

EG America Terms of Use

Effective Date: December 19, 2022

To download and/or print this Terms of Use (“Terms”), [click here](#).

Please read these Terms carefully before using our websites and any online services, or apps provided by EG America, LLC or its Affiliates (collectively, “Company”, “we”, or “us” or “our”) that post a link to these Terms (the “Services”). By visiting or otherwise using the Services in any manner, you agree to the then-posted Terms), to be bound by them, and that you have read and understood them. You also acknowledge, agree and consent to our data practices as described in our [Privacy Policy](#).

These Terms affect your legal rights, responsibilities and obligations and govern your use of the Service, are legally binding, limit Company’s liability to you and require you to indemnify us and to settle certain disputes through individual arbitration.

BY VISITING, ACCESSING, OR USING THE SERVICES YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND THE TERMS, AND THAT YOU AGREE TO COMPLY WITH AND BE LEGALLY BOUND BY THE TERMS.

If you are accepting or agreeing to the Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to act on behalf of and bind that entity to the Terms.

IF YOU DO NOT AGREE TO THE TERMS, DO NOT ACCESS OR USE THE SERVICES AND UNINSTALL ALL APPS.

Quick Links

We have summarized some (but not all) of the main topics of these Terms below. The complete provisions, and not the headings or summaries govern.

- **Grants and Limitations of Rights**
 - We only grant you a limited revocable license to use the Services subject to rules and limitations.
 - Your use of our Services is subject to various restrictions designed to protect the Services and users.
- **Limitations on Your Remedies**

As permitted by applicable law,

- We also disclaim most warranties and provide the Services “As Is”.
- Our liability is greatly limited.
- Your equitable or injunctive relief rights are limited.

- **Dispute Resolution**

- As permitted by law, you agree to arbitrate disputes and waive jury trial and class actions.

- **Availability of Service**

- We may change or discontinue our Service, or your right to access it, in whole or in part.
- Our Services are intended for access from and use in the U.S.A.

YOUR ACCESS TO AND USE OF THE SERVICES ARE CONDITIONED ON YOUR ACCEPTANCE OF AND COMPLIANCE WITH THESE TERMS.

1. ABOUT THE TERMS

1.1 Key Terms

As used in these Terms:

(a) **“Account”** refers to a SmartPay RewardsSM account including any subaccounts relating to such account.

(b) **“Affiliates”** refers to any corporation, unincorporated organization, limited liability company or other entity that, directly or indirectly is controlled by or is under common control with EG America, LLC including Certified Oil Corporation, Cumberland Farms, Inc., Fastrac EG, LLC, Kwik Shop, Inc., Mini Mart, Inc. d/b/a “Loaf N Jug,” Quik Stop Markets, Inc., Minit Mart, LLC, Junior Food Stores of West Florida Inc. d/b/a “Tom Thumb” or “Sprint,” TH Minit Markets, LLC, and TH Midwest, Inc.

(c) **“App”** refers to any downloadable mobile application owned and operated by Company through which access to the Services is available. References to an “App” includes any and all features, functionality, tools and content available on or through the [SmartPay RewardsSM](#) application or any application where a link to these Terms appear.

(d) **“Linked Users”** refers to individuals that you designate as secondary account holders to access and use your SmartPay RewardsSM account.

(e) **“Users”** means any and all persons that access or use the Services. References to “access” and/or “use” of the Services (and any variations thereof) include the acts of accessing or browsing the App, and accessing or using our websites.

1.2 Updates to Terms

Company reserves the right, in its sole discretion, to amend the Terms, at any time and without prior notice, including to change, modify, add to, update or remove terms and conditions (collectively “amend” or “update”). If we choose to amend the Terms, we will update the Effective Date at the top of the Terms and post the updated version. We may also, at our option, choose to notify you by e-mail or another means. By continuing to use the Services after we have posted an updated version of the Terms or otherwise notified you of an update, you are affirming that you agree to be bound by the amended Terms. This provision is subject to the limitations described in

Section 10 below. You can reject any new, revised or additional terms by discontinuing use of the Services.

EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICES YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICES (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICES AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS.

Any new Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs.

1.3 Consequences of Non-Compliance

Your right to use the Services and all of the content therein (“Content”) is subject to your strict compliance with these Terms and the Supplemental Terms. Your right to access and use the Services and the Intellectual Property (defined below) shall automatically terminate upon any violations.

