



## Referral Agency and Packaging Agency Agreement

Please read this Referral Agency and Packaging Agency Agreement (the “Agreement”) carefully. In signing this Agreement, you acknowledge that you have read, understood and agree to be bound by each and every provision set forth herein. If there is any term, condition, or provision of this Agreement that you do not understand, you may seek independent legal counsel to assist you.

This Agreement is made and entered into between BillFloat, Inc. doing business as SmartBiz Loans (“SmartBiz”, “we”, “us”, “our”, or the “SmartBiz Team”) and you (“You” or “Client”). Client is a business seeking loan financing assistance under Section 7(a) of the Small Business Act, (“7(a) Loan Program”) and SmartBiz is willing to assist with the loan application services necessary to apply for such a 7(a) Loan, or other business loan (“Non-SBA Loan”). Therefore, Client and SmartBiz agree as follows:

### 1. Referral to Lenders

The SmartBiz Team will assist Client by identifying lenders who may be appropriate to extend a 7(a) Loan to Client and will introduce Client to such lenders, at our sole discretion, and subject to Client’s prior consent. The SmartBiz Team will use its knowledge of preparing loan applications in order to focus its introduction of Client to lenders likely to approve a loan to Client. Subject to Client’s prior consent, SmartBiz may introduce Client to providers of Non-SBA Loans.

### 2. Referral Fee

Our Referral Fee will be less than or equal to two percent (2%) of the amount of the loan Client accepts from a lender to whom the SmartBiz Team made a referral (or up to three percent (3%) for Non-SBA Loans). You agree that the Referral Fee will be paid directly to us by the lender from Client’s loan proceeds.

### 3. Packaging of Loan Application

If Client meets the pre-qualification criteria for a Small Business Administration (“SBA”)-approved lender, Client will be given the option of retaining the services of the SmartBiz Team to prepare Client’s loan application in a manner that streamlines the application process and organizes Client’s information in a way that a lender can more accurately and quickly underwrite it. The service of preparing the Client’s loan application is called Packaging. When the Client asks the SmartBiz Team to prepare Client’s loan application, then the SmartBiz Team becomes the Packaging Agent for Client. Subject to Client’s prior consent, SmartBiz may provide Packaging services to prepare Client’s application for a Non-SBA Loan.

Because Client is required to pay the Packaging Fee even if Client’s loan is not ultimately funded, we will engage in extensive prequalification of Client’s business and use commercially reasonable efforts to only package a loan application for an Client if we believe, based on the information Client has provided to us, that Client’s business is eligible to receive the loan for which we help it apply. It remains Client’s responsibility to ensure that the information Client provides to us about Client’s business is not contradicted by documents, such as, but not

limited to, tax returns, that lenders with whom we work may request when reviewing Client's application.

#### **4. Packaging Fee**

Our Packaging Fee will be less than or equal to two percent (2%) of the amount of the loan amount applied for by Client (or up to three percent (3%) for Non-SBA Loans). If Client's loan is approved, you agree to allow the Lender to directly pay us the Packaging fee from Client's loan proceeds.

#### **5. We Are Not a Lender**

SmartBiz is not an SBA lender. We identify appropriate lenders to work with small businesses and help those small businesses to quickly prepare accurate loan applications. We do not control the loan application evaluation process of the SBA lenders with whom we work. These lenders retain full control of the loan underwriting process. We have no authority to bind either a lender or the SBA.

#### **6. Client's Responsibility for Accuracy**

IT IS CLIENT'S RESPONSIBILITY TO ENSURE THAT ANY INFORMATION IT PROVIDES TO THE SMARTBIZ TEAM IS ACCURATE AND IS NOT CONTRADICTED BY BUSINESS RECORDS AND PUBLIC FILINGS, SUCH AS, BUT NOT LIMITED TO CLIENT'S TAX RETURNS AND CORPORATE FILINGS. Lenders with whom the SmartBiz Team works will check all or part of Client's loan application against documents such as tax returns that Client has provided to the IRS in the past. The SmartBiz Team cannot effectively refer Client to an appropriate lender or help prepare a loan application unless the information Client has provided us is accurate. Because 7(a) Loans are guaranteed by the federal government, there may be criminal consequences for Clients that provide misinformation in seeking an SBA loan.

