



## **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 “Applicant”). Applicant 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. Therefore, Applicant and SmartBiz agree as follows:

### **1. Referral to Lenders**

The SmartBiz Team will assist Applicant by identifying lenders who may be appropriate to extend a 7(a) Loan to Applicant and will introduce Applicant to such lenders, at our sole discretion. The SmartBiz Team will use its knowledge of the loan underwriting and evaluation criteria of lenders in order to focus its introduction of Applicant to lenders on the lenders likely to approve a loan to Applicant.

### **2. Referral Fee**

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

### **3. Packaging of Loan Application**

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

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

to ensure that the information Applicant provides to us about Applicant'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 Applicant'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 Applicant. If Applicant's loan is approved, you agree to allow the Lender to directly pay us the Packaging fee from Applicant'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. Applicant's Responsibility for Accuracy**

IT IS APPLICANT'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 APPLICANT'S TAX RETURNS AND CORPORATE FILINGS. Lenders with whom the SmartBiz Team works will check all or part of Applicant's loan application against documents such as tax returns that Applicant has provided to the IRS in the past. The SmartBiz Team cannot effectively refer Applicant to an appropriate lender or verify that Applicant meets a lender's underwriting criteria unless the information Applicant has provided us is accurate. Because 7(a) Loans are guaranteed by the federal government, there may be criminal consequences for Applicants that provide misinformation in seeking an SBA loan.

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

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

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

Applicant agrees to immediately notify the SmartBiz Team of any material adverse change in Applicant'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 an SBA loan of more than \$25,000, a lien on business assets is required, including assets such as accounts receivable or inventory, as well as fixed assets such as new equipment purchased with loan proceeds, and commercial real estate owned by the business. The lender may require additional collateral, as well.

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

The charges, rules, regulations and procedures related to Applicant'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. Applicant is responsible for understanding all requirements, costs and restrictions applicable to the 7(a) Loan program. Applicant 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, Applicant 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 Applicant**

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

#### **13. Termination**

We may terminate our 7(a) Loan packaging services and all other obligations under this Agreement upon written notice to Applicant. Applicant 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 SmartBiz Privacy Policy posted on the Site during each session.

### **15. Indemnification**

Applicant 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 Applicant to receive a 7(a) Loan or a 7(a) Loan guaranty authorization by the SBA and/or any loss, damage or liability to Applicant or the business of Applicant. We shall not be liable for any of the debts, expenses or obligation incurred by Applicant or on its behalf in preparing the 7(a) Loan Application Package and/or introducing Applicant to potential lenders. Further, Applicant 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**

Applicant understands and acknowledges that the SmartBiz Team cannot and does not make representations or warranties as to the likelihood of Applicant obtaining a loan. Applicant acknowledges and agrees that the SmartBiz Team and its agents and representatives have made no representations, promises or warranties to Applicant and that Applicant 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 and Dispute Resolution**

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. You agree that you will notify SmartBiz in writing of any claim or dispute concerning or relating to the Site and the information or services provided through it, and give SmartBiz a reasonable period of time to address it BEFORE bringing any legal action, either individually, as a class member or representative, or as a private attorney general, against SmartBiz.

Any action against SmartBiz arising from or relating to your access to and use of the Site and the provisions of these Terms and Conditions must be brought by you in state or federal court located in the State of California, City and County of San Francisco. You consent to the jurisdiction and venue of the state and federal courts located within the State of California, City and County of San Francisco, for the adjudication of all claims by SmartBiz against you arising from or relating to your access to and use of the Website and the provisions of these Terms and Conditions.

#### **20. 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.

#### **21. 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.

#### **22. 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>).

**23. 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.

**24. Headings**

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