2. ABOUT THE SERVICES

2.1 Rights to Use the Services and Content

Subject to your compliance with the Terms, Company grants you a limited non-exclusive, non-transferable, non-assignable and non-sublicensable license to access and use the Services, including the right to download and install a copy of the App on each mobile device that you own or control, for your own personal or internal use only, and not for use for any external business purpose or commercial activity. This license is granted for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Company, in the manner permitted by the Terms.

These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Services and the content is personal to you, you may not assign nor transfer your right; any attempt to do so is void.

2.2 Acknowledgements

YOU AFFIRM THAT YOU HAVE READ THE FOREGOING AND ACKNOWLEDGE THAT:

(a) CERTAIN FEATURES AND FUNCTIONALITIES OF THE SERVICES ARE ONLY AVAILABLE FOR USE AT PARTICIPATING COMPANY LOCATIONS.

(b) COMPANY DOES NOT AND CANNOT GUARANTEE THAT THE SERVICES WILL BE CONTINUOUS OR ERROR-FREE.

(c) IF YOUR MOBILE OR DATA PLAN SERVICES OR ACCESS TO THE INTERNET OR OUR SERVICES IS/ARE SUSPENDED, CANCELLED OR TERMINATED (E.G., AS A RESULT OF BILLING ISSUES OR OTHER BREACH), YOU MAY NOT BE ABLE TO USE SOME OR ALL OF THE SERVICES.

(d) YOU ARE EXCLUSIVELY RESPONSIBLE FOR YOUR AND YOUR LINKED USERS' USE OF THE SERVICES THROUGH YOUR ACCOUNT OR OTHERWISE. ABUSE OF THE SERVICES MAY SUBJECT YOU TO CIVIL AND CRIMINAL FINES AND PENALTIES.

2.3 Modifications and Updates to the Services

Company reserves the right, in its sole discretion, to modify or discontinue offering the Services, in whole or in part, or any features, functionality, tools or content thereof, at any time, for any reason or no reason, with or without notice to you. We also retain the right to impose limits on your use and storage of any content or use of any Services at our sole discretion at any time without prior notice to you.

We may from time to time develop and provide updates for the App, which may include upgrades, bug fixes, patches and other error corrections and/or new features, functionality, tools or content (collectively, "Updates"). Updates may also modify or delete features, functionality, tools or content in their entirety. Based on your mobile device settings, when your mobile device is connected to the internet either: (a) the Updates will automatically download and install; or (b) you may receive notice of or be prompted to download and install available Updates. Please promptly download and install all Updates. If you do not, portions of the App may not properly operate. All Updates will be deemed part of the App and be subject to all terms and conditions of the Terms.

You agree that Company has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or content, and will not be liable with respect to any such modifications, discontinuance or deletions.

2.4 International Users

The Services are controlled and operated within the United States and are not intended for use outside of the United States. You are hereby prohibited from accessing or using the Services from any territory where the Services or any of the features, functionality, tools, content thereof, are illegal. If you choose to access the Services from a location outside the United States, you do so at your own risk and you are solely responsible for compliance with applicable laws, rules and regulations, including export laws and any regulations and local laws regarding online conduct and content.

2.5 Credit Checks

For individual consumer Users, in order to use SmartPay RewardsSM, Company will obtain a credit report regarding such User from National Payment Card Association, d/b/a Zipline in accordance with the Payment Terms & Conditions for SmartPay RewardsSM available [here](#).

2.6 Rewards & Restricted Content

From time to time, Company may provide eligible customers opportunities to receive and participate, through the Services or otherwise, certain coupons, clubs, rewards, member pricing,

discounts, promotional messages or similar content related to specific products sold by Company (“Rewards”), including but not limited to opt-in/opt-out opportunities for age-restricted products such as alcohol or tobacco (“Restricted Content”), which opportunities may be exclusive to a particular Service User or subset of Users. A determination of eligibility for Rewards may be based upon information provided to Company through your enrollment and use of the Services, such as information about your age, your state of residence, and your purchase history, such as that related to the Rewards or Restricted Content. By using the Services, you consent to such Rewards opportunities, including opt-in/opt-out Restricted Content, upon a determination of eligibility in the sole discretion of Company. For more details regarding the Rewards program, please visit the SmartPay RewardsSM [website](#).

