



# Terms of Service, Investor Agreement, Small & Medium Business / Startup Agreement, Private Policy, and Electronic Consent and Electronic Delivery of Documents

**SMBX connects investors to small and medium businesses for the buying of U.S. small business financial securities.**

SMBX, Inc, operating as “SMBX”, (together, “SMBX,” “we,” “us,” “our” or the “Company”) operate the mobile app (the “App”) offered through the IOS platform, the website located at the THESMBX.com (the “Site”) and other SMBX web-based products specifically for small and medium business owners (“SMBOs”) and entrepreneurs (“Founders”). Our mission is to connect SMBOs and Founders who have thriving existing businesses (“SMBs”) or are working on innovative new businesses (“Startups”) with people who may be able to provide financing, advice and other support to those SMBs or Startups (“Investors”). Among other things, SMBX offers a comprehensive offering platform via our App and other trading tools to facilitate fundraising by SMBOs and Founders for their SMBs and Startups. SMBX also provides supplementary materials that educate SMBOs, Founders and Investors about the nature of SMBs, entrepreneurship, the process and perils of investing in SMBs and startup companies, different types of securities offered on our platform (i.e. what they are etc.) and “crowdfunding” – the funding of a project or venture by raising small amounts of money from a large number of people. The services, features, content or applications that may be offered from time to time by SMBX in connection with the App, Site, other SMBX web-based products, and/or The SMBX's business are collectively referred to as the “Services.”

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## TERMS OF SERVICE

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### 1. Acceptance of the Terms of Service; Changes

By accessing the App, Site, and/or using the Services, you agree to be bound by all of the provisions of the Terms of Service (the “TOS”). **IF YOU DO NOT ACCEPT AND AGREE TO ALL OF THE PROVISIONS OF THE TOS, OR IF YOU ARE NOT ELIGIBLE, YOU ARE NOT AUTHORIZED TO ACCESS THE APP, SITE OR USE THE SERVICES.**

This TOS provides that all disputes between you and SMBX will be resolved by BINDING ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract, except for matters that may be taken to small claims court. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury, and your claims cannot



be brought as a class action. Please review Section 15.3 ("Dispute Resolution") for the details regarding your agreement to arbitrate any disputes with SMBX.

As used in the TOS, the terms "you" and "your" mean each individual or entity that accesses, browses or uses the App, Site and/or the Services in any manner. If you are accessing the App, Site and/or using the Services on behalf of an entity, you represent and warrant to SMBX that you have the authority to bind the entity you represent to the TOS. Your agreement to this TOS will be treated as the agreement of the entity you represent.

SMBX may modify the TOS or add or remove terms at any time, and each such modification, addition or deletion will be effective immediately upon posting on the App, Site and/or the Services. Your use of the App, Site or the Services following any such posted modification, addition or deletion constitutes your agreement to be bound by and your acceptance of the TOS as so modified. It is therefore important that you review the TOS regularly. **IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THE TERMS OF THE MODIFIED TOS, YOU ARE NOT AUTHORIZED TO ACCESS THE APP, SITE AND/OR USE THE SERVICES, AND YOU MUST IMMEDIATELY DISCONTINUE DOING SO.**

## **2. Privacy Policy; Additional Terms.**

Use of the App, Site and the Services are subject to SMBX Privacy Policy (the "Privacy Policy"). The terms of the Privacy Policy are incorporated into the TOS by this reference. (To view the Privacy Policy, please see page 31.)

Your access to and/or use of certain portions of the App, Site and the Services will require you to accept terms and conditions applicable to such Services which are in addition to the terms of the TOS and will be presented to you for your acceptance when you sign up for such Services (the "Additional Terms"). For Investors, "Additional Terms" includes the Investor Agreement. For SMBOs, Founders, SMBs and Startups, "Additional Terms" includes the SMB or Startup Agreement. The TOS, the Privacy Policy and the Additional Terms (collectively, the "User Agreements") set forth the terms and conditions that apply to your use of the App, Site and the Services. To the extent there is any conflict between the TOS and any Additional Terms, the Additional Terms will prevail.

## **3. Eligibility.**

You may only use the App, Site and the Services if you are at least 13 years of age. If you are under the age of 18 or under the age of majority in the jurisdiction in which you are located, you may only use the App, Site and the Services under the supervision of a parent or legal guardian. You may not use the App or Site if you are under 13 years of age. SMBX reserves the right to require you to provide SMBX with proof of your age and, if applicable, approval of your use of the App, Site and the Services by your parent/legal guardian. SMBX may terminate your access to and use of the App, Site and the Services without warning if it determines that you do not meet the foregoing eligibility requirements.

