



## Terms and Conditions

Last updated October 15, 2023

### AGREEMENT TO TERMS

These Terms of Use constitute a legally binding agreement made between you, whether personally or on behalf of an entity ("you") and Smart Cleaning - Cleaning Services INC., as simply called Smart Cleaning ("Smart Cleaning - Cleaning Services INC. as simply called Smart Cleaning", "we", "us", or "our"), concerning your access to and use of the <https://smartcleaningnyc.com> website as well as any other media for media channel mobile website or mobile application related, linked, or otherwise connected thereto (collectively, the "Site"). The Site provides an online marketplace for the following goods, products, and/or services: House cleaning services (the "Marketplace Offerings"). In order to help make the Site a secure environment for the purchase and sale of Marketplace Offerings, all users are required to accept and comply with these Terms of Use. You agree that by accessing the Site and/or the Marketplace Offerings, you have read, understood, and agree to be bound by all of these Terms of Use. IF YOU DO NOT AGREE WITH ALL OF THESE TERMS OF USE, THEN YOU ARE EXPRESSLY PROHIBITED FROM USING THE SITE AND/OR THE MARKETPLACE OFFERINGS AND YOU MUST DISCONTINUE USE IMMEDIATELY.

Supplemental terms and conditions or documents that may be posted on the Site from time to time are hereby expressly incorporated herein by reference. We reserve the right, in our sole discretion, to make changes or modifications to these Terms of Use at any time and for any reason. We will alert you about any changes by updating the "Last updated" date of these Terms of Use, and you waive any right to receive specific notice of each such change. It is your responsibility to periodically review these Terms of Use to stay informed of updates. You will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms of Use by your continued use of the Site after the date such revised Terms of Use are posted.

The information provided on the Site is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject us to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Site from other locations do so on their own initiative and are solely responsible for compliance with local laws. If and to the extent local The Site is intended for users who are at least 13 years of age, All users who are minors in the jurisdiction in which they reside generally under the age of 18) must have the permission of, and be directly supervised by, their parent or guardian to use the Site. If you are a minor, you must have your parent or guardian read and agree to these Terms of Use prior to you using the Site.

### INTELLECTUAL PROPERTY RIGHTS

Unless otherwise indicated, the Site and the Marketplace Offerings are our proprietary property and all source code, databases, functionality, software, website designs, audio, video, text photographs, and graphics on the Site (collective the content) and the trademarks, service marks, and logos contained therein (the "Marks") are owned or controlled by us or licensed to us, and are protected by copyright and trademark laws and various other intellectual property rights and unfair competition laws of the United States, foreign jurisdictions, and international conventions. The Content and the Marks are provided on the Site as "IS" for your information and personal use only. Except as expressly provided in these Terms of Use, no part of the Site or the Marketplace Offerings and no Content or Marks may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without our express prior written permission. Provided that you are eligible to use the Site, you are granted a limited license to access and use the Site and to download or print a copy of any portion of the Content to which you have properly gained access solely for your personal, non-commercial use. We reserve all rights not expressly granted to you in and to the Site, the Content and the Marks.

### USER REPRESENTATIONS

By using the Site or the Marketplace Offerings, you represent and warrant that: (1) all registration information you submit will be true, accurate, current, and complete; (2) you will maintain the accuracy of such information and

promptly update such registration information as necessary; (3) you have the legal capacity and you agree to comply with these Terms of Use; (4) you are not under the age of 13; (5) you are not a minor in the jurisdiction in which you reside, or if a minor, you have received parental permission to use the Site; (6) you will not access the Site or the Marketplace Offerings through automated or non human means, whether through a bot, script or otherwise; (7) you will not use the Site for any illegal or unauthorized purpose and (8) your use of the Site or the Marketplace Offerings will not violate any applicable law or regulation.

If you provide any information that is untrue, inaccurate, not current, or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the Site (or any portion thereof).