3. USER CONDUCT GUIDELINES

Any time you access or use the Services, you are required to comply with our User conduct guidelines, as set forth below. You are not authorized to access or use the Services:

- (a) to impersonate any person or entity, or falsify or otherwise misrepresent your identity, credentials, affiliations or intentions;
- (b) to systematically retrieve information or content to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;
- (c) if you are a person barred from receiving services under the laws of the United States or other applicable jurisdiction; or
- (d) for any other purposes that are not expressly permitted by the Terms.
- (e) to designate a Linked User under the age of sixteen (16);
- (f) to access, copy, distribute, share, publish, use or store any Services content, including by disclosing, selling, renting, distributing or exposing any Services content to a third party, using it for marketing purposes, or otherwise using it for any purposes unrelated to the Services;
- (g) to access, copy, distribute, share, publish, use or store, or prepare derivative works from any Services content that belongs to Company or any third party, including works covered by any copyrights, trademark, patent, or other intellectual property right, except with prior express permission of the person or entity party holding the rights to license such use;
- (h) to transfer your Account to another party without our consent;
- (i) to circumvent our systems, policies, determinations as to your Account status, including by attempting to access or use the Services if your Account has been suspended or cancelled or you have otherwise been temporarily or permanently prohibited or blocked from using the Account;
- (j) to access, search, collect information from, or otherwise interact with the Services by “scraping,” “crawling” or “spidering” the Services, by the use of any software, device, script or robot, or by any other means (automated or otherwise) other than through the currently available, published interfaces that are provided by Company, unless you have been specifically authorized to do so in a separate agreement with Company;

(k) to use, display, mirror or frame the Services, or any feature, functionality, tool or content of the Services, Company's name, any Company trademark, logo or other proprietary information, without Company's express written consent;

(l) to interfere with, disrupt, damage or compromise the Services or our systems or the access of any User, host or network in any way, including through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, backdoors, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology or by overloading, flooding, spamming, mail-bombing the Services or otherwise imposing an unreasonable or disproportionately large load on the Services;

(m) to attempt to decipher, decompile, disassemble or reverse engineer any of the code or software used to provide the Services;

(n) to export or re-export the Services, except in compliance with the export control laws and regulations of any relevant jurisdictions;

(o) to otherwise abuse the Services or breach the Terms;

(p) to use the Services for infringing, illegal or other similarly inappropriate activity; or

(q) to attempt to do any of the foregoing, or advocate, encourage or assist any third party in doing any of the foregoing.

3.2 Investigations; Cooperation with Law Enforcement; Termination; Survival

As permitted by applicable law, Company reserves the right, without limitation, to investigate and prosecute violations of any and all reports, complaints and claims, or otherwise suspected misconduct or violations of the law to the fullest extent of the law. Without limiting the foregoing, you acknowledge that Company has the right, but not the obligation, at any time and without prior notice, to monitor access to or use of the Services by any User if we believe in good faith that it is reasonably necessary (i) to comply with any law or regulation or satisfy any legal process or governmental request (for example, a subpoena, warrant, order or other requirement of a court, administrative agency or other governmental body), (ii) to respond to claims asserted against Company, (iii) to enforce and to ensure a User's compliance with the Terms, including the investigation of potential violations, (iv) to conduct risk assessments, and prevent, detect and investigate incidents or suspected incidents of fraud, security breaches and technical issues, (v) to protect the rights, property or safety of Company, its Users or members of the public, (vi) use any information obtained by Company in accordance with its [Privacy Policy](#) in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by Company to comply with law enforcement requests or legal requirements in accordance our Privacy Policy [LINK], (vi) for the purpose of operating and improving the Services (including for customer support purposes), and (vii) discontinue the Services, in whole or in part, or, suspend or terminate your access to it and the Services, in whole or in part, including any Accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third-party.

Any suspension or termination will not affect your obligations to Company under these Terms. Upon suspension or termination of your access to the Services, or upon notice from Company, all rights granted to you under these Terms or any applicable Supplemental Terms will cease immediately, and you agree that you will immediately discontinue use of the Services. The provisions of these Terms and any applicable Supplemental Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Company in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

4. INTELLECTUAL PROPERTY OWNERSHIP

4.1 The Services

The Services, and all features, functionality, tools and Content therein, are protected by copyright, patents, trademarks, service marks, and all other intellectual property rights therein (“Intellectual Property”), are owned or controlled by Company, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Services is the property of Company, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other Intellectual Property and unfair competition rights and laws to the fullest extent possible. Company owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Services. You acknowledge and agree that the Services, and all intellectual property rights therein are the exclusive property of Company and its licensors. You will not remove, alter or obscure any copyright, trademark, service mark, patent marking, or other proprietary rights notices incorporated in or accompanying the Services.