In addition to the eligibility requirements in the TOS, your use of certain Services may be subject to eligibility requirements set forth in the Additional Terms.

## 4. Access to the App, Site and the Services

### 4.1 General Access.

Subject to your compliance with the Agreement, SMBX hereby grants to you a limited, non-transferable, non-exclusive right to access and use its proprietary, commercially available, hosted software product and related documentation via its App or Web-browser for use during the term of the Agreement. SMBX hosts and retains control over the software and only makes it available for access and use by you via the App on the IOS platform or over the Internet through a Web-browser. Nothing in this Agreement obligates SMBX to deliver or make available any copies of computer programs or code from the software to you, whether in object code or source code form. You may not rent, lease, distribute, or resell the software, or use the software as the basis for developing a competitive solution (or contract with a third party to do so), or remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the software.

### 4.2 Registered Users.

In order to access or use certain Services you must become a "Registered User" by creating an account (an "Account") and choosing a password that you will use to access your Account. By registering, you represent and warrant to the Company that all registration and other information you submit to or through the App and Site is truthful, accurate, current and complete, and you agree to immediately provide corrected information if any of the submitted information shall no longer be truthful, accurate, current and complete. You further represent and warrant that your use of the App, Site and the Services does not violate any applicable laws, rules or regulations. Without limiting any of SMBX's other available legal remedies, if you provide any registration or other information that is untrue, inaccurate, or incomplete, or SMBX has reasonable grounds to suspect that such is the case, SMBX may immediately, and without notice to you, suspend or terminate your Account and refuse any and all use by you of the App, Site and the Services. Your registration on the App, Site and your use of the App, Site and the Services are void where prohibited.

You are solely responsible for safeguarding the confidentiality of your password and for any and all use of your Account and password, whether or not authorized by you. Although SMBX will not be liable for any of your losses that are caused by any unauthorized use of your Account, you may be liable for the losses of SMBX or others due to such unauthorized use. If you suspect any unauthorized use of your Account or unauthorized access to your password, please contact SMBX immediately at [support@thesmbx.com](mailto:support@thesmbx.com). You do not have the right to transfer your Account to any individual or entity and SMBX reserves the right to remove or reclaim your Account if SMBX determines, in its sole discretion, that such action is appropriate under the circumstances. You agree that you will not create an Account for any individual other than yourself (or, if applicable, the entity you represent). As a Registered User, you agree that SMBX may electronically provide you (via email or postings or links on the App or Site) with invoices, documents, notices and other

communications regarding the App, Site, the Services and/or your use thereof, as well as special offers, promotions, commercial advertisements, marketing materials, etc. You agree that SMBX may send the foregoing communications to you via your Account or any email address(es) which you provide to SMBX as part of your Account registration or otherwise.

## 5. Use of the App, Site and Services

### 5.1 Generally

**5.1.1.** You agree that you will use the Services solely in a manner consistent with this Agreement and SMBX mission described above. You assume all risk when using the App, Site and the Services, and you acknowledge that the Company cannot guarantee and does not promise any specific results from your use of the App, Site and the Services.

**5.1.2.** While some of the Services relate to legal, tax, investment or accounting matters, neither we nor any of the professionals providing such content are providing professional advice to you, and you acknowledge that there is no professional relationship (including without limitation any attorney-client relationship) between you and any of the same, unless you and such party specifically agree otherwise.

**5.1.3.** The information and services provided on the App, Site and the Services are not provided to, and may not be used by, any person or entity in any jurisdiction where the provision or use thereof would be contrary to applicable laws, rules or regulations of any governmental authority or where SMBX is not authorized to provide such information or services. Some products and services described in the App, Site and the Services may not be available in all jurisdictions or to all users.

**5.1.4.** You represent and warrant to SMBX that: you own all rights in and to the content posted by you on, through or in connection with the App and Site ("User Content"), or otherwise have all the rights, power and authority legally required to grant SMBX the rights in your User Content pursuant to the TOS and the Additional Terms; and the posting of your User Content on or through the App and Site does not violate the TOS or violate the privacy rights, publicity rights, intellectual property rights (including, without limitation, copyrights and trademarks), contract rights or any other rights of any person or entity, whether or not such person or entity is depicted or appears/performs in your User Content. You agree that you are solely responsible for the User Content that you post on or through the App and Site and any material or information that you transmit to other users of the App, Site or the Services.

