the Feedback does not violate the rights of any other person or entity, including, but not limited to, intellectual property rights, such as infringing a copyright, trademark, or patent; violating a right of privacy, attribution or withdrawal; or otherwise misappropriating a trade secret, and (iii) that your Feedback does not contain the confidential or proprietary information of any third party or parties. By sending us any Feedback, you further (1) agree that we are under no obligation of confidentiality, express or implied, with respect to the Feedback, (2) acknowledge that we may have something similar to the Feedback already under consideration or in development, and (3) grant us an irrevocable, non-exclusive, royalty-free, perpetual, worldwide license, under all intellectual property rights, to use, make, have made, incorporate into our Services, modify, copy, display, perform, distribute, prepare derivative works, publish, distribute, and sublicense the Feedback, without any credit or compensation to you. This Feedback section shall survive any termination of your account or any aspect of the Services.
- D. *Third-Party Websites.*** Certain content, products, and services available via the Services may include materials from third-parties or provide you with access to third-party tools, products, and resources over which we neither monitor nor have any control nor input. Further, third-party links on our Site may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy of any third-party materials or websites, or for any other materials, products, or services of third-parties. The views expressed in third-party materials, websites, resources, products, or services are those of such third-party, and do not necessarily reflect our views.

You acknowledge and agree that we provide access to such materials, products, websites, tools, and resources “as is” and “as available” without any warranties, representations, or conditions of any kind and without any endorsement. We do not warrant and will not have any liability or responsibility arising from or relating to third-party materials, websites, tools, products, and resources. Any use by you of third-party materials, tools, products, services, and resources offered through the Services is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which such items are provided by the relevant third-party provider(s).

We are not liable for any harm or damages related to the purchase or use of services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party's policies and practices and make sure you understand them before you engage in any transaction. You may not use third-party content without that third-party's permission, or as otherwise allowed by law. Complaints, claims, concerns, or questions regarding third-party products or services should be directed to the applicable third-party.

**E. *Errors, Inaccuracies and Omissions.*** Occasionally there may be information on the Services that contains typographical errors, inaccuracies, or omissions that may relate to Services' descriptions, pricing, promotions, offers, and availability. We reserve the right, without prior notice, to (i) correct any errors, inaccuracies, or omissions, and (ii) change or update information or cancel orders, if any information in the Services or on any related website is inaccurate at any time (including after you have submitted your order).

We undertake no obligation to update, amend, or clarify information in the Services or on any related website, including without limitation, pricing information, except as required by law. No specified update or refresh date applied in the Services or on any related website, should be taken to indicate that all information in the Services or on any related website has been modified or updated.

### 3. USER ACCOUNT AND SECURITY

**A. *Agreement to Provide Accurate Registration Information.*** If you wish to participate in certain aspects of the Services, you may need to register for an account on the Services (“**Account**”). By creating an Account, you agree to (i) provide accurate, current, and complete registration information about yourself, (ii) maintain and promptly update as necessary your Account information, (iii) maintain the security of your password and accept all risks of unauthorized access to your Account and the information you provide us, and (iv) immediately notify us if you discover or otherwise suspect any security breaches related to the Services or your Account.

By creating an Account, you consent to receive electronic communications from SmartPay (e.g., via email). These communications may include notices about your Account (e.g., password changes and other transactional information) and are part of your relationship with us. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including, but not limited to, that such communications