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, and other trademarks and service marks associated with Company (the “Company Marks”) are the property of Company, and that you are not permitted to use the Company Marks without our prior written consent.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post, publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or content of the Services in any form or by any means, or sublicense the rights granted in the Terms, except as expressly permitted herein, without the prior written permission of Company or the intellectual property owner, as applicable.

This foregoing license is subject to modification or revocation at any time at Company’s sole discretion.

These Terms and any applicable Supplemental Terms include only narrow, limited grants of rights to use and access the Services and Content. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Company or its licensors, except for the licenses and rights expressly granted in the Terms. No other right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you by the Terms are hereby reserved by the Company and its

licensors and other third parties. *Any unauthorized use of any Content or the Services for any purpose is prohibited.*

4.2 Feedback

We welcome and encourage you to provide feedback, comments, ideas and suggestions for improvements, enhancements and modifications to the Services (“Feedback”). You may submit Feedback by e-mailing us, at support@smartpayrewards.com. You acknowledge and agree that all Feedback you give us (i) will be treated as non-confidential, and (ii) will be the sole and exclusive property of Company. Without limiting the foregoing, you acknowledge that your Feedback may be disseminated or used by Company or its affiliates for any purpose whatsoever, including developing, improving and marketing products. You hereby irrevocably transfer and assign to Company all of your right, title, and interest in and to all Feedback, including all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein, and waive any moral rights you may have in such Feedback.

You agree to sign and deliver such documents, and otherwise provide such assistance, as may reasonably be required from time to time to perfect Company’s rights in such improvements, enhancements and modifications.

5. THIRD PARTY TERMS

5.1 Links to Third Party Websites and Services

The Services may also provide links to third-party websites, resources or services including, without limitation, the **National Payment Card Association d/b/a Zipline** and Wright Express® Financial Services Corporation. You acknowledge and agree that Company is not responsible or liable for (i) the availability, terms or practices of such websites, resources or services, or (ii) the content, products or services available on or through such websites, resources or services, including that any information provided is complete, accurate or up-to-date. Links to such websites, resources or services do not imply any endorsement by Company of such websites, resources or services or the content, products or services available on or through such websites, resources or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites, resources or services or the content, products or services available on or through such websites or services.

Portions of the Services may be integrated into or linked to third-party sites, platforms and applications that we do not control. Similarly, we may make third-party ads and other third-party services, which we also may not control, available to you on or via our Services. This may include the ability to register or sign in to our Services using Facebook Connect or other third-party tools, and to post content on third-party services using their plug-ins made available on our Services.

Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for third-party services. We will not be responsible or liable for any damage or harm resulting from your interactions with such websites or services, or the content, products or services available on or through such websites or services.

If you are accessing or using the Services through Apple, Android, or any other platform, these are third-party services. If you access our Apps via Apple, click [here](#) for Supplemental Terms and conditions that are applicable to you and are incorporated into the Terms by this reference.

5.2 Apps Downloaded from Third Party App Stores

Our Apps may be available for download from third party app stores which are not owned or operated by Company. When downloading, installing, accessing, using or browsing the App, you must comply with any applicable third party terms and conditions, including any End User License Agreement, your mobile device agreement or any wireless data service agreement, and ensure that your use of the App is not in violation of any such terms or conditions.

To the extent that you are accessing the Services through an Apple mobile application, you acknowledge that these Terms are entered into between you and Company and, that Apple, Inc. (“Apple”) is not a party to these Terms other than as third-party beneficiary as contemplated below.

Any Apps accessed through or downloaded from Apple’s App Store (an “App Store Download”) may only be used (i) on an Apple-branded product that runs the iOS (Apple’s proprietary operating system), and (ii) as permitted by the “Usage Rules” set forth in the Apple App Store Terms and Conditions. Without limiting the foregoing, the following applies to App Store Downloads:

- (a) You acknowledge and agree that (i) these Terms are between you and Company only, and not Apple, and (ii) that Apple, Inc. (“Apple”) is not a party to these Terms other than as third-party beneficiary as contemplated below. Your use of the App Store Download must comply with the App Store Terms and Conditions.
- (b) The license granted to you by Company under the Terms is subject to the permitted Usage Rules set forth in the App Store Terms of Use (see: <http://www.apple.com/legal/itunes/us/terms.html>) and any third-party terms of agreement applicable to the Services.
- (c) You acknowledge that Company, and not Apple, is responsible for providing the Services and Content thereof.
- (d) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Download.
- (e) In the event of any failure of the App Store Download to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Download to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Download. As between Company and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Company.
- (f) You acknowledge that, as between Company and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Download or your possession and use of the App Store Download, including: (i) product liability claims; (ii) any claim that the App Store Download fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

(g) You acknowledge that, in the event of any third-party claim that the App Store Download or your possession and use of that App Store Download infringes that third party's intellectual property rights, as between Company and Apple, Company, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.