**5.2** You agree that SMBX has the right to perform all technical functions necessary to offer the Services, including, but not limited to, processing and transmitting email communications to and from you, and transcoding and/or reformatting your User Content. You do not have the right to use, copy or distribute any of the content posted on the App or Site, except as expressly authorized by the TOS and the Additional Terms. Any violation by you of the foregoing prohibitions may result in the termination of your Account and your right to use the App, Site and/or the Services.

### 5.3 Your Conduct When Using the App, Site and/or the Services

**5.3.1.** As a condition of your access to the App and Site and use of the Services, you are prohibited from taking any action that would violate the content and conduct standards set forth in Section 6 below. In addition and not in limitation of the prohibited actions set forth in Section 6 below, you agree that you will not (a) employ any device, scheme, or artifice to defraud or (b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

**5.3.2.** SMBX reserves the right, but is under no obligation or duty, to at any time, and without notice, monitor activity on the App and Site to determine compliance with the TOS or to comply with any law, regulation or authorized government request. You hereby specifically agree to such monitoring. In the event that SMBX does monitor the App, Site or the Services, SMBX makes no representation or warranty that SMBX will take any action whatsoever in connection with any of the monitored activities and SMBX assumes no liability with respect thereto.

### 5.4 Your Interactions with Other Users

**5.4.1.** SMBX uses various techniques to verify the accuracy of the information provided by users. However, in view of the limitations in verification on the Internet, SMBX cannot confirm the identity of users. We encourage you to use the various tools and content available on the App and Site, as well as elsewhere, to evaluate the users with whom you are dealing.

**5.4.2.** You acknowledge that there are risks of dealing with other users acting under false pretenses, and you assume the risks of liability or harm of any kind in connection with transactions of any kind relating to goods and/or services that are the subject of transactions using the App and Site. Such risks shall include, but are not limited to, misrepresentation of information about a user, a Small & Medium or a Startup, breach of warranty, breach of contract, and violation of third-party rights and consequent claims. You agree that SMBX shall not be liable or responsible for any damages, liabilities, costs, harms, inconveniences, business disruptions or expenditures of any kind that may arise as a result of or in connection with any transactions with others using the [App and Site](#).

## 6. Prohibited Content/Conduct.

As a condition of your access to the App and Site and use of the Services, you are prohibited from (i) posting, uploading, exhibiting, communicating or distributing content which violates any applicable laws, rules or regulations or which SMBX, in its sole and absolute discretion, deems to be inappropriate and (ii) engaging in conduct which violates any applicable laws, rules or regulations or which SMBX, in its sole and absolute discretion, deems to be inappropriate. Examples of such prohibited content and prohibited conduct include, without limitation, the following:

- Posting, uploading or transmitting any content that violates any privacy right, publicity right, patent, trademark, trade secret, copyright or other proprietary right, or contract right or other right of any party;

- Posting, uploading or transmitting any content or engaging in any conduct that is offensive, harmful, threatening, abusive, harassing, defamatory, libelous, or obscene or that is unlawful in any manner or that degrades, intimidates, promotes or incites racism, bigotry, hatred or physical harm of any kind against any group or individual, including, without limitation, on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- Posting, uploading or transmitting any content that is pornographic or that exploits people (adults or children) in a sexual or violent manner; or contains nudity, excessive violence, or offensive subject matter or that contains a link to any of the foregoing types of content or to an adult website or in any way using the App and Site or the Services in connection with any adult entertainment or pornography business;
- Copying, reproducing, modifying (including, without limitation, altering, obscuring, deleting, etc. any copyright or other legally required notices, credits, logos, trademarks, etc.), creating derivative works from, or distributing in any manner or medium any content posted on the App and Site or through the Services in any manner that is in violation of the terms of the User Agreements or other applicable agreements;
- Impersonating any person or entity, or submitting any materials to the App, Site or through the Services that are false, inaccurate, deceptive, misleading, unlawful, or are otherwise in violation of the TOS or the Additional Terms, including, without limitation, utilizing misleading email addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of any content transmitted to the App, Site or through the Services;
- Except as explicitly permitted by the TOS and Additional Terms, or otherwise pre-approved in writing by The SMBX, engaging in any commercial activity on the App and Site or including any links to commercial services or websites or uploading, posting or otherwise transmitting any content that contains advertising or any solicitation regarding products, goods or services;
- Interfering with any user's right to privacy; soliciting or collecting user names, passwords, emails, personal identifying information or other information from any user; engaging in conduct that poses or creates a privacy or security risk to any person; or posting private information about a third party;
- Engaging in conduct that involves the posting, uploading or transmission of unsolicited or unauthorized advertising or promotional materials, "junk mail," "chain letters," unsolicited mass mailing, "spimming," or "spamming";
- Engaging in any action or inaction that could disable, overload, impair the infrastructure of the App and Site or impair the proper functioning of the App, Site or the Services, including, without limitation, uploading, posting or otherwise transmitting any software or materials which contain a virus or other harmful or disruptive component; circumventing, altering or interfering with any computer software, or security-related features of the App, Site or the Services; or deciphering, decompiling, disassembling or reverse engineering any of the software comprising or in any way utilized in connection with the App, Site or the Services;