You may not use the Site or the Marketplace Offerings for any illegal or unauthorized purpose nor may you, in the use of Marketplace Offerings, violate any laws. Among unauthorized Marketplace Offerings are the following: intoxicants of any sort, illegal drugs or other illegal products; alcoholic beverages; games of chance; and pornography or graphic adult content, images, or other adult products. Postings of any unauthorized products or content may result in immediate termination of your account and a lifetime ban from use of the Site.

We are a service provider and make no representations as to the safety, effectiveness, adequacy, accuracy, availability, prices, ratings, reviews, or legality of any of the information contained on the Site or the Marketplace Offerings displayed or offered through the Site. You understand and agree that the content of the Site does not contain or constitute representations to be reasonably relied upon, and you agree to hold us harmless from any errors, omissions, or misrepresentations contained within the Site's content. We do not endorse or recommend any Marketplace Offerings and the Site is provided for informational and advertising purposes only.

## **USER REGISTRATION**

You may be required to register with the Site in order to access the Marketplace Offerings. You agree to keep your password confidential and will be responsible for all use of your account and password. We reserve the right to remove, reclaim, or change a username you select if we determine, in our sole discretion, that such username is inappropriate, obscene, or otherwise objectionable.

## **MARKETPLACE OFFERINGS**

We reserve the right to limit the quantities of the Marketplace Offerings offered or available on the Site. All descriptions or pricing of the Marketplace Offerings are subject to change at any time without notice, at our sole discretion. We reserve the right to discontinue any Marketplace Offerings at any time for any reason. We do not warrant that the quality of any of the Marketplace Offerings purchased by you will meet your expectations or that any errors in the Site will be corrected.

## **PURCHASES AND PAYMENT**

We accept the following forms of payment:

Visa

Mastercard

Discover

Venmo (acc. @smartcleaning)

Zelle (acc. info@smartcleaningnyc.com)

You agree to provide current, complete, and accurate purchase and account information for all purchases of the Marketplace Offerings made via the Site. You further agree to promptly update account and payment information, including email address, payment method, and payment card expiration date, so that we can complete your transactions and contact you as needed. Sales tax will be added to the price of purchases as deemed required by us. We may change prices at any time. All payments shall be in U. S. dollars. Once charges have been incurred, they are considered conclusive and non-refundable.

You agree to pay all charges at the prices then in effect for your purchases and any applicable shipping fees, and you authorize us to charge your chosen payment provider for any such amounts upon placing your order. If your order is subject to recurring charges, then you consent to our charging your payment method on a recurring basis.

without requiring your prior approval for each recurring charge, until such time as you cancel the applicable order. We reserve the right to correct any errors or mistakes in pricing, even if we have already requested or received payment.

We reserve the right to refuse any order placed through the Site. We may, in our sole discretion, limit or cancel quantities purchased per person, per household, or per order. These restrictions may include orders placed by or under the same customer account, the same payment method, and/or orders that use the same billing or shipping address. We reserve the right to limit or prohibit orders that, in our sole judgment, appear to be placed by dealers, resellers, or distributors.

Customer acknowledge that a Customer's personal assessment shall not be deemed an objective evaluation of the quality of the rendered Services and cannot serve as a basis for a refund request.

## **REFUND POLICY**

### STANDARD Cancellation policy

- You can cancel a Booking on the Website, over email, text messaging, free of charge, up to 23 hours before the Service is scheduled to take place
- The Customer can amend and/or reschedule the Booking no more than TWO times up to 12 hours before the Service is scheduled to begin.
- NO REFUND If the Customer cancel the booking within 23 hours before the Service is scheduled to begin
- NO REFUND If the Customer or their representative did not show up within 30 min after beginning of the scheduled appointment or a cleaning person wasn't able to gain access to the premises.
- The Customer may amend or extend a Booking during the performance of the Services if the Company has available time slot and the cleaner has required skills/ equipment.
- If the Customer cancel the Booking during the performance of the Service NO REFUND will be provided.
- Rescheduled Booking is not eligible for refund.
- The Cleaning Agreement shall expire once the Services under the Booking have been performed.
- If the Business is unable to fulfill a confirmed Booking (in full or part). we will attempt to find you a replacement Business. If we cannot find you an alternative Business, we will reschedule your Booking to a new time which suits your convenience, If we cannot find a suitable time for you, you may cancel the Booking at no charge.