(h) You acknowledge and agree that Apple and its subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Download, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Download against you as a third party beneficiary thereof.

(i) Without limiting any other terms of the Terms, you must comply with all applicable third party terms and conditions when using the App Store Download.

6. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION

6.1 Warranties by Users

You represent and warrant to Company that:

(a) you have the power and authority to accept and agree to the Terms;

(b) you own or control all of the rights necessary to grant the rights and licenses granted herein;

(c) you will not violate any federal, state or local laws, rules or regulations or infringe the rights of any third party, including, any intellectual property, privacy or publicity-related rights, in connection with your access to or use of the Services;

(d) the exercise by Company of the rights granted by you hereunder will not cause Company to violate any applicable laws, rules or regulations, to infringe the rights of any third party; and

(e) all Accounts and any other information provided by you will be complete, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date.

6.2 Disclaimers

AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICES IS AT YOUR SOLE RISK AND ARE PROVIDED ON AN "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, COMPANY and their direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, "COMPANY PARTIES" or "COMPANY PARTY") hereby EXPRESSLY DISCLAIM AND MAKE NO REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, OR PROMISES, WHETHER EXPRESS, IMPLIED, IN CONNECTION WITH OR ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, OR OTHERWISE DIRECTLY OR INDIRECTLY RELATED TO WITHOUT LIMITATION, THE SERVICES, CONTENT, COMPANY LICENSES ELEMENTS, OR OTHER COMPANY PRODUCTS OR SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-

INFRINGEMENT OR TITLE OR RIGHTFUL CLAIM, WARRANTIES AS TO THE RELIABILITY OR AVAILABILITY OF THE SERVICES, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WARRANTIES AS TO THE COMPLETENESS, ACCURACY OR TIMELINESS OF ANY SERVICE CONTENT.

6.3 Limitation of Liability

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW:

(a) THE ENTIRE RISK ARISING OUT OF OR RELATING TO YOUR USE OF THE SERVICES AND ANY LINKED USERS' USE OF THE SERVICES UNDER YOUR ACCOUNT IS AND REMAINS WITH YOU.

(b) WITHOUT LIMITING THE FOREGOING, COMPANY DISCLAIMS ANY AND ALL LIABILITY RELATED TO (I) YOUR USE OF OR INABILITY TO USE THE SERVICES, (II) ANY LINKED USERS' USE OF THE SERVICES (III) ANY SERVICE CONTENT ACCESSED, VIEWED OR DOWNLOADED IN CONNECTION WITH THE USE OF THE SERVICES.

(c) IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, INCLUDING ANY DIRECT, INDIRECT, ECONOMIC, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE, OR FOR ANY DAMAGES FOR DEATH OR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, CONTENT, SERVICES COMPANY LICENSES ELEMENTS, OR OTHER COMPANY PRODUCTS OR SERVICES, EXCEPT TO THE EXTENT NOT WAIVABLE UNDER APPLICABLE LAW, WHETHER BASED IN WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT COMPANY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(d) The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if Company Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Services).

(e) CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSIVE OR LIMITATION OF CERTAIN DAMAGES AS SET FORTH IN THIS SECTION, SO THESE LIMITATIONS AND EXCLUSIONS APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. IN THE EVENT THAT THE FOREGOING LIMITATION OF LIABILITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES SHALL BE LIMITED TO ONE HUNDRED U.S. DOLLARS (US\$100).

6.4 Basis of the Bargain

YOU ACKNOWLEDGE AND AGREE THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN

COMPANY AND YOU, AND WILL SURVIVE AND APPLY EVEN IF YOUR REMEDIES ARE FOUND OR ALLEGED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

6.5 Exclusions

NOTHING IN THE TERMS FURTHER IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE FROM DEATH OR PERSONAL INJURY. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS IN THIS SECTION THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU, AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT REQUIRED BY LAW.

