

SMARTBIZ PARTNER PROGRAM TERMS AND CONDITIONS

Your agreement with BillFloat, Inc. dba SmartBiz Loans (“SmartBiz Loans”, “SmartBiz” or “us”) for participation in the Program (defined below) comprises and incorporates (i) these terms and conditions (the “Terms & Conditions”); (ii) the applicable Partner Enrollment Form (defined below); (iii) any other documents referred to within such documentation and materials; and (iv) all amendments and supplements thereto, and all exhibits and schedules to any of the foregoing (the “Agreement”). In the event of a conflict, the Partner Enrollment Form will prevail followed by: (i) these Terms & Conditions; and (ii) any other documentation referred to within the Agreement.

By accepting this Agreement, either by clicking a box indicating your acceptance or by executing a Partner Enrollment Form or other document that references this Agreement, you agree to the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to this Agreement, in which case the terms “Partner,” “you” or “your” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these Terms & Conditions, you must not accept this Agreement and may not participate in the Program.

The Terms & Conditions were last updated on January 9, 2021. It is effective between you and SmartBiz as of the date of you accepted this Agreement (the “Effective Date”).

1. Definitions.

Capitalized terms used herein shall have the meanings ascribed to them in this Section or elsewhere in this Agreement:

- a. “**Applicable Law**” means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, order, other requirement, or rule of law of any federal, state, local, foreign, or supranational government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority, or any arbitrator, court or tribunal of competent jurisdiction.
- b. “**Applicant**” means a Customer introduced to SmartBiz by Partner (who was not previously introduced to SmartBiz by another Partner or obtained directly by SmartBiz) that retains SmartBiz for SmartBiz Services.
- c. “**Application**” means a commercial loan application that is completed and submitted by a Customer Introduction on the SmartBiz Website.
- d. “**Claim**” means any claim, legal or equitable, cause of action, suit, litigation, proceeding (including a regulatory or administrative proceeding), grievance, complaint, demand, charge, investigation, audit, arbitration, mediation, or other process for settling disputes or disagreements, including, without limitation, any of the foregoing processes or procedures in which injunctive or equitable relief is sought.
- e. “**Confidential Information**” means any data or information, oral or written, whether or not marked “confidential,” that relates to either Party’s (or, if either Party is bound to protect the confidentiality of any third party’s information, such third party’s) past, present, or future

research, development, or business activities, including any unannounced products and services, any information relating to services, developments, inventions, processes, plans, financial information and budgetary information, revenue, forecasts, projections, Customer Data, Personal Information, the terms of this Agreement, and any other information which from its nature or the circumstances in which it is received should reasonably be recognized to be confidential. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information that: (i) was already known to the Receiving Party prior to delivery to such Party, as can be reasonably proven; (ii) is in or has entered the public domain through no breach of this Agreement or other wrongful act of the Receiving Party; (iii) has been rightfully received by the Receiving Party from a third party without the Receiving Party's knowledge of a breach of any obligation of confidentiality by such third party to the owner of the Confidential Information; (iv) has been approved for release by written authorization of the owner of the Confidential Information; or (v) has been independently developed by a Party without use of the Confidential Information of the other Party.