FLEXIBLE rescheduling - additional service fee all Services(except for Flat Rate) - \$20+tax..

- If added, the Customer will be able to reschedule the Booking, once, at any time, up to 1 min before scheduled Service.
- May be added before Standard non-refundable period has begun for Rescheduling.
- Rescheduled Booking is not eligible for refund.

FLEXIBLE cancellation - additional service fee.

- If added, the Customer will be able to cancel the Booking, once, at any time, up to 1 min before scheduled Service.
- Additional cancellation fee will be charged, if such cancellation has occurred - \$40.
- Cannot be added within non-refundable period for Cancellation.

#### **ADDITIONAL CHARGES:**

\$300 once every yearly cycle for adding any additional name requested by Customer to Company's Insurance Policy. NON-REFUNDABLE.

#### **PROHIBITED ACTIVITIES**

You may not access or use the Site for any purpose other than that for which we make the Site available. The Site may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by us.

As a user of the Site, you agree not to:

1. Systematically retrieve data or other content from the Site to create or compile, directly or indirectly, a collection compilation, database, or directory without written permission from us.
2. Make any unauthorized use of the Marketplace Offerings, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses.
3. Use the Site to advertise or offer to sell goods and services.
4. Circumvent, disable, or otherwise interfere with security-related features of the Site, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the Site and/or the Content contained therein.
5. Trick, defraud, or mislead us and other users, especially in any attempt to learn sensitive account information such as user passwords.
6. Make Improper use of our support services or submit false reports of abuse or misconduct.
7. Engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots, or similar data gathering and extraction tools.

8. Interfere with, disrupt, or create an undue burden on the Site or the networks or services connected to the Site.
9. Attempt to impersonate another user or person or use the username of another user.
10. Use any information obtained from the Site in order to harass, abuse, or harm another person.
11. Use the Marketplace Offerings as part of any effort to compete with us or otherwise use the Site and/or the Content for any revenue-generating endeavor or commercial enterprise.
12. Decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the Site.
13. Attempt to bypass any measures of the Site designed to prevent or restrict access to the Site, or any portion of the Site.
14. Harass, annoy, intimidate, or threaten any of our employees or agents engaged in providing any portion of the Marketplace Offerings to you.
15. Delete the copyright or other proprietary rights notice from any Content.
16. Copy or adapt the Sites software, including but not limited to Flash, PHP, HTML, Javascript, or other code.
17. Upload or transmit(or attempt to upload or to transmit)viruses, Trojan horses, or other material, including excessive use of capital letters and spamming(continuous posting of repetitive text), that interferes with any parts uninterrupted use and enjoyment of the Site or modifies, impairs, disrupts, alters, or interferes with the use, features, functions, operation, or maintenance of the Marketplace Offerings.
18. Upload or transmit(or attempt to upload or to transmit)any material that acts as a passive or active information collection or transmission mechanism, including without limitation, clear graphics interchange formats(gis ), 1x1 pixels, web bugs, cookies, or other similar devices(sometimes referred to as"spyware"or"passive collection mechanisms or pcms).
19. Disparage, tarnish, or otherwise harm, in our opinion, us and/or the Site.
20. Use the Site in a manner inconsistent with any applicable laws or regulations.

## **GUIDELINES FOR REVIEWS**

We may provide you areas on the Site to leave reviews or ratings. When posting a review, you must comply with the following criteria you should have firsthand experience with the person/entity being reviewed; (2)your reviews should not contain offensive profanity, or abusive, racist, offensive, or hate language(3)your reviews should not contain discriminatory references based on religion, race, gender, national origin, age, marital status, sexual orientation, or disability; (4) your reviews should not contain references to illegal activity; (5)you should not be affiliated with

competitors if posting negative reviews (6)you should not make any conclusions as to the legality of conduct; (7)you may not post any false or misleading statements; and(8)you may not organize a campaign encouraging others to post reviews, whether positive or negative.