#### **7. Client's Responsibility for Timeliness**

In order to assist Client in finding a lender and applying for a loan, we require up to date information about Client's business and its principal shareholders, directors, and officers. For this reason, we require that Client complete our forms within thirty (30) days of the time that Client begins filling them out. If Client does not complete our application forms within this thirty (30) day timeframe, Client may be required to fill the forms out again in order to proceed with having us refer Client to a lender and package Client's loan application.

#### **8. Client's Responsibility to Notify Us of Change of Circumstances**

Client agrees to immediately notify the SmartBiz Team of any material adverse change in Client's financial condition, and the absence of such notification shall be considered a continuing statement that no such unfavorable change has occurred. Such notification should be sent via email to support@SmartBizloans.com.

#### **9. SBA Requirements for Loan Applications**

The SBA does not require the use of an Agent for Packaging Services or referring a loan application in order to apply for an SBA loan. If you apply for a SBA loan of more than \$25,000, a lien on fixed business assets is required (includes assets such as accounts receivable, inventory, new equipment purchased with loan proceeds, and commercial real estate owned by the business).

#### **10. 7(a) Loan Requirements Subject to Change**

The charges, rules, regulations and procedures related to Client's 7(a) Loan application are governed by federal regulations. Such federal regulations are subject to change, and therefore, the information contained herein is subject to change. Additional requirements or changes may be imposed by a lender or the SBA. Client is responsible for understanding all requirements, costs and restrictions applicable to the 7(a) Loan program. Client is encouraged to seek the advice of its own legal counsel before and during the entirety of the 7(a) Loan application process. By signing this Agreement, Client acknowledges it has read, understands, and agrees to be bound by each and every provision set forth herein.

#### **11. Use of Third Party Service Providers**

We may use third party service providers to assist in providing packaging and referral services with or without notice to You (each, a "Third Party Service Provider"). We may also change Third Party Service Providers or may provide a packaging and/or referral service without the assistance of such third party. You consent and authorize us to delegate the authorizations you provide to us to our Third Party Service Provider(s) as we deem necessary or desirable to provide the applicable packaging and/or referral service to you.

You agree that the terms and conditions of this Agreement, including any of the other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement, inure to the benefit of such Third Party Service Providers and such Third Party Service Providers are deemed to be third party beneficiaries of this Agreement, including any other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement. You also agree that all references to us within this Agreement and any incorporated terms are also deemed to include, where applicable, our agents, such as the Third Party Service Providers.

Third Party Service Providers who are authorized to use or maintain your personal information will be required to maintain its privacy and confidentiality.

#### **12. Inquiries about Client**

Client agrees that the SmartBiz Team may make credit inquiries and receive confidential business, personal, financial, and credit information about Client and the principal shareholders, officers, directors and key employees of Client, that the SmartBiz Team deems necessary in connection with its provision of referral and packaging services to Client. Client herein authorizes any person, financial institutions, and/or credit reporting agency to comply and furnish such information.

#### **13. Termination**

We may terminate our loan packaging services and all other obligations under this Agreement upon written notice to Client. Client may terminate the loan packaging services of the SmartBiz Team upon written notice.

#### **14. Privacy and Your Information**

The SmartBiz Privacy Policy (accessible at <http://www.smartbizloans.com/privacy-policy>) is incorporated into this Agreement. This policy explains how SmartBiz protects the privacy of nonpublic business and personal information you share with us and how we use it. The policy may change from time to time at our discretion. Changes will be effective upon posting to the Site.

You acknowledge that we may disclose and transfer any information that you provide through this Site to (i) SmartBiz's affiliates, lenders, agents or information providers; (ii) to any other person or entity with your consent; or (iii) if we have a right or duty to disclose or are permitted or compelled to so disclose such information by law. You consent to the transmission, transfer or processing of such information to, or through, any country in the world, as we deem necessary or appropriate, and by using and providing information through this Site you agree to such transfers.