7. INDEMNIFICATION

7.1 General

To the maximum extent not prohibited by applicable law, you agree to release, defend (if requested by Company), indemnify, and hold Company Parties harmless (collectively “indemnify” or any variation thereof) from and against any claims, liabilities, damages, losses, costs, investigations, judgements, fines, penalties, settlements, interest and expenses, including, any bodily injury, illness, death or damage to any real or personal property, or any other injuries, losses, or damages (whether compensatory, direct, incidental, consequential or otherwise) of any kind, and including legal fees and litigation expenses and costs, that directly or indirectly arise out of or relate to or are in any way connected with any claim, suit, action, demand, or proceeding made or brought against Company Parties, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your access to or use of the Services and your activities in connection with the Services, including any and all features, functionality, tools, content and promotions and Services available on and through the Services, (ii) your breach of the Terms including any violation of national, federal, state or local or other applicable laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Services or your activities in connection with the Services or any infringement or misappropriation of the rights of any third party, (iii) your negligence or willful misconduct, (iv) information or material transmitted through your device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (v) any misrepresentation made by you; and (vi) Company Parties’ use of the information that you submit to us subject to our [Privacy Policy](#) (all of the foregoing, “Claims and Losses”).

7.2 Obligation to Defend

You agree that you will cooperate as fully required by Company Parties and at Company Party’s option, you will conduct the defense of any such claim or action; provided that, notwithstanding our election that you to conduct the defense, (i) Company Party retains the exclusive right to settle, compromise, and pay any and all Claims and Losses, (ii) Company Party reserves the right to

assume the exclusive defense and control of any Claims and Losses and may nevertheless participate in such defense or settlement negotiations and pay its own costs associated therewith, and (iii) you will not enter into any settlement or other compromise related to any Claims and Losses without the prior written approval of Company (which approval shall not be unreasonably withheld), unless such settlement or other compromise includes a full and unconditional release of the relevant parties from all liabilities and other obligations in respect of such claim or action. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.

7.3 No Implied Indemnity

No person or entity shall be entitled to any form of equitable or implied indemnification at any time, except as provided by the Terms.

8. GOVERNING LAW, ARBITRATION & DISPUTE TERMS

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND COMPANY HAVE AGAINST EACH OTHER ARE RESOLVED. The provisions of this Section 10 shall supersede any inconsistent provisions of any prior agreement between the parties. This Section shall remain in full force and effect notwithstanding any termination of your use of the Services or these Terms.

8.1 Governing Law

The Terms, General Disputes and IP Disputes (defined below), and any other claim brought by you against Company or by Company against you pursuant to this Section, or otherwise related to the Services, Content, Company Licensed Elements, or other Company products or services, shall be governed by and interpreted in accordance with the laws of the State of New York without regard to conflict of law principles. This Section shall be governed solely by the Federal Arbitration Act, 9 U.S.C. §1, et seq., and not by the law of any state, and is enforceable pursuant to its terms on a self-executing basis. You and Company agree that we intend that this Section satisfies the “writing” requirement of the Federal Arbitration Act. This Section can only be amended by mutual agreement. Either party may seek enforcement of this Section in any court of competent jurisdiction. The arbitrator shall determine any and all challenges to the arbitrability of a claim.

8.2 Arbitration

(a) Company and you agree that it would be advantageous to discuss and hopefully resolve any controversy, allegation, or claim arising out of or relating to the Services, Content, these Terms, or any applicable Supplemental Terms, (collectively, “**Dispute**”) before formal proceedings are initiated; provided, however, that Company need not do so in circumstances where its claims of Intellectual Property rights are concerned (“IP Disputes,” with all other disputes referred to as “General Disputes”). The party making a claim – whether you or Company – shall send a letter to the other side briefly summarizing the claim and the request for relief. If Company is making a claim, the letter shall be sent, via email, to the email address listed in your Account, if applicable. If no such information exists or if such information is not current, then we have no notification or delay obligations under this Section. If you are making a claim, the letter shall be sent to EG America, LLC, 165 Flanders Road, Westborough, MA 01581 (Attn: General Counsel). If the Dispute

is not resolved within sixty (60) days after notification, the claimant may proceed to initiate proceedings as set forth in this Section. Either you or Company, however, may seek provisional remedies before the expiration of this sixty (60)-day period.