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- be in writing. We may also send you promotional communications via email, including, but not limited to, newsletters, special offers, surveys, and other news and information we think will be of interest to you. You may opt out of receiving these promotional emails at any time by emailing [support@smartpayllc.com](mailto:support@smartpayllc.com)
- B. *User is Responsible for Equipment and Software to Connect to Services.*** You must provide all equipment and software necessary to connect to the Services. You are solely responsible for any fees, including Internet connection or mobile fees, that you incur when accessing the Services.
- C. *User Submission of Personal Information.*** By submitting personal information through our Services, you agree to the terms of our Privacy Policy and you expressly consent to the collection, use and disclosure of your personal information in accordance with the Privacy Policy. You grant SmartPay and all other persons or entities involved in the operation of the Services the right to transmit, monitor, retrieve, store, and use your information in connection with the operation of the Services. SmartPay cannot and does not assume any responsibility or liability for any information you submit, or your or third parties' use or misuse of information transmitted or received using the Services.
- D. *SmartPay May Suspend Accounts.*** SmartPay reserves the right to terminate, suspend, or restrict your access to any Account(s) if (i) we discover you have created multiple Accounts for the same user, or (ii) we suspect that the Account(s) have been or will be used for any illegal, fraudulent, or otherwise unauthorized purposes. Under no circumstances shall SmartPay or other persons be responsible or liable for any direct, indirect, consequential, or other losses (including lost revenue, lost profits, lost business opportunities, loss of good will, or reputational harm), damages, or costs suffered by you or any other person or entity due to any such termination, suspension, or restriction of access to any Account(s).
- E. *User May Not Use the Services for Illegal Activity.*** You agree to use the Services only for purposes that are legal, proper, and in accordance with these Terms of Service and any applicable laws or regulations. Without limitation, you may not, and may not allow or encourage any third-party to: (i) undertake any unlawful activity which would violate, or assist in violation of, any law, statute, ordinance, or regulation, sanctions program administered in any relevant country; (ii) impersonate another person (via the use of an email address or otherwise); (iii) upload, post, transmit, or otherwise make available through the Services any content that infringes the intellectual or proprietary rights of any party; (iv) operate to defraud SmartPay, other users, or any other person; (v) provide false, inaccurate, or misleading information; (vi) use the Services to violate the legal rights (such as rights of privacy and publicity) of others; (vii) engage in, promote, or encourage illegal activity (including, without limitation, tax evasion or money laundering); (viii) harvest or otherwise collect information from the Services about others, including without limitation email addresses, without proper consent; (ix) exploit the Services for any unauthorized commercial purpose; (x) modify, adapt, translate, or reverse engineer any portion of the Services; (xi) remove any copyright, trademark, or other proprietary rights notices contained in or on the Services or any part of it; (x) use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the Services or the content posted on the Services, or



to collect information about its users for any unauthorized purpose; (xi) create user accounts by automated means, or under false or fraudulent pretenses; or (xii) access or use the Services for the purpose of creating a product or service that is competitive with any of our products or Services.

**F. Statistical Information.** We may derive and compile, either manually or automatically, anonymized, and aggregated data related to the performance, operation, and use of the Services (“**Statistical Information**”) including by you, and use such Statistical Information for our business purposes, including for operations management, for research and development, and for sharing with relevant parties. We own the rights in and to such Statistical Information.

#### 4. PAYMENT SERVICES; FEES

**A. Payment Processors.** SmartPay uses third-party providers (“**Payment Processors**”). You expressly authorize us or our Payment Processors to charge you for each transaction. You will provide all Payment Information directly to SmartPay. You represent and warrant that you have the legal right to use all payment method(s) represented by any such Payment Information. When you initiate a transaction through the Services, you authorize our Payment Processors to complete your transaction, and to charge your payment method for the transaction (plus any applicable taxes and other charges). You may need to provide additional information to verify your identity before completing your transaction (such information is included within the definition of Payment Information). By initiating a transaction, you agree to the pricing, payment, and billing policies applicable to such fees and charges, as posted or otherwise communicated to you. All fees and applicable taxes, if any, are payable in United States dollars.

**B. Cancelling Payment and Chargebacks.** You may only cancel a transaction pursuant to the policies as communicated to you by us or by our Payment Processors. We may institute a chargeback policy as we deem appropriate in the event that you or your bank does not honor a payment obligation or if our Payment Processors question our ability to collect funds from you. As part of such chargeback policy, we may in our sole discretion suspend, terminate, or otherwise limit your ability to use the Services or otherwise take any action we or our Payment Processors deem necessary.