Use of this Site may be monitored, tracked and recorded. Anyone using this Site expressly consents to such monitoring, tracking and recording. You are responsible for being familiar with the current version of these Terms and Conditions posted on the Site during each session.

### **15. Indemnification**

Client will indemnify and hold SmartBiz and its officers, directors, employees, agents, and attorneys harmless from any and all loss, damage or injury (including attorneys' fees incurred with attorneys of our choice) resulting from failure by Client to receive a 7(a) Loan or a 7(a) Loan guaranty authorization by the SBA (or a Non-SBA Loan) and/or any loss, damage or liability to Client or the business of Client. We shall not be liable for any of the debts, expenses or obligation incurred by Client or on its behalf in preparing any loan Application Package and/or introducing Client to potential lenders. Further, Client hereby agrees to indemnify SmartBiz and hold SmartBiz harmless from any loss, liability, claim, demand, cost, charge or damage arising out of or related to this Agreement and defend SmartBiz against any demand, claim or charge made against SmartBiz arising out of or related to this Agreement, including, without limitation, any attorneys fees incurred by SmartBiz in defending any such action.

### **16. No Representations or Warranties**

Client understands and acknowledges that the SmartBiz Team cannot and does not make representations or warranties as to the likelihood of Client obtaining a loan. Client acknowledges and agrees that the SmartBiz Team and its agents and representatives have made no representations, promises or warranties to Client and that Client has not relied on any representation, promise or warranty of the SmartBiz Team and its agents and/or representatives regarding approval for and/or obtaining a loan. The SmartBiz Team makes no representation as to the length of time to: a) prepare the loan package, b) submit the loan package to a lender, c) for the lender to review the application, and/or d) any other actions implied by this Agreement.

### **17. Limitation of Liability**

IN NO EVENT WILL SMARTBIZ BE LIABLE FOR ANY DAMAGES INCLUDING GENERAL, SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR ANY OTHER DAMAGES, LOSSES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS INTERRUPTION) OF ANY KIND WHETHER IN AN ACTION IN CONTRACT OR NEGLIGENCE ARISING OR RELATING IN ANY WAY TO THE PROVISION OF REFERRAL SERVICES AND/OR PACKAGING SERVICES, EVEN IF SMARTBIZ, OUR REPRESENTATIVES THEREOF, ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR EXPENSES. YOUR SOLE

REMEDY FOR DISSATISFACTION WITH THE SMARTBIZ TEAM AND ITS REFERRAL SERVICES AND/OR PACKAGING SERVICES IS TO CANCEL YOUR REGISTRATION ON THE SMARTBIZ WEBSITE AND WITHDRAW ANY LOAN APPLICATIONS YOU HAVE OUTSTANDING. IF THE FOREGOING LIMITATION IS FOUND TO BE INVALID, YOU AGREE THAT SMARTBIZ'S TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION OF ANY KIND OR NATURE SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

#### **18. Consultation with Counsel**

If you do not understand any aspect of this Agreement or its terms and conditions, you are advised to consult with your own legal counsel for advice. IT IS IMPORTANT THAT YOU UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT BECAUSE THEY WILL BE BINDING UPON YOU.

#### **19. Applicable Law**

This Agreement and all other aspects of your use of the Site shall be governed by and construed in accordance with the laws of the United States and, to the extent applicable, the laws of the State of California, without regard to its conflict of laws rules.

#### **20. Arbitration and Dispute Resolution**

I HAVE READ THIS PROVISION CAREFULLY AND UNDERSTAND THAT IT LIMITS MY RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND ME. I UNDERSTAND THAT I HAVE THE RIGHT TO REJECT THIS PROVISION AS PROVIDED IN PARAGRAPH (b) BELOW.