- Accessing or attempting to access the App, Site or the Services using automated means (such as harvesting bots, robots, spiders, or scrapers) or gaining, or attempting to gain, unauthorized access to any servers, computer systems or databases utilized in connection with the App, Site or the Services;
- Using the communication systems provided by the App and Site for any solicitation or other commercial purposes, except as explicitly permitted by the User Agreements or otherwise authorized by SMBX, and the specific user, as applicable;
- Uploading, posting or transmitting any content that advocates or provides instruction on illegal activity or communicating on or through the App and Site regarding illegal activities with the intent to commit them;
- Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in connection with the purchase or sale of any security; and
- Engaging in any conduct that in SMBX's sole discretion restricts or inhibits any other user from enjoying the use of the App, Site or any of the Services.

## 7. Pricing and Payment

While there are currently no fees for users (specifically "Investors") to use the App and Site, SMBX reserves the right to charge fees for use of the App, Site or specific Services, and may change the fees that it charges. Before you pay any fees, you will have an opportunity to review and accept the fees that you will be charged. All fees are in U.S. dollars and are non-refundable. You agree that, in addition to all other amounts payable under the TOS or the Additional Terms, you are responsible for paying all sales, use, value added or other taxes - federal, state or otherwise - however designated, that are levied or imposed by reason of your use of the App, Site and the Services. SMBX will charge the payment method you specify at the time of purchase. You authorize SMBX to charge all sums as described on the App and Site for the Services you select, to that payment method. If you pay any fees with a bank account or credit card, SMBX may seek pre-authorization of your bank account or credit card account prior to your transaction to verify that the bank account or credit card is valid and has the necessary funds or credit available to cover your transaction.

## 8. Proprietary Property.

### 8.1 SMBX Proprietary Property.

The App, Site and the Services are and contain proprietary property/content of SMBX (such as logos, copyrights, trademarks, technology, processes, etc.) ("SMBX Proprietary Property") which may be protected by copyright, trademark, patent, trade secret and other laws. SMBX owns and retains all rights in and to SMBX Proprietary Property. "SMBX" and SMBX logo are trademarks of SMBX, Inc. SMBX hereby grants you a limited, revocable, non-sub-licensable license to display

and/or utilize SMBX Proprietary Property solely for your use in connection with using the App, Site and the Services for the purposes (if any) authorized by the User Agreement. Except as explicitly permitted in the TOS or any Additional Terms, you do not have the right to use SMBX Proprietary Property for any commercial use or to receive any monetary or other compensation in connection with SMBX Proprietary Property. Except as expressly provided by the TOS or the Additional Terms, your use of SMBX Proprietary Property is strictly prohibited.

## 8.2 Third Party Proprietary Property.

The Services may contain proprietary property/content provided by third party SMBX licensors (such as logos, copyrights, trademarks, etc.) ("Third Party Proprietary Property"). Unless otherwise expressly provided by the TOS or the Additional Terms, your use of the Third Party Proprietary Property is strictly prohibited.

## 8.3 Use of Proprietary Property

Unless expressly provided by the TOS or the Additional Terms, you may not copy, modify, edit, translate, publish, broadcast, transmit, distribute, perform, display, sell or otherwise use any SMBX Proprietary Property, any Third Party Proprietary Property or any other content appearing on or through the App and Site. You acknowledge that SMBX is not responsible for, does not control and makes no representation or warranty regarding the reliability, accuracy, usefulness, safety, legitimacy or quality of any content. SMBX does not endorse any content on the App and Site or any statement, opinion, suggestion or advice contained therein, and SMBX expressly disclaims any and all liability in connection therewith. You agree that you will bear any and all risk of reliance on the accuracy, validity or legitimacy of any content on the App and Site. You further understand and agree that in the course of your use of the App, Site and the Services, you may be exposed to content on the App and Site that is illegal, inaccurate, offensive, indecent or objectionable and you hereby waive, any legal or equitable rights or remedies you have or may have against SMBX with respect thereto.

# 9. Protecting Intellectual Property; Digital Millennium Copyright Act.

## 9.1 General.

SMBX specifically prohibits users from uploading, embedding, posting, emailing, transmitting or otherwise making available on or through the App, Site or the Services any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. It is The SMBX's policy to terminate, under appropriate circumstances, the account of users who are determined to be repeat infringers.