**C. Fee Disputes.** If you have any concerns or objections regarding charges, you agree to raise them with us first and you agree not to cancel or reject any credit card or third-party payment processing charges unless you have made a reasonable attempt at resolving the matter directly with SmartPay.

**D. Future Functionality.** You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by SmartPay regarding future functionality or features.

#### 5. DMCA

SmartPay respects the intellectual property rights of others. It is our policy to respond promptly to any claim that Content infringes the copyright or other intellectual property rights of any person. SmartPay will use reasonable efforts to investigate notices of alleged infringement and will take appropriate action the Digital Millennium Copyright Act (“**DMCA**”) and these Terms

of Service. If you believe that your copyrighted work is infringed by Content, please provide a written DMCA notice to SmartPay at: [Service@SmartPayllc.com](mailto:Service@SmartPayllc.com)

**Filing a DMCA “Take Down” Notification.** If you are a copyright owner or an agent thereof and believe that any Content infringes upon your copyrights, you may submit a take-down notification (“**Take-Down Notification**”) pursuant to the DMCA by providing us with the following information in writing (see 17 U.S.C. § 512 for further detail):

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works, a representative list of such works at that website;
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; **\*\*Providing URLs in the body of your DMCA notification is the best way to help us locate content quickly\*\***
- (iv) Information reasonably sufficient to permit us to contact you (the complaining party), such as an address, telephone number, and electronic mail address at which you (the complaining party) may be contacted;
- (v) A statement that you (the complaining party) have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that you (the complaining party) are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; and
- (vii) **\*\*Optional**) Provide information, if possible, sufficient to permit us to notify the user(s) who posted the content that allegedly contains infringing material.

*Any person who knowingly materially misrepresents that content or an activity is infringing or that any material or activity was removed or disabled by mistake or misidentification, shall be liable to us and possibly others for any damages, including costs and attorneys’ fees incurred by us in removing or disabling access to the material or activity claimed to be infringing or in replacing the removed material or enabling access to it.*

## 6. INDEMNIFICATION

You agree to indemnify, defend and hold harmless SmartPay and its subsidiaries, affiliates, partners, officers, directors, agents, contractors, licensors, service providers, subcontractors, suppliers, interns, and employees, harmless from and against any and all losses, claims, damages, judgments, demands, actions, proceedings, investigations (whether formal or informal), or expenses (including reasonable attorneys’ fees), or threats thereof, due to, arising out of or relating to (a) your breach of these Terms of Service or the documents they



incorporate by reference, (b) your violation of (i) any law or (ii) the rights of a third-party, or (c) your use of the Services.

In the event of such a claim, suit, or action, we will attempt to provide you notice of the claim, suit, or action at the contact information we have for your account/on file (provided, that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder). SmartPay reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with SmartPay in asserting any available defenses. You agree that the provisions in this section will survive any termination of your account, these Terms of Service, or your access to the Services, including the purchase or use of any benefits through the Services.

### 7. DISCLAIMERS AND LIMITATIONS ON OUR LIABILITY

TO THE EXTENT PERMITTED BY APPLICABLE LAW, SMARTPAY AND ITS OFFICERS, EMPLOYEES, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, AND LICENSORS DISCLAIM ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

**A. *SmartPay Makes No Representations or Warranties; Disclaimer.*** THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE.” TO THE EXTENT PERMITTED BY APPLICABLE LAW, SMARTPAY AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY OR COMPLETENESS OF CONTENT AVAILABLE ON OR THROUGH THE SERVICES, OR THE CONTENT OF ANY THIRD-PARTY WEBSITES OR SERVICES LINKED TO OR INTEGRATED WITH OUR SERVICES. WE DO NOT REPRESENT OR WARRANT THAT (i) YOUR USE OF OUR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (ii) ANY ERRORS IN THE SERVICE WILL BE CORRECTED, (iii) THE QUALITY OF THE SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU WILL MEET YOUR EXPECTATIONS, (iv) THE SERVICES WILL BE FREE OF ANY WORMS OR VIRUSES OR ANY CODE OF A MALICIOUS AND/ OR DESTRUCTIVE NATURE, OR (v) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE. YOU (AND NOT SMARTPAY) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

