

commresinc.com

Terms & Conditions of Service

Last updated: March 10, 2020

PLEASE CAREFULLY REVIEW THESE TERMS AND CONDITIONS OF USE BEFORE USING THIS WEBSITE. BY ACCESSING THIS WEBSITE YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS BELOW. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, PLEASE DO NOT ACCESS THIS WEBSITE.

User Agreement

The following are terms of a legal agreement (the "Agreement") between you and Commercial Resources Inc. ("we", "us", "our", or the "Commercial Resources Team") that sets forth the terms and conditions for your use of this web site and our hosted web-based applications (the "Site"). This Site and the services it offers (the "Commercial Resources Services") are being provided to you expressly subject to this Agreement. By accessing, browsing and/or using this Site, you acknowledge that you have read, understood, and agree to be bound by the terms of this Agreement and to comply with all applicable laws and regulations. The terms and conditions of this Agreement form an essential basis of our bargain.

We reserve the right to amend this Agreement at any time and will notify you of any such changes by posting the revised Agreement on the Site. You should check this Agreement periodically for changes. All changes shall be effective upon posting. Your continued use of the Site after any change to this Agreement constitutes your agreement to be bound by any such changes. We may terminate, suspend, change, or restrict access to all or any part of this Site without notice or liability.

Registration Information and the Need for Accuracy

You are invited to register at the Site to help us tailor the Commercial Resources Services for your business financial needs and to alert you to other products and services for your business. In registering to use the Site, you agree to provide accurate, true, current, and complete information about your business as requested by the registration screens, including information about principal shareholders, officers, and directors of the business. As a convenience to you, the Site will create a profile for your business based on the registration information that you provide (a "Commercial Resources Account"). This profile and any registration information you provide will be handled as described in our Privacy Policy.

IT IS YOUR RESPONSIBILITY TO ENSURE THAT ANY INFORMATION YOU PROVIDE TO US ABOUT YOUR BUSINESS IS ACCURATE AND IS NOT CONTRADICTED BY YOUR BUSINESS RECORDS AND PUBLIC FILINGS, SUCH AS, BUT NOT LIMITED TO, YOUR TAX RETURNS AND CORPORATE FILINGS



Lenders with whom we work will check all or part of your loan application against documents such as tax returns you have provided to the IRS in the past. We cannot effectively help you find an appropriate lender or verify that you meet a lender's underwriting criteria unless the information you have provided us is accurate. You understand, acknowledge, and agree that the SmartBiz and Other Loan Participants can obtain, use and share tax return information for purposes of (i) providing the Services; (ii) originating, maintaining, managing, monitoring, servicing, selling, insuring, and securitizing a loan; (iii) marketing; or (iv) as otherwise permitted by applicable laws, including state and federal privacy and data security laws. SmartBiz includes the Company's affiliates, agents, service providers and any of aforementioned parties' successors and assigns. The Other Loan Participants includes any actual or potential owners of a loan resulting from your loan application, or acquirers of any beneficial or other interest in the loan, any insurer, guarantor, any servicers or service providers for these parties and any of aforementioned parties' successors and assigns.

You certify that information provided in your loan application and in all supporting documents and forms is true and accurate. The penalty for knowingly making a false statement to obtain a loan guaranteed by the Small Business Administration (SBA) can include fines of up to \$25,000 and imprisonment of up to five years, pursuant to 18 U.S.C. § 1001. False statements to a federally insured depository institution, such as the SBA lenders with whom we work, may be punished with fines up to \$1,000,000 and/or imprisonment for up to 30 years pursuant to 18 U.S.C. § 1014.

By registering on the Site, you also specifically consent to let SmartBiz request and receive your consumer report data and other data about you from third parties to include in your SmartBiz Account, as follows: I understand that I am providing written instructions in accordance with the Fair Credit Reporting Act and other applicable law for SmartBiz Loans or its affiliated companies to request and receive copies of consumer reports, scores and other information about me from third parties, including, but not limited to, TransUnion and Equifax. I understand that my instructions let SmartBiz Loans and affiliated companies obtain such information at any time for as long as I have a registered SmartBiz Account to use as described in the Terms of Service and Privacy Policy.

Closing Your Account and Ceasing Email Communications

If you wish to cancel and close your SmartBiz Account, contact us by telephone at 844-678-8736. If you wish to stop receiving email communications from us, you are advised to close your SmartBiz Account.