## 9.2 DMCA Notification.



If you are a copyright owner or an agent thereof and believe that any content made available via the App and Site infringes upon your copyright, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing SMBX's copyright agent ("Copyright Agent") with the following information in writing: (a) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (b) identification of the claimed infringing material and information reasonably sufficient to permit us to locate the material on the App and Site (providing the URL(s) of the claimed infringing material satisfies this requirement); (c) information reasonably sufficient to permit SMBX to contact you, such as an address, telephone number, and, if available, an email address; (d) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (e) a statement by you, made under penalty of perjury, that the above information in your notification is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf; and (f) your physical or electronic signature. The contact information for the Copyright Agent to receive notifications of claimed infringement is: Copyright Agent, The SMBX, Inc., 486 15<sup>th</sup> Avenue, San Francisco, CA 94118; email: [support@theSMBX.com](mailto:support@theSMBX.com)

### 9.3 Counter-Notice.

If you feel that any of your content was improperly removed or made unavailable to other users, please contact SMBX's Copyright Agent via the contact information set forth above.

## 10. Links to Third Party Sites.

The App, Site and the Services may contain links to independent third-party websites and/or services (collectively, "Linked Sites"). The Linked Sites are not under SMBX's control, and SMBX does not endorse, is not responsible for and shall have no liability to you with respect to the business practices, privacy policies or content, materials, information, merchandise, products or services displayed, featured, mentioned, advertised, distributed or sold on or through such Linked Sites. By accessing a Linked Site, you may be disclosing your private information and be exposing yourself to content that you find disturbing. It is your responsibility to read and understand the privacy, membership, payment and other policies of the Linked Sites and to determine on your own whether or not you will have any interaction with any of the Linked Sites. SMBX encourages you not to provide any personally identifiable information to any Linked Site unless you know and are comfortable with the party with whom you are interacting. You agree that SMBX is not responsible for and shall have no liability to you, with respect to merchandise, products, and/or services advertised, featured, mentioned, sold, distributed, displayed or linked on or through the App, Site or the Services.

## 11. Submitted Ideas/Feedback.

All comments, suggestions, ideas, notes, drawings, concepts or other information disclosed or offered by you through the App, Site and the Services or in response to solicitations made through the App, Site or the Services (collectively, "Feedback") is entirely voluntary and shall be deemed to be non-confidential and shall forever remain the sole property of SMBX. You

understand and acknowledge that SMBX has both internal and external resources which may have developed, or may in the future develop, ideas, content, programming, etc. identical to or similar to your Feedback and you agree that SMBX will not incur any obligation or liability to you or otherwise as a result of (i) any such similarities or (ii) SMBX's review of any of the Feedback. SMBX shall exclusively own, throughout the universe in perpetuity, and you hereby irrevocably assign, all rights of every kind and nature (whether currently existing or hereafter developed) in and to the Feedback and SMBX shall be entitled to unrestricted use of the Feedback for any and all purposes whatsoever, commercial or otherwise, without any payment or other obligation to you or any other person involved with the creation and/or submission to SMBX of the Feedback. You hereby waive any and all of your rights of droit moral and similar rights with respect to the Feedback.

## **12. Disclaimer; Exclusion of Warranties.**

SMBX PROVIDES ITS USERS WITH A SELECTION OF SERVICES, TOOLS AND RESOURCES WITH THE GOAL OF CONNECTING SMALL & MEDIUM BUSINESS OWNERS, AND FOUNDERS WITH INVESTORS WHO MAY BE ABLE TO PROVIDE FINANCING, ADVICE AND OTHER SUPPORT TO THEIR BUSINESSES AND STARTUPS. SMBX IS NOT A "BROKER," OR "DEALER" (AS DEFINED IN SECTION 3(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED). SMBX DOES NOT ENDORSE ANY THIRD PARTIES, OR THIRD PARTY CONTENT, INCLUDING, WITHOUT LIMITATION, ANY SMALL & MEDIUM BUSINESS AND STARTUP SEEKING TO RAISE CAPITAL THROUGH THE APP, SITE OR USING THE SERVICES. SMBX MERELY SERVES AS A PLATFORM FOR INTERACTIONS BETWEEN SMALL & MEDIUM BUSINESS OWNERS, FOUNDERS, OR STARTUPS AND INVESTORS. SMBX IS NOT INVOLVED IN THE ACTUAL TRANSACTIONS BETWEEN SMALL & MEDIUM BUSINESS OWNERS, FOUNDERS, OR STARTUPS AND INVESTORS. SMBX IS NOT RESPONSIBLE FOR ANY INVESTMENT OR OTHER DECISIONS MADE BY ANY INDIVIDUAL OR ENTITY IN CONNECTION WITH ANY OPPORTUNITY POSTED ON OR THROUGH THE APP, SITE OR THE SERVICES.