SMARTPAY AND ITS AFFILIATES WILL HAVE NO LIABILITY FOR ANY: (i) ERRORS, MISTAKES OR INACCURACIES OF CONTENT; (ii) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM YOUR ACCESS TO OR USE OF THE SERVICES OR CONSUMPTION OF ANY CONTENT; (iii) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS OR OF ANY PERSONAL INFORMATION OR USER DATA; (iv) ANY INTERRUPTION OF





TRANSMISSION TO OR FROM THE SERVICES; (v) ANY BUGS, VIRUSES, TROJAN HORSES OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE SERVICES; (vi) ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED OR SHARED THROUGH THE SERVICES; OR (vii) LOSS OR DAMAGED CAUSED BY ANOTHER USER'S VIOLATION OF THESE TERMS OF SERVICE.

**B. *Limitation on Liability.*** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL SMARTPAY AND ITS AFFILIATES, OFFICERS, DIRECTORS, AFFILIATES, AGENTS, CONTRACTORS, REPRESENTATIVES, INTERNS, SUPPLIERS, SERVICE PROVIDERS, OR LICENSORS BE RESPONSIBLE FOR ANY LOSS INCLUDING, WITHOUT LIMITATION, LOST PROFITS, REVENUES, OR FINANCIAL LOSSES, OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM THESE TERMS OF SERVICE OR THE SERVICES, OR FOR ANY DAMAGES RELATED TO THE LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE, LOSS OF GOODWILL OR LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE AND EVEN IF SMARTPAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL THE MAXIMUM TOTAL LIABILITY OF SMARTPAY AND ITS AFFILIATES, FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THESE TERMS OF SERVICE OR THE ACCESS TO AND USE OF THE SERVICES, EXCEED THE LESSER OF (i) \$100 OR (ii) TO THE TOTAL AMOUNT YOU PAID TO SMARTPAY IN FEES OVER THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

Some jurisdictions do not allow the exclusion of certain warranties and limitations of liability provided in this Section. If you are in such a jurisdiction, some of the above limitations and disclaimers may not apply to you. To the extent we may not, as a matter of applicable law, disclaim any implied warranty or limit our liabilities, the scope and duration of such warranty and the extent of our liability will be the minimum permitted by applicable law.

## 8. COMMUNICATIONS

SmartPay may communicate with you using email, phone calls, chatbots and text messages, including autodialed or prerecorded calls and text messages, at any email address or telephone number that you provide us, to: (a) notify you regarding your Account; (b) provide customer support; (c) troubleshoot problems with your Account; (d) resolve a dispute; (e) collect a debt; (f) poll your opinions through surveys or questionnaires; or (g) as otherwise necessary to service your account or enforce these Terms of Service, our policies, applicable law, or any other agreement we may have with you.

SmartPay may route phone and text communications through a third-party service provider, and we or the service provider may record telephone conversations or chatbot exchanges you



have with SmartPay or its agents for quality control and training purposes, or for our own protection.