(b) Unless you give us notice of opt-out within five (5) business days of your first use of the Services, addressed to: EG America, LLC, 165 Flanders Road, Westborough, MA 01581 (Attn: General Counsel), all actions, proceedings, disputes, claims, controversies and matters relating to or arising in connection with, touching upon or relating to any Dispute or the scope of the provisions of this Section, shall be submitted to JAMS (www.jamsadr.com) for final and binding arbitration under its Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less (“AAA Rules”), to be held in New York County, New York before a single neutral arbitrator appointed in accordance with the AAA Rules and shall be conducted in the English language. If the matter in dispute is between Company and a consumer, the matter shall be submitted to JAMS in accordance with its Policy on Consumer Arbitration Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by JAMS. We may have the right to pay the JAMS fees if required for arbitration to be enforceable. If you are a consumer you have the right to an in-person hearing. The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates’ lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The parties may engage in the discovery or exchange of non-privileged information relevant to the dispute. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator’s award is based. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the arbitrator’s award; provided, however, that prior to the appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek pendente lite relief (subject to the provisions of these Terms waiving or limiting that relief) in a court of competent jurisdiction in New York County, New York or, if sought by Company, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section; provided further, however, that the losing party shall have fifteen (15) business days after the issuance of the arbitrator’s decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the Manhattan County Superior Court or, in the case of you, such other court having jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award.

(c) All arbitrations shall be conducted and resolved on an individual basis and not a class-wide, multiple plaintiff or similar basis. No arbitration shall be consolidated with any other arbitration proceeding involving any other person or entity.

8.3 Limitation on Injunctive Relief

AS PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICES, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS (WITHOUT LIMITATION) THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, UGC, PRODUCT, SERVICES, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED, OR CONTROLLED BY ANY COMPANY PARTY (DEFINED BELOW) (INCLUDING YOUR LICENSED UGC) OR A LICENSOR OF ANY Company PARTY.

8.4 Jury Waiver

AS PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE THEIR RIGHT TO JURY TRIAL WITH RESPECT TO ALL CLAIMS AND ISSUES ARISING UNDER, IN CONNECTION WITH, TOUCHING UPON OR RELATING TO THESE TERMS, THE BREACH THEREOF AND/OR THE SCOPE OF THE PROVISIONS OF THIS SECTION, WHETHER SOUNDING IN CONTRACT OR TORT, AND INCLUDING ANY CLAIM FOR FRAUDULENT INDUCEMENT THEREOF.

8.5 Small Claims Matters

Notwithstanding the foregoing, either of us may bring qualifying claim of General Dispute (but not IP Disputes) in small claims court, subject to Section 10.7 (Prohibition of Class Actions).

8.6 Jurisdiction and Venue

Subject to the above arbitration provisions, you and Company agree that any and all disputes, claims and actions, at law or in equity, arising out of or relating to or in connection with the Terms or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Services (collectively, "Disputes") shall be brought in the federal or state courts located in New York, New York and each of us agrees that such courts shall have exclusive jurisdiction and venue for any such actions, except that Company retains the right to submit a Dispute to any court of competent jurisdiction. Company also may seek injunctive or other equitable relief for breach of these Terms in any court of competent jurisdiction wherever located. You consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. The prevailing party in any suit, action or proceeding, including any arbitration proceeding, will be entitled to recover its reasonable legal fees and costs and expenses from the other party.

8.7 Prohibition of Class and Representative Actions and Non-Individualized Relief

YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST COMPANY ONLY ON AN INDIVIDUAL BASIS AND HEREBY WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING, TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW. FURTHER, UNLESS BOTH YOU AND COMPANY OTHERWISE AGREE IN WRITING, THE COURT MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. Notwithstanding any provision in the JAMS Comprehensive Arbitration Rules and Procedures to the contrary, the arbitrator shall not have the authority or any jurisdiction to hear

the arbitration as a class, consolidated, representative, or private attorney general action or to consolidate, join, or otherwise combine the Disputes of different persons into one proceeding. Notwithstanding the arbitration provision set forth above, if the provision regarding waiver of class, collective, representative, and private attorney general claims of this Section is found to be void or otherwise unenforceable, any such class, collective, representative, or private attorney general claims must be heard and determined through an appropriate court proceeding, and not in arbitration.

9. MISCELLANEOUS

9.1 Company's Consent or Approval

As to any provision in these Terms or any applicable Supplemental Terms that grants Company a right of consent or approval, or permits Company to exercise a right in its "sole discretion," Company may exercise that right in its sole and absolute discretion. No Company consent or approval may be deemed to have been granted by Company without being in writing and signed by an officer of Company.

9.2 Privacy

Our collection and use of personal information is governed by our [Privacy Notice](#). By accessing and using the Services, you consent to the collection and use of this information as set forth in the [Privacy Notice](#).