- f. **"Customer"** means a small business seeking a commercial loan through SmartBiz or Partner.
- g. **"Customer Data"** means any data or information of any Customer, Program Applicant, or approved Program borrower that is provided to or obtained by any Party in connection with the Program (including the servicing, marketing, processing or administration thereof), including but not limited to the Personal Information of Customers, any lists of Customers or former Customers and all information relating to and identified with specific individual Customers, including, but not limited to account transaction and balance data for the Program.
- h. **"Customer Introduction"** means any Partner Customer directed to the SmartBiz Website.
- i. **"Funded Loan"** means a loan to a Customer Introduction that is approved for funding, and a SmartBiz Lender has disbursed all of the loan proceeds to the Customer.
- j. **"Losses"** mean and include any loss, assessment, fine, penalty, deficiency, interest, payment, expense, cost, debt, indebtedness, liability, lien, judgment, or damage, which is sustained, incurred, or accrued.
- k. **"Marks"** mean all trade names, domain names, trademarks, trade dress, brand names, corporate names, service marks, logos, and other distinctive brand features of a Party.
- l. **"Parties"** and **"Party"** means SmartBiz and Partner, individually and collectively.
- m. **"Personal Information"** means any information that a Party obtains in any manner from any source during or in connection with this Agreement that concerns any of a Party's or Party's affiliate's prospective, former and existing customers or employees. Personal Information includes, without limitation, names, addresses, telephone numbers, e-mail addresses, social security numbers, credit card numbers, call-detail information, purchase information, product and service usage information, account information, credit information, demographic and any other personally identifiable information that can be reasonably linked to a specific person.
- n. **"Promotional Materials"** mean the materials, which may include without limitation text, images, audiovisual materials, scripts, logos, and the like, that relate in any way to SmartBiz, SmartBiz Products, or the Program.
- o. **"SmartBiz Lenders"** means lenders that license SmartBiz software and to which SmartBiz refers its Customers seeking SBA Loans and non-SBA Loans.

- p. **“SBA Loans”** means loans offered through SmartBiz by SmartBiz Lenders that are guaranteed, in part, by the Small Business Administration, as further described at www.smartbizloans.com.
 - q. **“SmartBiz Partner Applications”** means tools that SmartBiz provides to Partner to access and assist Partner in providing Services.
 - r. **“SmartBiz Lender Products”** means small business loans offered by SmartBiz Lenders through SmartBiz for which Partner intends to refer to Partner Customers.
 - a. **“SmartBiz Services”** means introducing Applicant to SmartBiz Lenders. and assisting Applicant in applying for an SBA Loan or a non-SBA Loan .
 - s. **“SmartBiz Website”** means webpages located at www.smartbizloans.com, any related landing pages or successor sites operated in connection with SmartBiz, and any SmartBiz Partner Applications.
- 2. Program.**
- a. **Partner Assistance.** Partner will identify Customers who may benefit from SmartBiz Lender Products and introduce such Customers to SmartBiz (the “Services”). Partner understands that SmartBiz Lenders, and not SmartBiz itself, retain sole discretion over which Applicants receive a loan. Partner shall not negotiate or enter into any agreement with any Customer on behalf of SmartBiz. Partner will not advise or otherwise imply to any Customer that Customer has been or will be approved for a financing product offered through SmartBiz.
 - b. **Timing.** The Program will commence on or around the Effective Date, or at such time mutually agreed to by the Parties following the completion of any implementation requirements. If either Party reasonably foresees any material delay to the implementation or integration described above, such Party shall notify the other Party of such material delay in a timely manner.
 - c. **Access to SmartBiz Partner Applications.** SmartBiz grants Partner a limited, revocable, non-exclusive, non-transferable, non-sublicenseable license during the Term to use and access SmartBiz Partner Applications solely for the purposes of assisting Applicants.
 - d. **Promotional Materials.** Partner shall offer the Program verbally or via email during the Term of this Agreement. Partner may also provide Promotional Materials to Partner Customers. Partner agrees that only Partner Customers who either click through a link or otherwise affirmatively act in order to be introduced to SmartBiz Website shall be introduced to SmartBiz by Partner. Partner agrees not to impose any fees or charges to Partner Customers for access to the Program or any Promotional Materials.
 - e. **Background Check Authorization and Release.** SmartBiz may, in its sole discretion, complete background checks (including criminal background checks), obtain motor vehicle reports and otherwise conduct due diligence on Partner and its agents or affiliates from time to time during the term of this Agreement. Partner understands that such background checks and reports (collectively, “Reports”) may be compiled through information from court records, departments of motor vehicles, past or present employers or educational institutions, government, occupational, licensing or registration agencies, business or personal references, and other sources necessary to verify information Partner has furnished to SmartBiz and ensure appropriate due diligence. SmartBiz will not make any hard credit inquiries pursuant to this background check authorization. Subject to the requirements or limitations of law, Partner acknowledges and agrees that if SmartBiz deems the findings of such Reports or other due diligence, or Partner’s response thereto, to be unsatisfactory in SmartBiz’s sole discretion, SmartBiz may immediately terminate this

Agreement. Partner releases SmartBiz, its agents, contractors and employees from any liability in connection with obtaining such Reports and terminating this Agreement based on such Reports. Notwithstanding anything to the contrary contained herein, Partner will not be entitled to Program Fees until it provides all due diligence information requested by SmartBiz, to SmartBiz's satisfaction.