We may accept, reject, or remove reviews in our sole discretion. We have absolutely no obligation to screen reviews or to delete reviews, even if anyone considers reviews objectionable or inaccurate. Reviews are not endorsed by us, and do not necessarily represent our opinions or the views of any of our affiliates or partners. We do not assume liability for any review or for any claims, liabilities, or losses resulting from any review. By posting a review you hereby grant to us a perpetual, non-exclusive, worldwide royalty-free, fully-paid, assignable, and sub licensable right and license to reproduce, modify, translate, transmit by any means, display, perform, and/or distribute all content relating to reviews.

## **SOCIAL MEDIA**

As part of the functionality of the Site, you may link your account with online accounts you have with third-party service providers (each such account, a "Third-party Account") by either: (1) providing our Third-party Account login information through the Site or (2) allowing us to access your Third-party Account, as is permitted under the applicable terms and conditions that govern your use of each Third-party Account. You represent and warrant that you are entitled to disclose your Third-party Account login information to us and/or grant us access to your Third-party Account, without breach by you of any of the terms and conditions that govern your use of the applicable Third-party Account, and without obligating us to pay any fees or making us subject to any usage limitations imposed by the third-party service provider of the Third-party Account. By granting us access to any Third-Party Accounts, you understand that(1)we may access, make available, and store(if applicable)any content that you have provided to and stored in your Third-party Account(the "Social Network Content")so that it is available on and through the Site via your account, including without limitation any friend lists and(2)we may submit to and receive from your Third-party Account additional information to the extent you are notified when you link your account with the Third-party Account. Depending on the Third-party Accounts you choose and subject to the privacy settings that you have set in such Third-party Accounts, personally identifiable information that you post to your Third-party Accounts may be available on and through your account on the Site. Please note that if a Third-party Account or associated service becomes unavailable or our access to such Third-party Account is terminated by the third-party service provider, then Social Network Content may no longer be available on and through the Site. You will have the ability to disable the connection between your account on the Site and your Third-party Accounts at any time. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD-PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS. We make no effort to review any Social Network Content for any purpose, including but not limited to for accuracy, legality, or non-infringement, and we are not responsible for any Social Network Content. You acknowledge and agree that we may access your email address book associated with a Third-party Account and your contacts list stored on your mobile device or tablet computer solely for purposes of identifying and informing you of those contacts who have also registered to use the Site. You can deactivate the connection between the Site and your Third-party Account by contacting us using the contact information below or through your account settings(if applicable). We will attempt to delete any information stored on our servers that was obtained through such Third-party Account, except the username and profile picture that become associated with your account.

## **SUBMISSIONS**

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback, or other information regarding the Site or the Marketplace Offerings(Submissions)provided by you to us are non-confidential and shall become our sole property. We shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any lawful purpose, commercial or otherwise, without acknowledgment or compensation to you. You hereby waive all moral rights to any such Submissions, and you hereby warrant that any such Submissions are original with you or that you have the right to submit such Submissions. You agree there shall be no recourse against us for any alleged or actual infringement or misappropriation of any proprietary right in your Submissions