Who We Are and What We Do

SmartBiz helps businesses find lenders and apply for small business loans. SmartBiz is not a small business lender and does not, itself, provide SBA-guaranteed or other business loans. SmartBiz has expertise identifying appropriate lenders for various types and sizes of businesses that often have a difficult time securing affordable credit. SmartBiz also helps lenders streamline and expedite the process of applying for small business credit, and has expertise and proprietary technology to do so.

SmartBiz Advisor™

The SmartBiz Services include SmartBiz Advisor, a platform that helps you learn about how banks typically evaluate your business and recommends steps for you to consider that might increase the likelihood of approval when applying for a business loan. Any analysis or estimates we provide as part of SmartBiz Advisor, including your Loan Ready Score, are for educational purposes only. Our analysis or estimates are based on certain assumptions and use only data that we have. In this respect, we may elect to consider, ignore, emphasize or de-emphasize certain factors in our sole discretion. We do not guarantee that the information we present as part of SmartBiz Advisor, including your Loan Ready Score, is the same information that may be used or reviewed by a third party to assess your eligibility for any particular product or service. SmartBiz Advisor is not a financial or legal advisor as defined under federal or state law. Use of SmartBiz Advisor is not a replacement for personal, professional advice or assistance regarding your finances, credit history or fixing your credit rating.

Service Fees

For non-SBA loans applications, in exchange for providing the SmartBiz Services, we charge a fee of up to six percent (6%) of the amount of the small business loan which you accept from a lender we helped you find. SmartBiz does not charge you any fees for SBA loan applications. However, the lender may charge you a fee ("Lender Fee"). For SBA loans, because you may be required to pay the Lender Fee even if your loan is not ultimately funded, we will engage in extensive prequalification of your business and use commercially reasonable efforts to only prepare a loan application for you if we believe, based on the information you have provided to us, that your business is eligible to receive the loan for which we help you apply. It remains your responsibility to ensure that the information you provide to us about your business is not contradicted by documents and information, such as, but not limited to, tax returns, that lenders with whom we work may request as part of your application.

Updating Your Information

In order to assist your business in finding a lender and applying for a loan, we require up-to-date information about your business and its principal shareholders, directors, and officers. For this reason, we require that you complete our forms within 30 days of the time that you begin filling them out. If you do not complete our application forms within this 30 day timeframe, you may be required to fill them out again in order to proceed with having us help you find a lender and prepare your loan application.

SBA Requirements for Loan Applications

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

Copyright; Limitation of Use

The copyright in all material on this Site, including without limitation the text, data, articles, design, source code, software, photos, images and other information (collectively the “Content”), is held by SmartBiz or by the original creator of the material and is protected by U.S. and International copyright laws and treaties. You agree that the Content may not be copied, reproduced, distributed, republished, displayed, posted, or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the express prior written consent of SmartBiz. You acknowledge that the Content is and shall remain the property of SmartBiz.

You may not modify, participate in the sale or transfer of, or create derivative works based on any Content, in whole or in part. The use of the Content on any other Site, including by linking or framing, or in any networked computer environment for any purpose, is prohibited without SmartBiz’s prior written approval. You also may not, without SmartBiz’s express written permission, “mirror” any material contained on this Site on any other server. Any unauthorized use of any Content on this Site may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications statutes and regulations.

You agree to use the Content and Site only for lawful purposes. You are prohibited from any use of the Content of Site that would constitute a violation of any applicable law, regulation, rule or ordinance of any national, state, or locality or of any international law or treaty, or that could give rise to any civil or criminal liability. Any unauthorized use of the Site, including but not limited to unauthorized entry into SmartBiz’s systems, misuse of passwords, or misuse of any information posted on the Site is strictly prohibited. SmartBiz makes no claims concerning whether the Content may be downloaded or is appropriate for use outside of the United States. If you access this Site from outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction. Your eligibility for particular products or services is subject to final determination by SmartBiz.