a. Either party to this Agreement, may, at its sole election, require that the sole and exclusive forum and remedy for resolution of a Claim be final and binding arbitration pursuant to this section (the "Arbitration Provision"), unless you opt out as provided in section (b) below. As used in this Arbitration Provision, "Claim" shall include any past, present, or future claim, dispute, or controversy involving you (or persons claiming through or connected with you), on the one hand, and us (or persons claiming through or connected with us), on the other hand, relating to or arising out of this Agreement, the Referral Agency and Packaging Agency Agreement, the Site, and/or the activities or relationships that involve, lead to, or result from any of the foregoing, including (except to the extent provided otherwise in the last sentence of section (f) below) the validity or enforceability of this Arbitration Provision, any part thereof, or the entire Agreement. Claims are subject to arbitration regardless of whether they arise from contract; tort (intentional or otherwise); a constitution, statute, common law, or principles of equity; or otherwise. Claims include matters arising as initial claims, counter-claims, cross-claims, third-party claims, or otherwise. The scope of this Arbitration Provision is to be given the broadest possible interpretation that is enforceable.

b. You may opt out of this Arbitration Provision for all purposes by sending an arbitration opt out notice to SmartBiz Loans, 417 Montgomery St., Suite 600, San Francisco CA, 94106, Attention: Legal Department, which is received at the specified address within 30 days of the date of your electronic acceptance of the terms of this Agreement. The opt out notice must clearly state that you are rejecting arbitration; identify the Agreement to which it applies by date; provide your name, address, and social security number; and be signed by you. You may send an opt out notice in any manner you see fit as long as it is received at the specified address within the specified time. No other methods can be used to opt out of this Arbitration Provision. If the opt out notice is sent on your behalf by a third party, such third party must include evidence of his or her authority to submit the opt out notice on your

behalf.

c. If a Claim arises, our goal is to learn about and address your concerns and, if we are unable to do so to your satisfaction, to provide you with a neutral and cost effective means of resolving the dispute quickly. You agree that before filing any claim in arbitration, you may submit Claims by sending an email to [legal@smartbizloans.com](mailto:legal@smartbizloans.com) at any time.

The party initiating arbitration shall do so with the American Arbitration Association (the "AAA") or Judicial Alternatives and Mediation Services ("JAMS"). The arbitration shall be conducted according to, and the location of the arbitration shall be determined in accordance with, the rules and policies of the administrator selected, except to the extent the rules conflict with this Arbitration Provision or any countervailing law. If you have any questions concerning the AAA or would like to obtain a copy of the AAA arbitration rules, you may call 1(800) 778-7879 or visit the AAA's web site at: [www.adr.org](http://www.adr.org). If you have any questions concerning JAMS or would like to obtain a copy of the JAMS arbitration rules, you may call 1(800) 352-5267 or visit their web site at: [www.jamsadr.com](http://www.jamsadr.com). In the case of a conflict between the rules and policies of the administrator and this Arbitration Provision, this Arbitration Provision shall control, subject to countervailing law, unless all parties to the arbitration consent to have the rules and policies of the administrator apply.

d. If we elect arbitration, we shall pay all the administrator's filing costs and administrative fees (other than hearing fees). If you elect arbitration, filing costs and administrative fees (other than hearing fees) shall be paid in accordance with the rules of the administrator selected, or in accordance with countervailing law if contrary to the administrator's rules. We shall pay the administrator's hearing fees for one full day of arbitration hearings. Fees for hearings that exceed one day will be paid by the party requesting the hearing, unless the administrator's rules or applicable law require otherwise, or you request that we pay them and we agree to do so. Each party shall bear the expense of its own attorneys' fees, except as otherwise provided by law. If a statute gives you the right to recover any of these fees, these statutory rights shall apply in the arbitration notwithstanding anything to the contrary herein.

e. Within 30 days of a final award by the arbitrator, any party may appeal the award for reconsideration by a three-arbitrator panel selected according to the rules of the arbitrator administrator. In the event of such an appeal, any opposing party may cross-appeal within 30 days after notice of the appeal. The panel will reconsider de novo all aspects of the initial award that are appealed. Costs and conduct of any appeal shall be governed by this Arbitration Provision and the administrator's rules, in the same way as the initial arbitration proceeding. Any award by the individual arbitrator that is not subject to appeal, and any panel award on appeal, shall be final and binding, except for any appeal right under the Federal Arbitration Act ("FAA"), and may be entered as a judgment in any court of competent jurisdiction.