THE APP, SITE AND THE SERVICES, AND ALL OF THE CONTENT, INFORMATION, COACHING, ADVICE, FEEDBACK AND MATERIALS POSTED ON OR PROVIDED BY OR THROUGH THE APP, SITE OR THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE. BY USING THE APP, SITE AND/OR THE SERVICES, YOU AGREE TO USE YOUR OWN JUDGMENT, CAUTION AND COMMON SENSE IN MANAGING ALL CONTENT, INFORMATION, COACHING, ADVICE, FEEDBACK AND MATERIALS OFFERED AND YOU AGREE THAT ANY USE YOU MAKE OF SUCH CONTENT, INFORMATION, COACHING, ADVICE, FEEDBACK OR MATERIALS IS AT YOUR OWN RISK. YOU ACKNOWLEDGE THAT SMBX DOES NOT EVALUATE OR GUARANTEE AND SHALL NOT BE RESPONSIBLE FOR THE, INFORMATION, COACHING, ADVICE AND/OR FEEDBACK SERVICES GIVEN THROUGH THE APP, SITE OR THE SERVICES. SMBX IS NOT RESPONSIBLE FOR ANY DAMAGES OR LOSSES RESULTING FROM YOUR RELIANCE ON ANY OF THE FOREGOING CONTENT, INFORMATION, COACHING, ADVICE, FEEDBACK OR MATERIALS.

SMBX IS NOT RESPONSIBLE FOR AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY USER OR THIRD-PARTY CONTENT POSTED ON, THROUGH OR IN CONNECTION WITH THE APP, SITE OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY CONTENT THAT IS

UNAUTHORIZED OR VIOLATES THE TOS OR THE ADDITIONAL TERMS, AND SUCH CONTENT DOES NOT NECESSARILY REFLECT THE OPINIONS OR POLICIES OF SMBX. UNDER NO CIRCUMSTANCES SHALL SMBX BE RESPONSIBLE FOR ANY LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR DEATH, RESULTING FROM USE OF THE APP, SITE OR THE SERVICES, FROM ANY CONTENT POSTED ON THE APP, SITE OR THROUGH THE SERVICES (WHETHER SUCH CONTENT VIOLATES THE TOS OR ADDITIONAL TERMS OR NOT), FROM ANY SERVICES OFFERED THROUGH THE APP AND SITE OR FROM THE CONDUCT OF ANY USER OF THE APP, SITE OR THE SERVICES OR ANY USER OF ANY LINKED SITE (REGARDLESS OF WHETHER SUCH CONDUCT VIOLATES THE TOS OR ADDITIONAL TERMS, OR WHETHER SUCH CONDUCT IS ONLINE OR OFFLINE).

SMBX ASSUMES NO RESPONSIBILITY FOR ANY ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, ANY OF YOUR COMMUNICATIONS ON OR THROUGH THE APP AND SITE. SMBX IS NOT RESPONSIBLE FOR ANY MALFUNCTION OR OTHER PROBLEM WITH ANY TELEPHONE NETWORK, TELEPHONE LINES, COMPUTER ONLINE SYSTEMS, SERVERS, INTERNET SERVICE PROVIDERS, COMPUTER EQUIPMENT, SOFTWARE, OR FAILURE OF ANY EMAIL OR PLAYERS, INCLUDING, WITHOUT LIMITATION, ANY PERSONAL INJURY OR PROPERTY DAMAGE. SMBX DOES NOT GUARANTEE ANY RESULTS (SPECIFIC OR OTHERWISE) FROM YOUR USE OF THE APP, SITE OR THE SERVICES AND SMBX MAKES NO REPRESENTATION OR WARRANTY THAT THE APP AND SITE, THE SERVICES OR THE INFORMATION OR SERVICES PROVIDED THEREBY WILL MEET YOUR REQUIREMENTS. IF YOU ARE IN ANY WAY DISSATISFIED WITH THE APP, SITE OR THE SERVICES, YOUR SOLE REMEDY IS TO DISCONTINUE YOUR USE OF THE APP, SITE AND/OR THE SERVICES. SMBX DISCLAIMS ANY AND ALL LIABILITY OF ANY KIND FOR ANY UNAUTHORIZED ACCESS TO OR USE OF ANY OF YOUR PERSONALLY IDENTIFIABLE INFORMATION. BY ACCESSING THE APP AND SITE, YOU AGREE THAT SMBX SHALL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO OR USE OF ANY OF YOUR PERSONALLY IDENTIFIABLE INFORMATION.