3. **SmartBiz Services and Responsibilities.** During the Term, SmartBiz will be responsible for:
 - a. Introducing Applicant to SmartBiz Lenders.
 - b. Assisting Applicant in applying for an SBA Loan.
 - c. Ensuring that Applicant receives all disclosures and other documentation related to the SBA Loans required by Applicable Law.
 - d. Providing customer service and support to Applicant for SmartBiz Services.
 - e. Seeking approvals required from SmartBiz Lenders regarding the Partner Materials and SmartBiz Materials.
 - f. Providing Partner with monthly sales and reconciliation reports, as mutually agreed upon by the Parties.
4. **Partner Services and Responsibilities.** During the Term, Partner will be responsible for:
 - a. Using commercially reasonable efforts to explain the benefits of SBA Loans available through the Program to its approved or prospective Customers through online, phone and email solicitations, solicitations at tradeshow, or such other solicitations as the Parties may mutually agreed upon from time to time;
 - b. Providing training to employees using scripts and/or other Partner Materials approved by SmartBiz;
 - c. Printing and distributing the SmartBiz Materials and Partner Materials to approved or prospective Customers;
 - d. Introducing SmartBiz to Customers who may wish to retain SmartBiz to introduce them to a SmartBiz Lender;
 - e. Ensuring that Applicants are not charged any fees by Partner that are related to a loan secured by Applicant through an introduction by SmartBiz; and
 - f. Notifying SmartBiz immediately if Partner becomes aware of or subject to any SBA investigation, debarment, suspension or proceeding or investigation related thereto.
5. **Representations and Warranties.**
 - a. **Representations and Warranties by Each Party.** Each Party represents and warrants as follows: (i) It has full power and authority to enter into this Agreement, to perform all of its obligations hereunder, and its entry into this Agreement does not violate any other agreement, understanding, or arrangement by which it is bound; (ii) Its performance of its obligations under this Agreement will at all times comply with all Applicable Laws; (iii) Its websites and services will materially comply with Applicable Law; and (iv) It has acquired and will maintain throughout the Term all rights and licenses necessary in connection with the performance of its obligations hereunder .
 - b. **Representations and Warranties by Partner.** Partner represents and warrants as follows: (i) Partner represents that it is now, and will be, at all times throughout the Term, in compliance with Applicable Law; and (ii) All communications by Partner to Customers regarding the Program have and will at all times comply in all material respects with Applicable Law.
6. **Intellectual Property Ownership and Limited License.**