f. We agree not to invoke our right to arbitrate an individual Claim you may bring in Small Claims Court or an equivalent court, if any, so long as the Claim is pending only in that court. NO ARBITRATION SHALL PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS (INCLUDING AS PRIVATE ATTORNEY GENERAL ON BEHALF OF OTHERS), EVEN IF THE CLAIM OR CLAIMS THAT ARE THE SUBJECT OF THE ARBITRATION HAD PREVIOUSLY BEEN ASSERTED (OR COULD HAVE BEEN ASSERTED) IN A COURT AS CLASS REPRESENTATIVE, OR COLLECTIVE ACTIONS IN A COURT. Unless consented to in writing by all parties to the arbitration, no party to the arbitration may join, consolidate, or otherwise bring claims for or on behalf of two or more individuals or unrelated corporate entities in the same

arbitration unless those persons are parties to a single transaction. Unless consented to in writing by all parties to the arbitration, an award in arbitration shall determine the rights and obligations of the named parties only, and only with respect to the claims in arbitration, and shall not (a) determine the rights, obligations, or interests of anyone other than a named party, or resolve any Claim of anyone other than a named party; nor (b) make an award for the benefit of, or against, anyone other than a named party. No administrator or arbitrator shall have the power or authority to waive, modify, or fail to enforce this section (f), and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable. Any challenge to the validity of this section (f) shall be determined exclusively by a court and not by the administrator or any arbitrator.

g. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by and enforceable under the FAA. The arbitrator will apply substantive law consistent with the FAA and applicable statutes of limitations. The arbitrator may award damages or other types of relief permitted by applicable substantive law, subject to the limitations set forth in this Arbitration Provision. The arbitrator will not be bound by judicial rules of procedure and evidence that would apply in a court. The arbitrator shall take steps to reasonably protect confidential information.

h. This Arbitration Provision shall survive (i) suspension, termination, revocation, closure, or amendments to this Agreement and the relationship of the parties and/or SmartBiz; and (ii) the bankruptcy or insolvency of any party or other person. If any portion of this Arbitration Provision other than section (f) is deemed invalid or unenforceable, the remaining portions of this Arbitration Provision shall nevertheless remain valid and in force. If an arbitration is brought on a class, representative, or collective basis, and the limitations on such proceedings in section (f) are finally adjudicated pursuant to the last sentence of section (f) to be unenforceable, then no arbitration shall be had. In no event shall any invalidation be deemed to authorize an arbitrator to determine Claims or make awards beyond those authorized in this Arbitration Provision.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT HAVE THAT RIGHT IF ANY PARTY ELECTS ARBITRATION PURSUANT TO THIS ARBITRATION PROVISION. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO LITIGATE SUCH CLAIMS IN A COURT BEFORE A JUDGE OR JURY UPON ELECTION OF ARBITRATION BY ANY PARTY.

#### **21. Waiver**

Failure by SmartBiz to enforce any of its rights under this Agreement shall not be construed as a waiver of those rights or any other rights in any way whatsoever.

#### **22. Severability**

If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall be enforced to the fullest extent possible, and the remaining provisions of the Agreement shall remain in full force and effect.

#### **23. Entire Agreement**

This Agreement sets forth the entire agreement between the parties hereto regarding packaging services and referral services and fully supersedes all prior oral and/or written agreements, understandings, commitments, and practices between the parties pertaining to the subject matter hereof. Neither the course of conduct between parties nor trade practice shall act to modify any

provision of the Agreement. This Agreement is intended to be read in conjunction other agreements between the parties, including Terms of Service (<http://www.smartbizloans.com/terms-of-service>), Privacy Policy (<http://www.smartbizloans.com/privacy-policy>), and Consent to Electronic Communications and Electronic Signatures (<http://www.smartbizloans.com/electronic-consent>).

#### **24. Successors and Assigns**

This Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns.

#### **25. Headings**

Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

Last updated: June, 2019.