### **13. Limitation on Liability.**

IN NO EVENT SHALL SMBX, ITS AFFILIATES, LICENSORS, SPONSORS, OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES) RESULTING FROM (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT DISPLAYED ON THE APP AND SITE OR THROUGH THE APP AND SITE OR THE SERVICES, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND/OR USE OF (OR YOUR INABILITY TO ACCESS AND USE) THE APP, SITE OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE CAUSED TO YOUR COMPUTER OR SOFTWARE OR INFORMATION STORED THEREON, (III) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY OBTAINED ON OR THROUGH THE APP, SITE OR THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES (IV) ANY UNAUTHORIZED ACCESS TO OR USE OF SMBX SERVERS AND/OR ANY AND ALL PERSONAL AND/OR OTHER INFORMATION STORED THEREIN, (V) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE APP AND SITE OR THROUGH THE APP, SITE OR ANY OF THE

SERVICES, (VI) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE APP, SITE OR THE SERVICES BY ANY THIRD PARTY, (VII) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT, (VIII) EMAILS OR OTHER TRANSMISSIONS OR COMMUNICATIONS MADE TO YOU THROUGH THE APP, SITE OR THE SERVICES AND/OR (IX) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT OR SERVICES POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE APP, SITE OR THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SMBX IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. ANY LIMITATION OF LIABILITY IN THIS TOS OR ANY OTHER USER AGREEMENT SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION, BUT NO LIMITATION OF LIABILITY IN ANY USER AGREEMENT IS INTENDED TO LIMIT THE RIGHTS OF ANY PERSON UNDER FEDERAL AND STATE SECURITIES LAW.

## **14. Termination.**

You may terminate your account at any time by contacting SMBX at [support@theSMBX.com](mailto:support@theSMBX.com). If you terminate your account, you remain obligated to pay all outstanding fees, if any, incurred prior to termination relating to your use of the Services. If you violate any provision of this TOS, your permission from SMBX to use the Services will terminate automatically. In addition, SMBX may in its sole discretion terminate your user account for the App, Site or Services or suspend or terminate your access to the App, Site or Services at any time for any reason or no reason, with or without notice. SMBX also reserves the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. We will have no liability whatsoever on account of any change to the Service or any suspension or termination of your access to or use of the Service.

## **15. Governing Law; Disputes; Arbitration.**

### **15.1 Governing Law; Venue and Jurisdiction; Waiver of Jury Trial.**

The User Agreements shall be governed by, and construed in accordance with, the laws of California, without regard to its conflict of law provisions. If a lawsuit or court proceeding is permitted under a User Agreement, then you and SMBX agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within San Francisco County, California for the purpose of litigating any dispute. **EACH OF YOU AND SMBX HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY USER AGREEMENT. FURTHER, EACH OF YOU AND SMBX HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE OTHER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER WOULD NOT IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. EACH OF YOU AND SMBX**

**ACKNOWLEDGES THAT THIS SECTION IS A MATERIAL INDUCEMENT FOR EACH OF THEM, RESPECTIVELY, TO ENTER INTO THIS TOS.**

## 15.2 Disputes With Other Users.

You are solely responsible for your interactions with users of the App, Site and the Services, and any other parties with whom you interact on or through the App, Site, the Services and/or the Linked Sites. SMBX reserves the right, but has no obligation, to become involved in any way with these disputes.

## 15.3 Dispute Resolution.

**15.3.1.** Generally. In the interest of resolving disputes between you and SMBX in the most expedient and cost effective manner, and except as described in Section 15.3.2, you and SMBX agree that every dispute between you and any SMBX affiliate arising in connection with the User Agreements will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of any User Agreement, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of this TOS. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THIS TOS, YOU AND SMBX ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Specifically:

"This agreement contains a predispute arbitration clause. By consenting to an arbitration agreement the parties agree as follows:

- a) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
- b) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- c) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- d) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.
- e) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.
- f) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

- g) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement."

**15.3.2. Exceptions.** Despite the provisions of Section 15.3.1, nothing in any User Agreement will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law; (d) to file suit in a court of law to address an intellectual property infringement claim; or (e) pursue any available remedies under federal or state securities law.

**15.3.3 Arbitrator.** Any arbitration between you and SMBX will be settled under the Federal Arbitration Act, and governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this TOS, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting SMBX.