### **THIRD-PARTY WEBSITES AND CONTENT**

The Site may contain (or you may be sent via the Site or the Marketplace Offerings) links to other websites ("Third-party Websites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software, and other content or items belonging to or originating from third parties ("third-party Content"). Such Third-party Websites and Third-party Content are not investigated, monitored, or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Websites accessed through the Site Site or any Third-party Content posted on available through, or installed from the Site, including the content, accuracy, offensiveness, opinions, reliability, privacy practices, or other policies of or contained in the Third-party Websites or the Third-party Content. Inclusion of, linking to, or permitting the use or installation of any Third-party Websites or any Third-party content does not imply approval or endorsement thereof by us. If you decide to leave the Site and access the Third-party Websites or to use or install any Third-party own risk, and you should be aware these Terms of Use no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any website to which you navigate from the Site or relating to any applications you use or install from the Site. Any purchases you make through Third-party Websites will be through other websites and from other companies, and we take no responsibility whatsoever in relation to such purchases which are exclusively between you and the applicable third party. You agree and acknowledge that we do not endorse the products or services offered on Third-party Websites and you shall hold us harmless from any harm caused by your purchase of such products or services. Additionally, you shall hold us harmless from any losses sustained by you or harm caused to you relating to or resulting in any way from any Third-party Content or any contact with Third-party Websites.

### **SITE MANAGEMENT**

We reserve the right, but not the obligation, to: (1) monitor the Site for violations of these Terms of Use; (2) take appropriate legal action against anyone who, in our sole discretion, violates the law or these Terms of Use, including without limitation, reporting such user to law enforcement authorities; (3) in our sole discretion and without limitation, refuse, restrict access to, limit the availability of, or disable (to the extent technologically feasible) any of your Contributions or any portion thereof; (4) in our sole discretion and without imitation notice, or liability, to remove from the Site or otherwise disable all files and content that are excessive in size or are in any way burdensome to our systems; and (5) otherwise manage the Site in a manner designed to protect our rights and property and to facilitate the proper functioning of the Site and the Marketplace Offerings.

### **PRIVACY POLICY**

We care about data privacy and security. By using the Site or the Marketplace Offerings, you agree to be bound by our Privacy Policy posted on the Site, which is incorporated into these Terms of Use. Please be advised the Site and the Marketplace Offerings are hosted in the United States. If you access the Site or the Marketplace Offerings from the European Union, Asia, or any other region of the world with laws or other requirements governing personal data collection, use, or disclosures that differ from applicable laws in the United States, then through your continued use of the Site, you are transferring your data to the United States, and you expressly consent to have your data transferred to and processed in the United States. Further, we do not knowingly accept, request, or solicit information from children or knowingly market to children. Therefore, in accordance with the U.S. Children's Online Privacy Protection Act, if we receive actual knowledge that anyone under the age of 13 has provided personal information to us without the requisite and verifiable parental consent, we will delete that information from the Site as quickly as is reasonably practical.

### **TERM AND TERMINATION**

These Terms of Use shall remain in full force and effect while you use the Site WITHOUT LIMITING ANY OTHER PROVISION OF THESE TERMS OF USE, WE RESERVE THE RIGHT TO IN OUR SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO AND USE OF THE SITE AND THE MARKETPLACE OFFERINGS (INCLUDING BLOCKING CERTAIN IP ADDRESSES), TO ANY PERSON FOR ANY REASON OR FOR NO REASON, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY OR

COVENANT CONTAINED IN THESE TERMS OF USE OR OF ANY APPLICABLE LAW OR REGULATION. WE MAY TERMINATE YOUR USE OR PARTICIPATION IN THE SITE AND THE MARKETPLACE OFFERINGS OR DELETE YOUR ACCOUNT AND ANY CONTENT OR INFORMATION THAT YOU POSTED AT ANY TIME, WITHOUT WARNING IN OUR SOLE DISCRETION.

If we terminate or suspend your account for any reason, you are prohibited from registering and creating a new account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of the third party. In addition to terminating or suspending your account, we reserve the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.

## **MODIFICATIONS AND INTERRUPTIONS**

We reserve the right to change, modify, or remove the contents of the Site at any time or for any reason at our sole discretion without notice. However, we have no obligation to update any information on our Site. We also reserve the right to modify or discontinue all or part of the Marketplace Offerings without notice at any time. We will not be liable to you or any third party for any modification, price change, suspension, or discontinuance of the Site or the Marketplace Offerings.