Privacy and Your Information

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

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

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

Trademarks

SmartBiz Loans, SmartBiz (including the SmartBiz logo), SBA Loans Made Easy, Helping Finance Small Business Dreams, SmartBiz Advisor, SmartBiz.com, SmartBizLoans.com, SmartBizloan.com, and all related logos (collectively the "SmartBiz Trademarks") are registered trademarks or service marks of SmartBiz. Other company, product, and service names and logos used and displayed on this Site may be registered trademarks or service marks owned by SmartBiz or others. Nothing on this Site should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of the SmartBiz registered trademarks displayed on this Site, without our prior written permission in each instance. You may not use, copy, display, distribute, modify or reproduce any of the registered trademarks found on the Site unless in accordance with written authorization by us. We prohibit use of any of the SmartBiz registered trademarks as part of a link to or from any site unless establishment of such a link is approved in writing by us in advance. Any questions concerning any SmartBiz Trademarks, or whether any mark or logo is a SmartBiz Trademark, should be referred to SmartBiz.

Links to Third-Party Sites

This site may contain links to websites controlled or offered by third parties (non-affiliates). SmartBiz hereby disclaims liability for any information, materials, products or services posted or offered at any of the third-party sites linked to this website. By creating a link to a thirdparty website, SmartBiz does not endorse or recommend any products or services offered or information contained at that website, nor is SmartBiz liable for any failure of products or services offered or advertised at those websites. Such third party may have a privacy policy different from that of SmartBiz and the third-party website may provide less security than the SmartBiz site. You are encouraged to review the Privacy Policy and Terms of Use on these third-party websites if you choose to access them.

Use of Third-Party Service Providers

We may use third-party service providers to assist in providing certain SmartBiz Services with or without notice to you (each, a "Third-Party Service Provider"). We may also change Third-Party Service Providers or may provide a SmartBiz Service without the assistance of such third party. You consent and authorize us to delegate the authorizations you provide to us to our Third-Party Service Provider(s) as we deem necessary or desirable to provide the applicable SmartBiz Service to you. You agree that the terms and conditions of this Agreement, including any of the other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement, inure to the benefit of such Third-Party Service Providers and such Third-Party Service Providers are deemed to be third-party beneficiaries of this Agreement, including any other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement. You also agree that all references to us within this Agreement and any incorporated terms are also deemed to include, where applicable, our agents, such as the Third-Party Service Providers.

To protect the privacy and security of your personal information, we require that Third-Party Service Providers who are authorized to access your personal information take privacy and confidentiality measures to protect it.

Use of Cookies

We use temporary cookies for login session management. If you disable cookies, you cannot access the Site.

Use of Browser Plug-Ins

Use of our Site requires users to run Javascript in their browser.

Disclaimer of Warranties

THE INFORMATION AND MATERIALS CONTAINED IN THIS SITE, INCLUDING TEXT, GRAPHICS, LINKS OR OTHER ITEMS AND CONTENT ARE PROVIDED "AS IS", "AS AVAILABLE," WITHOUT ANY WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR TITLE. ADDITIONALLY, THERE ARE NO WARRANTIES AS TO THE RESULTS OF YOUR USE OF THE CONTENT. SMARTBIZ DOES NOT WARRANT THAT THE SITE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THIS DISCLAIMER DOES NOT AFFECT THOSE WARRANTIES WHICH ARE INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

SMARTBIZ MAY DISCONTINUE OR MAKE CHANGES TO THE CONTENT AND SITE AT ANY TIME WITHOUT PRIOR NOTICE TO YOU AND WITHOUT ANY LIABILITY TO YOU. ANY DATED INFORMATION IS PUBLISHED AS OF ITS DATE ONLY, AND SMARTBIZ DOES NOT UNDERTAKE ANY OBLIGATION OR RESPONSIBILITY TO UPDATE OR AMEND ANY SUCH INFORMATION. SMARTBIZ RESERVES THE RIGHT TO TERMINATE ANY OR ALL SITE OFFERINGS OR TRANSMISSIONS WITHOUT PRIOR NOTICE TO YOU. THIS SITE COULD CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS. USE OF THIS SITE IS AT YOUR OWN RISK.