### 9. DISPUTE RESOLUTION

- A. *Mandatory Arbitration of Disputes.*** We each agree that any dispute, claim, or controversy arising out of or relating to these Terms of Service or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, “**Disputes**”) will be resolved solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding. You and SmartPay agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms of Service, and that you and SmartPay are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these Terms of Service.
- B. *Exceptions.*** As limited exceptions to Section 8.a. above: (i) we both may seek to resolve a Dispute in small claims court if it qualifies; and (ii) we each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our respective intellectual property rights.
- C. *Conducting Arbitration and Arbitration Rules.*** The arbitration will be conducted by the American Arbitration Association (“**AAA**”) under its Consumer Arbitration Rules (the “**AAA Rules**”) then in effect, except as modified by these Terms of Service. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at [www.adr.org](http://www.adr.org).
- D. *Arbitration Costs.*** Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules, and each party shall bear its own costs and expenses of arbitration, including legal fees.
- E. *Injunctive and Declaratory Relief.*** Except as provided in Section 9.b. above, the arbitrator shall determine all issues of liability on the merits of any claim asserted by either party and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. To the extent that you or we prevail on a claim and seek public injunctive relief (that is, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that litigation of any issues of public injunctive relief shall be stayed pending the outcome of the merits of any individual claims in arbitration.
- F. *Class Action Waiver.*** YOU AND SMARTPAY AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, if the parties’ Dispute is resolved through arbitration, the arbitrator may not consolidate another person’s claims with your claims, and may not otherwise preside over any form



of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.

### 10. MISCELLANEOUS TERMS

- A. *These Terms May Change.*** We reserve the right, at our sole discretion, to update, change, modify, or replace any part of these Terms of Service by posting updates and changes to the Site. We may elect to notify you of such changes by mail, email, posting of modified Terms of Service, or some other similar manner. However, it is your responsibility to check the Site regularly for changes to these Terms of Service. Your continued use of or access to the Site or the Services following the posting of any changes to these Terms of Service constitutes acceptance of those changes.
- B. *Severability.*** In the event that any provision of these Terms of Service is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms of Service, such determination shall not affect the validity and enforceability of any other remaining provisions.
- C. *Termination.*** These Terms of Service are effective unless and until terminated by either you or us. You may terminate these Terms of Service at any time by notifying us that you no longer wish to use the Services, or when you cease using our Services.

We are free to terminate (or suspend access to) to your use of the Services (or any part thereof) or your Account, if (i) you fail, or we suspect that you have failed, to comply with any term or provision of these Terms of Service, or (ii) for any other reason in our sole discretion. We also may terminate these Terms of Service at any time without notice. Even after your right to use the Services is terminated, the obligations and liabilities of the parties incurred prior to the termination date shall survive the termination and the Terms of Service will remain enforceable against you.

Provisions that, by their nature, should survive termination of these Terms of Service shall survive termination. By way of example, but without limitation, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, and any terms regarding ownership or intellectual property rights.

- D. *No Assignment of the Terms of Service.*** You may not assign these Terms of Service to any other party. We may assign these Terms of Service or delegate any or all of our rights and responsibilities under these Terms of Service to any third parties, without notice to you.
- E. *Governing Law and Jurisdiction.*** These Terms of Service and all disputes arising out of or relating to the Terms of Service shall be governed by, construed, and enforced in accordance with the laws of the State of Connecticut in the United States, without regard to its conflict of laws principles. These disputes will be resolved exclusively in the federal and state courts in the State of Connecticut, and you and we consent to personal jurisdiction in those courts.



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- F. Waiver.** No delay or omission by us in exercising any rights or remedies thereunder shall impair such right or remedy or be construed as a waiver of any such right or remedy. Any single or partial exercise of a right or remedy by us shall not preclude further exercise or any right or remedy by us. No waiver by us shall be valid unless in writing signed by us.
- G. Headings.** The headings used in the Terms of Service are included for convenience only and will not limit or otherwise affect these Terms of Service.
- H. Entire Agreement.** These Terms of Service and any policies or operating rules posted by us on this website or in respect to the Services constitutes the complete and exclusive agreement and understanding between you and us related to the Services, and supersedes any prior or contemporaneous agreements, communications and proposals, whether oral or written, between you and us (including, but not limited to, any prior versions of the Terms of Service). Any ambiguities in the interpretation of these Terms of Service shall not be construed against the drafting party.
- I. Contact Information.** Questions about the Terms of Service should be sent to us at [Service@SmartPayllc.com](mailto:Service@SmartPayllc.com)