We cannot guarantee the Site and the Marketplace Offerings will be available at all times. We may experience hardware, software, or other problems or need to perform maintenance related to the Site, resulting in interruptions, delays, or errors. We reserve the right to change, revise, update, suspend, discontinue, or otherwise modify the Site or the Marketplace Offerings at any time or for any reason without notice to you. You agree that we have no liability whatsoever for any loss, damage, or inconvenience caused by your inability to access or use the Site or the Marketplace Offerings during any downtime or discontinuance of the Site or the Marketplace Offerings. Nothing in these Terms of Use will be construed to obligate us to maintain and support the Site or the Marketplace Offerings or to supply any corrections, updates, or releases in connection therewith.

## **GOVERNING LAW**

These Terms of Use and your use of the Site and the Marketplace Offerings are governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be entirely performed within the State of New York, without regard to its conflict of law principles.

## **DISPUTE RESOLUTION**

**Informal Negotiations** To expedite resolution and control the cost of any dispute, controversy, or claim related to these Terms of Use (each dispute and collectively, the "Disputes") brought by either you or us (individually, a "Party" and collectively, the "Parties"), the Parties agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) days before initiating arbitration. Such informal negotiations commence upon written notice from one Party to the other Party.

### **Binding Arbitration**

If the Parties are unable to resolve a Dispute through informal negotiations, the Dispute (except those Disputes expressly excluded below) will be finally and exclusively resolved by binding arbitration. YOU UNDERSTAND THAT WITHOUT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) and, where appropriate, the AAAS Supplementary Procedures for Consumer Related Disputes ("AAA Consumer Rules"), both of which are available at the AAA website [www.adr.org](http://www.adr.org). Your arbitration fees and your share of arbitrator compensations shall be governed by the AAA Consumer Rules and, where appropriate, limited by the AAA Consumer Rules. If such costs are determined to be excessive, we will pay all arbitration fees and expenses. The arbitration may be conducted in person, through the submission of documents, by phone, or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by either Party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator



fails to do so. Except where otherwise required by the applicable AAA rules or applicable law, the arbitration will take place in United States County, New York. Except as otherwise provided herein, the Parties may litigate in court to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

If for any reason, a Dispute proceeds in court rather than arbitration, the Dispute shall be commenced or prosecuted in the state and federal courts located in United States County, New York, and the Parties hereby consent to, and waive all defenses of lack of personal jurisdiction, and forum non conveniens with respect to venue and jurisdiction in such state and federal courts application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act(UCITA)are excluded from these Terms of Use.

In no event shall any Dispute brought by either Party related in any way to the Site be commenced more than one(1) years after the cause of action arose. If this provision is found to be illegal or unenforceable, then neither Party will elect to arbitrate any Dispute falling within that portion of this provision found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the courts listed for jurisdiction above, and the Parties agree to submit to the personal jurisdiction of that court.

### **Restrictions**

The Parties agree that any arbitration shall be limited to the Dispute between the Parties individually. To the full extent permitted by law, (a)no arbitration shall be joined with any other proceeding: (b)there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and(c)there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

### **Exceptions to Informal Negotiations and Arbitration**

The Parties agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (a )any Disputes seeking to enforce or protect, or concerning the validity of, any of the intellectual property rights of a Party; (b )any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorized use, and (c)any claim for injunctive relief. If this provision is found to be illegal or unenforceable, then neither Party will elect to arbitrate any Dispute falling within that portion of this provision found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the courts listed for jurisdiction above, and the Parties agree to submit to the personal jurisdiction of that court.

### **CORRECTIONS**

There may be information on the Site that contains typographical errors, inaccuracies, or omissions that may relate to the Marketplace Offerings, including e, pricing availability, and various other information. We reserve the right to correct any errors, inaccuracies, or omissions and to change or update the information on the Site at any time, without prior notice.