- a. **Marks.** To the extent necessary to perform its obligations, each Party grants to the other Party the limited non-exclusive, non-transferable right to display its trademarks, service marks and logos, in the form and format supplied by the other Party, solely in connection with the Program, provided that such proposed display is first reviewed in advance and approved by both Parties.
- b. **Customer Data.** Each Party shall own any Customer Data that it collects in connection with this Agreement or Application. Notwithstanding the foregoing, any overlapping Customer Data may be independently collected by each Party and is non-exclusively owned by each Party.
- c. **Other IP.** Each Party maintains its own right, title and interest in its proprietary services, databases and other technology used to perform its obligations under this Agreement, and in the case of SmartBiz, includes, but is not limited to Loan Assist. Each Party agrees that it will not reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from such services, databases and technology.
- d. **Licenses.** Either Party may revoke any licenses granted herein at any time if the other Party is in receipt of a written notice of breach of this Agreement and such breach is not cured within the time period specified in Section 9(b). In addition, any licenses granted shall terminate automatically upon the termination or expiration of the Agreement.
7. **Confidential Information.** Each Party acknowledges and agrees that, from time to time, it may receive Confidential Information from the other Party. The Party that receives Confidential Information (the "*Receiving Party*") hereby agrees (i) to hold the other Party's (such Party, the "*Disclosing Party*") Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials); (ii) not to divulge, sell, rent, or transfer any such Confidential Information or any information derived therefrom to any third party; (iii) not to make any use whatsoever at any time of such Confidential Information except as contemplated hereunder; (iv) not to copy or reverse engineer any such Confidential Information; and (v) that any employee, subcontractor, or agent given access to any such Confidential Information must have a legitimate "need to know" and shall be bound in writing to comply with the Receiving Party's confidentiality obligations, whether generally or specific to this Agreement. The Receiving Party shall be responsible for any breach of this Section 6 caused by any of its employees, subcontractors or agents. Notwithstanding any provision in this Agreement to the contrary, the Receiving Party may disclose Confidential Information of the Disclosing Party only to the extent it is required to be disclosed pursuant to a valid request, order, or requirement of a governmental agency or court of competent jurisdiction; *provided* that the Disclosing Party shall be given prompt notice in writing of the pendency of such an order or requirement and the opportunity for the Disclosing Party to contest.
- a. **Additional Protection of Personal Information. (i) Privacy Policies.** The Parties shall maintain all Personal Information in accordance with their respective privacy policies and applicable law. Partner's privacy policies are to be made available to Partner Customers, and SmartBiz's privacy policies are to be made available to Customer Introductions. Each Party's privacy notices and privacy policies will comply with acceptable trade practices and are materially consistent with Applicable Law. **(ii) California Consumer Privacy Act ("CCPA").** Partner will undertake the following obligations which are in addition to those otherwise set forth herein: (a) Partner shall comply with all applicable requirements of the

California Consumer Privacy Act (“CCPA”), including regulations from the California Attorney General, when collecting, using, retaining, or disclosing personal information, as that term is defined in the CCPA. (b) Partner shall comply with additional state or federal privacy laws that may be enacted in the future. The obligations set forth in Section 7(a)(ii) shall apply equally to future privacy legislation that applies to Partner and/or the services under this Agreement. (c) Partner shall only collect, use, retain, or disclose Personal Information for the purposes of this Agreement for which SmartBiz provides or permits access to Personal Information. (d) Partner shall not collect, use, retain, disclose, sell, or otherwise make Personal Information available for Partner’s own commercial purposes or in a way that does not comply with the CCPA. If a law requires Partner to disclose Personal Information for a purpose unrelated to the purpose of this Agreement, Partner must first inform SmartBiz of the legal requirement and give the SmartBiz an opportunity to object or challenge the requirement, unless the law prohibits such notice. (e) Partner shall limit Personal Information collection, use, retention, and disclosure to activities reasonably necessary and proportionate to achieve the purposes of this Agreement. (f) Partner shall promptly comply with any SmartBiz request or instruction requiring Partner to provide, amend, transfer, or delete the Personal Information, or to stop, mitigate, or remedy any unauthorized processing. (g) If the Services provided under this Agreement require that Partner collect Personal Information from individuals on SmartBiz’s behalf, Partner shall always provide a CCPA-compliant pre-collection notice addressing use and collection methods. SmartBiz retains the right to pre-approve any such notices. Partner shall not modify or alter approved notices in any way without SmartBiz’s prior written consent. (h) Partner shall immediately notify SmartBiz if it receives any complaint, notice, or communication that directly or indirectly relates to SmartBiz’s compliance with the CCPA. (i) Subcontracting. Partner may use a subcontractor to provide the services contemplated in under this Agreement. Any subcontractor used by Partner to provide the Services must qualify as a service provider under the CCPA and Partner shall not make any disclosures to the subcontractor that the CCPA would constitute a sale of Personal Information under the CCPA. Partner shall have in place processes and procedures to audit its subcontractors’ compliance with applicable laws, including but not limited to, CCPA. Subcontractors must comply with the terms and spirit on this Agreement. **(ii) Data Security.** Each Party shall implement and maintain administrative, physical and technical safeguards (“Safeguards”) that prevent any collection, use or disclosure of, or access to, Personal Information that this Agreement does not expressly authorize, including, without limitation, an information security program that meets the standards of industry practice to safeguard Personal Information. Such information security program shall include, without limitation: (a) adequate physical security of all premises in which Personal Information will be processed and/or stored; (b) reasonable precautions taken with respect to the employment of and access given to Partner personnel, including background checks and security clearances that assign specific access privileges to such personnel; and (c) an appropriate network security program. Such network security program shall include, without limitation: (d) appropriate access controls and data integrity controls; (e) testing and auditing of all controls; and (f) appropriate corrective action and incident response plans. **(iii) Breach of Security.** In the event of an actual or suspected breach of security regarding Personal Information while in the possession of either Party, SmartBiz Lender, or any subcontractor, the Party connected with the breach shall, subject to Applicable Law, notify the other Party immediately and cooperate with the investigative