Limitation of Liability

IN NO EVENT WILL SMARTBIZ BE LIABLE FOR ANY DAMAGES INCLUDING GENERAL, SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR ANY OTHER DAMAGES, LOSSES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS INTERRUPTION) OF ANY KIND WHETHER IN AN ACTION IN CONTRACT OR NEGLIGENCE ARISING OR RELATING IN ANY WAY TO THE USE OR INABILITY TO USE BY ANY PARTY OF THE CONTENT, THE SITE OR ANY THIRD-PARTY SITE TO WHICH THIS SITE IS LINKED, OR IN CONNECTION WITH ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS OR LINE OR SYSTEM FAILURE, EVEN IF SMARTBIZ, OUR REPRESENTATIVES THEREOF, ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR EXPENSES. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THIS SITE IS TO STOP USING THE SITE. IF YOUR USE OF

MATERIALS FROM THIS SITE RESULTS IN THE NEED FOR SERVICING, REPAIR OR CORRECTION OF EQUIPMENT OR DATA, YOU ASSUME ANY COSTS THEREOF. IF THE FOREGOING LIMITATION IS FOUND TO BE INVALID, YOU AGREE THAT SMARTBIZ'S TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION OF ANY KIND OR NATURE SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

Security of Data Transmissions and Storage

Electronic (including wired and wireless) communications through the Site may not be encrypted. You acknowledge that there is a risk that data, including e-mail, electronic and wireless communications and personal data, may be accessed by unauthorized third parties when communicated between you and SmartBiz or between you and other parties.

Indemnification

You agree to indemnify and hold harmless SmartBiz from and against any and all claims, losses, expenses, demands or liabilities, including attorneys' fees and costs, incurred by SmartBiz in connection with any claim by a third party (including any intellectual property claim) arising out of (i) materials and content you submit to, post to, or transmit through the Site, or (ii) your use of the Site in violation of this Agreement or in violation of any applicable law. You further agree that you will cooperate fully in the defense of any such claims. SmartBiz reserves the right, at their own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you shall not in any event settle any such claim or matter without the written consent of SmartBiz.

Monitoring of the Site

SmartBiz has no obligation to monitor the Site; however, you acknowledge and agree that SmartBiz has the right to monitor the Site electronically from time to time and to disclose any information as necessary or appropriate to satisfy any law, regulation or other governmental request, to operate the Site, or to protect itself or other users of the Site.

Potential Disruption of Service

You shall be responsible for obtaining and maintaining all telephone, computer hardware, software, and other equipment needed to access and use this Website. Access to this Site may from time to time be unavailable, delayed, limited or slowed due to, among other things:

- hardware failure, including among other things, failures of computers (including your own computer), servers, networks, telecommunication lines and connections, and other electronic and mechanical equipment;
- software failure, including among other things, bugs, errors, viruses, configuration problems, incompatibility of systems, utilities or applications, the operation of firewalls or screening programs, unreadable codes, or irregularities within particular documents or other content;
- overload of system capacities;

- damage caused by severe weather, earthquakes, wars, insurrection, riots, terrorism, civil commotion, act of God, accident, fire, water damage, explosion, mechanical breakdown or natural disasters;
- interruption (whether partial or total) of power supplies or other utility of service;
- strike or other stoppage (whether partial or total) of labor;
- governmental or regulatory restrictions, exchange rulings, court or tribunal orders or other human intervention; or
- any other cause (whether similar or dissimilar to any of the foregoing) whatsoever beyond our control.

If access to this Site is unavailable, delayed, or limited, or if this Site does not operate quickly and efficiently, you may be unable to complete your application or transmit your instructions for transactions and other matters, or such application or instructions may not be promptly executed or you may be unable to retrieve information on a timely basis. If your operations are dependent on such communications with us, and such communications are disrupted or delayed, you may suffer losses. SmartBiz will not be liable for any such loss.

Use of Personally Identifiable Information

SmartBiz's practices and policies with respect to the collection and use of personally identifiable information are governed by the SmartBizloans.com Privacy Policy (<https://www.smartbizloans.com/privacy-policy.pdf>).

Unauthorized Use of Your Registration

If you believe that someone has used your registration information to access the Site without your authorization, please call us immediately at 844-678-8736.

Business Use of this Site

You agree to use the Site for only business use, not for seeking household, personal, or family credit.

Consultation with Counsel

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

Availability

This Site is not intended for distribution to, or use by, any person or entity in any jurisdiction or country where such distribution or use would be contrary to local law or regulation. By offering this Site and Content no distribution or solicitation is made by SmartBiz to any person to use the Site or Content in jurisdictions where the provision of the Site and/or Content is prohibited by law.