### **DISCLAIMER**

THE SITE AND THE MARKETPLACE OFFERINGS ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. YOU AGREE

THAT YOUR USE OF THE SITE AND OUR SERVICES WILL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED IN CONNECTION WITH THE SITE AND THE MARKETPLACE OFFERINGS AND YOUR USE THEREOF INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SITES CONTENT OR THE CONTENT OF ANY WEBSITES LINKED TO THE SITE AND

WE WILL ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (1) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (2) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE, (3) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (4) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE OR THE MARKETPLACE OFFERINGS, (5) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE BY ANY THIRD PARTY, AND/OR (6) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SITE, ANY HYPERLINKED WEBSITE, OR ANY WEBSITE OR MOBILE APPLICATION FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND ANY THIRD PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

### **LIMITATIONS OF LIABILITY**

IN NO EVENT WILL WE OR OUR DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST REVENUE, LOSS OF DATA, OR OTHER DAMAGES ARISING FROM YOUR USE OF THE SITE OR THE MARKETPLACE OFFERINGS. EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO US DURING THE SIX (6) MONTH PERIOD PRIOR TO ANY CAUSE OF ACTION ARISING. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

### **INDEMNIFICATION**

You agree to defend, indemnify, and hold us harmless, including our subsidiaries, affiliates, and all of our respective officers, agents, partners, and employees, from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of: (1) use of the Marketplace Offerings; (2) breach of these Terms of Use; (3) any breach of your representations and warranties set forth in these Terms of Use; (4) your violation of the rights of a third party, including but not limited to intellectual property rights; or (5) any overt harmful act toward any other user of the Site or the Marketplace Offerings with whom you connected via the Site. Notwithstanding the foregoing, we reserve the right at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate, at your expense, with our defense of such claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

### **USER DATA**

We will maintain certain data that you transmit to the Site for the purpose of managing the performance of the Marketplace Offerings, as well as data relating to your use of the Marketplace Offerings. Although we perform regular routine backups of data, you are solely responsible for all data that you transmit or that relates to any activity you have undertaken using the Marketplace Offerings. You agree that we shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against us arising from any such loss or corruption of such data.

## **ELECTRONIC COMMUNICATIONS. TRANSACTIONS AND SIGNATURES**

Visiting the Site, sending us emails, and completing online forms constitute electronic communications. You consent to receive electronic communications, and you agree that all agreements, notices, disclosures, and other communications we provide to you electronically, via email and on the Site, satisfy any legal requirement that such communication be in writing. YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES CONTRACTS ORDERS. AND OTHER RECORDS, AND TO ELECTRONIC DELIVERY OF NOTICES POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED BY US OR VIA THE SITE. You hereby waive any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by any means other than electronic means.

## **CALIFORNIA USERS AND RESIDENTS**

If any complaint with us is not satisfactorily resolved, you can contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento California 95834 or by telephone at (800)952-5210 or (916)445-1254

## **MISCELLANEOUS**

These Terms of Use and any policies or operating rules posted by us on the Site or in respect to the Marketplace Offerings constitute the entire agreement and understanding between you and us. Our failure to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of such right or provision. These Terms of Use operate to the fullest extent permissible by law. We may assign any or all of our rights and obligations to others at any time. We shall not be responsible or liable for any loss, damage, delay, or failure to act caused by any cause beyond our reasonable control. If any provision or part of a provision of these Terms of Use is determined to be unlawful, void, or unenforceable, that provision or part of the provision is deemed severable from these Terms of Use and does not affect the validity and enforceability of any remaining provisions. There is no joint venture, partnership, employment or agency relationship created between you and us as a result of these Terms of Use or use of the Marketplace Offerings. You agree that these Terms of Use will not be construed against us by virtue of having drafted them. You hereby waive any and all defenses you may have based on the electronic form of these Terms of Use and the lack of signing by the parties hereto to execute these Terms of Use.

## **CONTACT US**

In order to resolve a complaint regarding the Site or the Marketplace Offerings or to receive further information regarding use of the Site or the Marketplace Offerings, please contact us at:

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