actions of the other Party, its representatives, and any appropriate law enforcement entity. As used herein, a breach of security regarding such Personal Information shall include, but is not limited to any unauthorized access, unauthorized disclosure, unauthorized use, loss, theft, misplacement or compromise of the integrity of any Personal Information. **(iv)**

Inspection. Each Party shall have the right to review the security practices and procedures of the other Party (including any subcontractors), upon reasonable request with advance notice and upon entering into an appropriate agreement of confidentiality, and to visit the relevant facilities, with an escort by the host Party, to evaluate all applicable security processes and controls. Any discrepancies found and agreed to by the Parties shall be corrected within timeframes to be agreed upon by the Parties.

- b. **Additional Terms.** Any violation of this Section shall be deemed a material breach of the Agreement entitling the non-breaching Party to immediate injunctive relief and constituting grounds for immediate termination of this Agreement, among other remedies.

8. Fees and Cost.

- a. **Program Fees.** As consideration for the services provided by Partner under this Agreement, SmartBiz shall pay Partner fees in the amount and in the manner set forth in Exhibit A (the "Program Fee").
- b. **Billing and Payment.** SmartBiz shall make payment of the Program Fees within thirty (30) days of the month following any fees generated by "Introductions" made to non-SmartBiz Lenders. Notwithstanding the forgoing, SmartBiz shall not be required to pay any amount reasonably in dispute; *provided* that SmartBiz promptly notifies Partner in writing of the amount in dispute and the reasonable basis therefor. The Parties will investigate and resolve any dispute in a timely and reasonable manner.
- c. **Expenses.** Each Party shall be responsible for payment of all its respective expenses relating to its performance of this Agreement. Other than with respect to the Program Fee contemplated herein or any indemnification or other obligation expressly provided for under this Agreement, SmartBiz shall have no obligation to pay Partner any remuneration or compensation of any kind for any reason.
- d. **Taxes.** Each Party will be responsible for payment of its taxes arising from payment related to the performance of obligations under this Agreement.

9. Term and Renewal.

- a. **Term.** This Agreement commences on the date Partner first accepted it ("Effective Date"), and, unless sooner terminated in accordance with the provisions of this Agreement, continues for a period of one (1) year from the Effective Date (the "*Initial Term*"). Thereafter, this Agreement shall automatically renew for additional one (1) year periods unless either Party delivers to the other Party written notice of its intent not to renew this Agreement at least thirty (30) days prior to the expiration of the then current term. The Initial Term and any renewal or extension thereof shall be referred to herein as the "*Term*."
- b. **Termination.** Notwithstanding anything contained herein, either Party may terminate this Agreement: (i) with or without cause, upon thirty (30) days prior written notice to the other Party or (ii) upon a material breach by the other Party, which is not cured within thirty (30) days of written notice from the terminating Party describing the specific details of the material breach and demanding that it be cured.
- c. **Effect Upon Termination.** Upon any termination or expiration of this Agreement: (i) Partner shall cease providing Services to SmartBiz; (ii) SmartBiz shall cease the provision of SmartBiz Services to Customer Introductions; (b) each Party will return or destroy the

Confidential Information of the other Party; *provided, however*, that each Party is entitled to retain a copy of Confidential Information pursuant to regulatory requirements or standard backup procedures; *provided, further*, that such retained information be held pursuant to the confidentiality requirements of this Agreement; (c) each Party shall immediately cease all use(s) and displays of any Marks of the other Party; and (d) each Party will delete all references to the other Party on their website(s), mobile applications, and other platforms.

d. Survival. The Parties' rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, compliance with laws, warranties, confidentiality and access to Personal Information, shall survive any termination or expiration of this Agreement.

10. Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SMARTBIZ WEBSITE IS PROVIDED FOR USE "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, SMARTBIZ DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. Indemnification.

a. Indemnification. Each Party shall indemnify ("Indemnifying Party"), defend, and hold the other Party, its officers, directors, employees, representatives and agents ("Indemnified Parties"), harmless from and against any Claim to the extent arising from or related to (i) a material violation of any Applicable Law or any other illegal or actionable act or omission by or on behalf of the Indemnifying Party; (ii) a material breach of any material covenant, obligation, representation, or warranty in this Agreement by the Indemnifying Party; and (iii) infringement by the Indemnifying Party of any intellectual property rights, contracts rights, or tort rights (including the right of publicity or right of privacy) of any third party. Indemnifying Party agrees to promptly pay and fully satisfy any and all Losses, including, without limitation, reasonable attorneys' fees, actually incurred, or sustained, as a result of any Claims of the types described in this Section 11(a).

b. Procedures. The Indemnified Party shall: (i) promptly notify the Indemnifying Party in writing of any Losses for which the Indemnified Party seeks indemnification; (ii) provide reasonable cooperation to the Indemnifying Party and its legal representatives in the investigation of any matter which is the subject of indemnification; and (iii) permit the Indemnifying Party to have full control over the defense and settlement of any matter subject to indemnification; *provided, however*, that the Indemnifying Party shall not enter into any settlement that affects the Indemnified Party's rights or interests without the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed. The Indemnified Party shall have the right to participate in the defense at its own expense.

12. Limitation on Liability. IN NO EVENT WILL A PARTY, ITS SUBSIDIARIES AND AFFILIATES, OR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, ALL OF WHICH ARE HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY

OF SUCH DAMAGES. THE FOREGOING LIMITATION SHALL NOT APPLY WITH RESPECT TO (A) EITHER PARTY'S VIOLATION OF (I) THE INDEMNITY OBLIGATIONS UNDER SECTION 11, OR (II) THE CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7.

13. Miscellaneous.

- a. **Disclosure.** Neither Party will disclose the terms of this Agreement without prior approval of the other Party. Notwithstanding any other provision of this Agreement, Partner may not issue press releases or endorsements which reference SmartBiz or include statements attributable to SmartBiz without the prior written consent of SmartBiz.
- b. **Governing Law.** The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any conflict of law provisions. Should a dispute arise under or in relation to this Agreement, jurisdiction over and venue of any suit arising out of this Agreement shall be exclusively in the state and federal courts of San Francisco, California. If either Party employs attorneys to enforce any right arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees.
- c. **Arbitration.** (i) Any controversy or claim arising out of this Agreement or any alleged breach of this Agreement shall be resolved by means of binding arbitration before a single arbitrator in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association, including the Optional Rules for Emergency Measures of Protection. The arbitrator shall be a practicing attorney or retired judge with at least fifteen years total working experience as such. The arbitration shall be held in San Francisco, California or any other place agreed upon at the time by the Parties. No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitation. The arbitrator is not authorized to award punitive or other damages not measured by the prevailing Party's actual damages. An award of damages shall include pre-award interest at the rate of five (5%) percent from the time of the act or acts giving rise to the award. (ii) A Party may apply to the arbitrator seeking injunctive relief until an arbitration award is rendered or the dispute is otherwise resolved. A Party also may, without waiving any other remedy, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that Party pending the arbitrator's appointment or decision on the merits of the dispute. If the arbitrator determines that a Party has generally prevailed in the arbitration proceeding, then the arbitrator shall award to that Party its reasonable out-of-pocket expenses related to the arbitration, including filing fees, arbitrator compensation, attorney's fees and legal costs. (iii) The arbitrator shall issue a reasoned award. Judgment upon the arbitrator's award may be entered in any court having jurisdiction. The arbitration proceedings and arbitrator's award shall be maintained by the Parties as strictly confidential, except as is otherwise required by court order or as is necessary to confirm, vacate or enforce the award and for disclosure in confidence to the Parties' respective attorneys, tax advisors and senior management and to family members of a Party who is an individual. (iv) The arbitrator shall require exchange by the Parties of (a) the name and, if known,