Termination

This Agreement is effective until terminated by SmartBiz. SmartBiz may terminate this Agreement at any time without notice, or suspend or terminate your access and use of the Site at any time, with or without cause, in SmartBiz's absolute discretion and without notice. The following provisions of the Agreement shall survive termination of your use or access to the Site: the sections concerning Indemnification, Disclaimer of Warranties, Limitation of Liability, Waiver, Applicable Law and Dispute Resolution, and General Provisions, and any other provision that by its terms survives termination of your use or access to the Site.

Waiver

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

Applicable Law

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

Dispute Resolution and Arbitration

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

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

b. You may opt out of this Arbitration Provision for all purposes by sending an arbitration opt out notice to SmartBiz Loans, 433 California Street, Suite 900 San Francisco CA, 94104, Attention: Legal Department, which is received at the specified address within 30 days of the date of your electronic acceptance of the terms of this Agreement. The opt out notice must clearly state that

you are rejecting arbitration; identify the Agreement to which it applies by date; provide your name, address, and social security number; and be signed by you. You may send an opt out notice in any manner you see fit as long as it is received at the specified address within the specified time. No other methods can be used to opt out of this Arbitration Provision. If the opt out notice is sent on your behalf by a third party, such third party must include evidence of his or her authority to submit the opt out notice on your behalf.

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

The party initiating arbitration shall do so with the American Arbitration Association (the "AAA") or Judicial Alternatives and Mediation Services ("JAMS"). The arbitration shall be conducted according to, and the location of the arbitration shall be determined in accordance with, the rules and policies of the administrator selected, except to the extent the rules conflict with this Arbitration Provision or any countervailing law. If you have any questions concerning the AAA or would like to obtain a copy of the AAA arbitration rules, you may call 1(877) 727-2692 or visit the AAA's web site at: www.adr.org. If you have any questions concerning JAMS or would like to obtain a copy of the JAMS arbitration rules, you may call 1(855) 742-4046 or visit their website at: www.jamsadr.com. In the case of a conflict between the rules and policies of the administrator and this Arbitration Provision, this Arbitration Provision shall control, subject to countervailing law, unless all parties to the arbitration consent to have the rules and policies of the administrator apply.

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

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

f. We agree not to invoke our right to arbitrate an individual Claim you may bring in Small Claims Court or an equivalent court, if any, so long as the Claim is pending only in that court. NO ARBITRATION SHALL PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS (INCLUDING AS PRIVATE ATTORNEY GENERAL ON BEHALF OF OTHERS), EVEN IF THE CLAIM OR CLAIMS THAT ARE THE SUBJECT OF THE ARBITRATION HAD PREVIOUSLY BEEN ASSERTED (OR COULD HAVE BEEN ASSERTED) IN A COURT AS CLASS REPRESENTATIVE, OR COLLECTIVE ACTIONS IN A COURT. Unless consented to in writing by all parties to the arbitration, no party to the arbitration may join, consolidate, or otherwise bring claims for or on behalf of two or more individuals or unrelated corporate entities in the same arbitration unless those persons are parties to a single transaction. Unless consented to in writing by all parties to the arbitration, an award in arbitration shall determine the rights and obligations of the named parties only, and only with respect to the claims in arbitration, and shall not (a) determine the rights, obligations, or interests of anyone other than a named party, or resolve any Claim of anyone other than a named party; nor (b) make an award for the benefit of, or against, anyone other than a named party. No administrator or arbitrator shall have the power or authority to waive, modify, or fail to enforce this section (f), and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable. Any challenge to the validity of this section (f) shall be determined exclusively by a court and not by the administrator or any arbitrator.

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

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

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

Other Agreements

This Agreement shall be subject to any other agreements you have entered into with SmartBiz.

Additional Terms

Certain sections or pages on the Site may contain separate terms and conditions of use, which are in addition to the terms and conditions of this Agreement. In the event of a conflict, the additional terms and conditions will govern for those sections or pages.

Severability

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

General Provisions

This Agreement supersedes any previous Terms of Use Agreement to which you and SmartBiz may have been bound with regard to SmartBiz and SmartBiz.com. This Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns. Neither the course of conduct between parties nor trade practice shall act to modify any provision of the Agreement. All rights not expressly granted herein are hereby reserved. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

U.S. PATRIOT ACT DISCLOSURE

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: If you receive a loan from one of our partner lenders, this is considered an account. When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

--- END DOCUMENT ---