9.3 Entire Agreement

These Terms, including our Privacy Notice, constitute the entire and exclusive understanding and agreement between you and Company regarding your access to and use of the Services and supersede and replace any and all prior or contemporaneous oral or written understandings or agreements between you and Company and regarding the subject matter hereof.

9.4 Assignment

You may not assign, transfer, delegate or sublicense any of your rights or obligations under the Terms, including by operation of law or merger or consolidation, without our express prior written consent, which may be granted or withheld in our sole discretion. Any attempted assignment, transfer, delegation or sublicense by you without the foregoing consent will be null and void. Company may assign, transfer, delegate and/or sublicense our rights and obligations under the Terms in whole or in part, in its sole discretion, without restriction.

Subject to the foregoing, the Terms will bind and inure to the benefit of the parties, their successors and assigns.

9.5 No Agency

Except as otherwise expressly set forth herein, no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by the Terms.

9.6 Survival of Terms

Any provisions of the Terms that contemplate performance or observance subsequent to the expiration or termination of these Terms shall survive such expiration or termination.

9.7 Notices

(a) Any notices or other communications permitted or required hereunder may be provided in writing and given by Company (i) via e-mail (in each case to the address that you provide), or (ii) by posting to the App or our websites. For notices made by e-mail, the date on which such notice is transmitted will be deemed the date of receipt.

(b) You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: EG America, LLC, 165 Flanders Road, Westborough, MA 01581 (Attn: General Counsel). If you have a question regarding the Services, you may contact Company Customer Support by sending an email here [LINK to contact tool] or calling us at 1-800-225-9702. You acknowledge that we have no obligation to provide you with customer support of any kind and that customer service personnel cannot change or waive the Terms.

When you use our Services, including signing up to receive email or text messages, you consent to receive electronic records from us and consent to us contacting you electronically. We will try to promptly respond to all inquiries, but we are not obligated to do so. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You agree that any time you electronically transact, agree or consent via the Services it is intended to be an electronic signature which binds you as if you had signed on paper. You agree that your use of the Services, other than to read the Terms (or Supplemental Terms) and Privacy Policy [Link], constitutes agreement to the Terms, and any applicable Supplemental Terms, then posted without further action by you. In order to withdraw your consent, update your contact information, or obtain paper copies of electronic records, you must contact us and stop using the Services. If you withdraw your consent, you will be removed from any email or text message program. If there is a cost to provide you with paper copies of electronic records, we will disclose that to you prior to sending you electronic records. Your consent to receive electronic records applies to your use of the Service, including any email or text message programs. Your devices must be able to review websites and electronic documents, receive email, or receive text messages to receive electronic records, depending on whether you are using the Services, or subscribing to email or text messages.

9.8 Waiver

Our failure to exercise any right or enforce any obligation under these Terms or to take action with respect to a breach by you or others will not constitute a waiver of such right, obligation or breach. The waiver of any right, obligation or breach will be effective only if in writing and signed by a duly authorized representative of Company. In addition, no waiver granted in any instance shall constitute a waiver in any other instance.

9.9 Remedies

Except as expressly set forth in the Terms, the exercise by either party of any of its remedies under the Terms will be without prejudice to its other remedies available under contract, at law, in equity or otherwise.

9.10 Severability

Except as otherwise provided in the Terms, if an arbitrator or a court of competent jurisdiction finds any provision of the Terms to be invalid, void or unenforceable, in whole or in part, for any reason, the offending provision will be enforced to the maximum extent permissible and will not affect the validity or enforceability of the remaining provisions, which will remain in full force and effect. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.

9.11 Headings

The headings in the Terms are for reference purposes only and do not limit or otherwise affect the meaning or interpretation of any of the provisions hereof.

9.12 Third Party Beneficiaries

Except as otherwise expressly set forth herein, the Terms do not and are not intended to confer any rights or remedies upon any person other than the parties hereto.

9.13 Contact Us

If you have any questions or concerns, please contact Company at support@smartpayrewards.com.

You can also write to us at:

EG America, LLC
165 Flanders Road
Westborough, MA 01581

You can also call us at:

1-800-225-9702

9.14 California Residents

Pursuant to California Civil Code §1789.3, California residents are also entitled to the following specific consumer rights notice: Complaints regarding the Services or requests to receive further information regarding use of the Services may be sent to the above address or to support@smartpayrewards.com.

The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite N112, Sacramento, CA 95834 or by telephone at (916) 445-1245 or (800) 952-5210. Hearing impaired persons may call TDD (800)-326-2297 or TDD (916)-928-1227, see www.dca.ca.gov for additional information.

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