address and telephone number of each person likely to have knowledge of relevant information, identifying the subjects of the information, and (b) non-privileged documents, including those in electronic form, that are relevant to the issues raised by any claim, defense or counterclaim or on which the producing Party may rely in support of or in opposition to any claim, defense or counterclaim. The arbitrator shall limit such production based on considerations of unreasonable expense, duplication and undue burden. These exchanges shall occur no later than a specified date within 60 days following the appointment of the arbitrator. At the request of a Party, the arbitrator may at his or her discretion order the deposition of witnesses.

Depositions shall be limited to a maximum of three depositions per Party, each of a maximum of four hours duration, unless the arbitrator otherwise determines. The arbitrator may allow such other discovery as he or she determines is reasonably necessary for a fair determination of the dispute. Any dispute or objections regarding discovery or the relevance of evidence shall be determined by the arbitrator. All discovery shall be completed within 120 days following the appointment of the arbitrator, unless the arbitrator otherwise determines.

- d. **Force Majeure.** Neither Party will be liable for failure or delay in performance of any of its obligations under this Agreement arising out of any event or circumstance beyond that Party's reasonable control; *provided, however*, that such Party promptly notifies the other Party of the nature and duration of the force majeure event and resumes performance as soon as possible.
- e. **Entire Agreement.** This Agreement and each of its exhibits or appendices constitutes and contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written agreements between Partner and BillFloat, Inc. or SmartBiz Loans LLC. Each Party acknowledges and agrees that the other has not made any representations, warranties, or agreements of any kind, except as expressly set forth in this Agreement.
- f. **Professionals' Fees.** Each Party will be responsible to pay all fees of its own attorneys, accountants, and other professionals utilized in connection with the relationship established under this Agreement.
- g. **Independent Contractors.** This Agreement is not intended to establish any partnership, joint venture, employment, or other relationship between the Parties except that of independent contractors. Neither Party has, or may represent that it has, any authority under or as a result of this Agreement to act on behalf of the other Party in any way.
- h. **Assignment.** Except as provided herein, neither Party may assign or otherwise transfer any of its rights under this Agreement, or delegate any of its obligations or duties under this Agreement, without the other Party's express prior written consent. Notwithstanding anything to the contrary, either Party may assign this Agreement (i) to any affiliate or wholly-owned subsidiary of that Party or (ii) to any third party in connection with the sale of all or substantially all of that Party's business or assets, whether by merger, sale of assets, sale of stock, or otherwise without the other Party's prior consent; *provided* that notice of such assignment is promptly provided to the other party. Subject to the foregoing, this Agreement will be binding upon each Party and its successors and permitted assigns.
- i. **Modification.** SmartBiz may modify any of the provisions of these Terms & Conditions and any attachments and exhibits at any time in its sole discretion, by posting a new Terms &

Conditions, attachment(s) or exhibit(s), as the case may be, at https://www.smartbizloans.com/agreements/partner_program.pdf. Unless otherwise provided in the revised Terms & Conditions, the Partner Enrollment Form, or any attachment(s) or exhibit(s), the modified terms shall take effect immediately when posted. SmartBiz shall use commercially reasonable efforts to notify Partner in advance of any such modifications, provided it shall remain Partner's duty to review the Terms and Conditions and all applicable Attachment(s) and Exhibit(s) from time to time to inform itself of the provisions and requirements of each. IF ANY MODIFICATION IS UNACCEPTABLE TO PARTNER, PARTNER'S SOLE AND EXCLUSIVE RECOURSE AND REMEDY IS TO TERMINATE THE AGREEMENT AS PROVIDED HEREIN. PARTNER'S CONTINUED PROVISION OF SERVICES FOLLOWING THE MODIFICATION OF THE TERMS AND CONDITIONS OR ANY ATTACHMENT(S) OR EXHIBIT(S) AS THE CASE MAY BE, SHALL CONSTITUTE PARTNER'S BINDING ACCEPTANCE OF AND AGREEMENT TO SUCH INSTRUMENT, AS AMENDED.

- j. **Waiver.** This Agreement may not be modified except as provided in Section 13(h) or in writing signed by an authorized signatory of each Party. No term or provision hereof will be deemed waived or modified, and no variation of terms or provisions hereof shall be deemed consented to, unless such waiver or consent is in writing and signed by the Party against whom such waiver or consent is sought to be enforced. Any delay, waiver, or omission by either Party to exercise any right or power arising from breach or default of this Agreement by the other Party shall not be construed to be a waiver by that Party of any subsequent breach or default.
- k. **Counterparts.** This Agreement may be executed and then delivered via facsimile transmission, via the sending of PDF, or other copies thereof via electronic mail and in one or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same Agreement.
- l. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unlawful, void, or unenforceable to any extent, the remainder of this Agreement will remain in full force and effect and the invalid, unlawful, void, or unenforceable provision will be deemed modified to be valid and enforceable to the maximum extent permitted by Law.
- m. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given: (i) upon delivery, when delivered personally against receipt therefore; (ii) upon delivery when sent by certified mail, postage prepaid and return receipt requested; (iii) upon transmission, when transmitted by electronic mail, facsimile, or other electronic transmission method; (iv) upon delivery, when sent by Federal Express or other nationally recognized overnight delivery service; or (v) three days after deposit if by U.S. mail, postage prepaid. Any such notice shall be sent to the Party to whom notice is intended to be given at its address as shown below or at such other address as shall be designated by such Party in a written notice to the other Party. If to SmartBiz: BillFloat, Inc., dba SmartBiz Loans, 433 California Street, Suite 900, San Francisco, CA 94104, Attention: Robert Hale, Email: robert@smartbizloans.com. If to Partner, then at the address provided by Partner when registering at SmartBiz Website or on the Partner Enrollment Form.
- n. **Headings.** The headings, captions, headers, and footers in this Agreement are intended for convenience or reference and shall not affect the meaning or interpretation of this Agreement.

EXHIBIT A

Program Fee

SmartBiz Lender Products

With the exception of SBA Loans permitted under Paycheck Protection Program Loan (“PPP Loans”), SmartBiz shall pay to Partner up to two percent (2%) of total aggregate principal amount of all Funded Loans by SmartBiz Lenders between \$25,000 and \$350,000 obtained by all Applicants introduced to SmartBiz by Partner throughout the Term of this Agreement. With the exception of PPP Loans, SmartBiz shall pay to Partner up to one and twenty-five hundredths of a percent (1.25%) of total aggregate principal amount of all Funded Loans by SmartBiz Lenders between \$350,001 and \$5,000,000 obtained by all Applicants introduced to SmartBiz by Partner throughout the Term of this Agreement.

Non-SmartBiz Lender Products

SmartBiz shall pay to Partner fifty percent (50%) of the amount earned by SmartBiz for introducing an Applicant to a non-SmartBiz Lender, net of SmartBiz’s expenses related to making such introduction.

PPP Loans

For funded PPP Loans where SmartBiz actually receives full payment for the funded PPP Loan from lender (as specified below), commencing on a date still to be determined, SmartBiz shall pay the following fee payment to partner based on the funded PPP loan amount:

Funded PPP Loan Amount	SBA Fee to Lender	Fee Payment to Partner*
Greater than \$2,000,000	1%	0.167%
Greater than \$350,000 and up to \$2,000,000	3%	0.50%
Greater than \$50,000 and up to \$350,000	5%	0.83%
Up to \$50,000	The lesser of \$2,500 or 50% of the Principal Amount for second draw PPP Loans; 5% for first draw PPP Loans.	16.7% of Fees Paid to Lender

*The Fee Payment to Partner cannot exceed any maximum Agent Fee that may be implemented by the SBA. In the event that the Fee Payment to Partner exceeds the maximum Agent Fee, the maximum Agent Fee will instead be used to calculate the Fee Payment to Partner.

SmartBiz will pay marketing referral fees to Partner for PPP Loans within thirty (30) days of receipt by SmartBiz of full payment of fees due from lender.