**15.3.4 Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if such other party has not provided a current physical address, then by electronic mail ("Notice"). The SMBX's address for Notice is: SMBX, Inc., 486 15<sup>th</sup> Avenue, San Francisco, CA 94118. The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice is received, you or SMBX may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or SMBX must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in your favor, SMBX will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by SMBX in settlement of the dispute prior to the arbitrator's award; or (iii) \$1,000.

**15.3.5. Fees.** If you commence arbitration in accordance with this TOS, SMBX will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in San Francisco County, California, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse SMBX for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and

reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

**15.3.6** No Class Actions. YOU AND SMBX AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and SMBX agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

**15.3.7** Modifications to this Arbitration Provision. If SMBX makes any future change to this arbitration provision, other than a change to SMBX's address for Notice, you may reject the change by sending us written notice within 30 days of the change to SMBX's address for Notice, in which case your account with SMBX will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

**15.3.8.** Enforceability. If Section 15.3.6 is found to be unenforceable or if the entirety of this Section 15.3 is found to be unenforceable, then the entirety of this Section 15.3 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 15.1 will govern any action arising out of or related to any User Agreement.

## **16. Indemnity.**

You agree to defend SMBX, its subsidiaries, affiliates, licensors and assignees and their respective officers, directors, managers, stockholders, members, agents, partners and employees (the "SMBX Indemnitees"), from and against any and all claims, actions, suits, demands or other proceedings brought by or on behalf of any third party, and to indemnify and hold SMBX Indemnitees harmless against any losses, liabilities and other damages (including, but not limited to, reasonable attorneys' fees), in any case arising out of or related to (i) your access to and/or use of the App, Site and the Services, including, without limitation, your use of the App, Site and the Services in connection with any transaction in securities; (ii) a violation or breach by you, or any user of your account, of any provision of the TOS or of any Additional Terms, including, without limitation, a breach of any of the representations, warranties or agreements set forth in the TOS and the Additional Terms; and/or (iii) any content that you post on or through the App, Site or the Services. This defense and indemnification obligation will survive following the termination of your use of the App, Site and the Services.

## **17. Other Terms.**

SMBX has the right to assign the User Agreements and/or its rights thereunder, in whole or in part, to any third party. You do not have the right to assign the User Agreements, except if and to the extent explicitly permitted in the Additional Terms. The failure of SMBX to exercise or enforce any right or provision of the User Agreements shall not operate as a waiver by SMBX of such right or provision. The section titles in the User Agreements are for convenience only and have no legal or contractual effect. The User Agreements operates to the fullest extent permissible by law. If any provision of the User Agreements are held by a court or other tribunal

of competent jurisdiction to be unlawful, void or unenforceable, such provision (i) is deemed severable from the User Agreements and does not affect the validity and enforceability of any remaining provisions which shall remain in full force and effect and (ii) shall be limited or eliminated to the minimum extent necessary to comply with the applicable law. SMBX reserves all rights in and to the App and Site, including the Services and the other content posted thereon, unless otherwise expressly provided by this TOS or the Additional Terms. SMBX reserves the right to modify or discontinue any aspect of the Services at any time without prior notice and without any liability to you.

## **18. Your Responsibilities as an Investor.**

You are a self-directed investor who is individually responsible for determining the suitability of your investment decisions. SMBX is not responsible for the investment decisions made by you or on your behalf. SMBX is not responsible for the strategies, actions or inactions taken with respect to your SMBX Investments. SMBX is not responsible for the gains or losses you incur. The employees, agents and representatives of SMBX are not authorized to give you investment advice, and any instructions you receive from SMBX with respect to SMBX Investments will be limited to technical or administrative guidance.

You assume individual responsibility for determining the suitability of all investment decisions and strategies you make or implement. You must base your investment decisions upon all information reasonably available to you and your own assessment of risks and rewards. You are solely responsible for knowing the rights and terms for all investments you make in SMBX Investments.

For further information related to the risks associated with SMBX Investments, refer to the Investor Agreement.

## **19. Contacting SMBX; Reporting of Violations.**

You may contact SMBX at [support@theSMBX.com](mailto:support@theSMBX.com). Please report any misuse of the App, Site or the Services or any violation of the TOS by sending an email to SMBX at [support@theSMBX.com](mailto:support@theSMBX.com).

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# **INVESTOR AGREEMENT**

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## **PROVISIONS GOVERNING THE USE OF SMBX APP AND SITE BY INVESTORS AND INVESTMENTS IN OFFERINGS**



SMBX Inc. operates the SMBX mobile app (the "App") and the SMBX website, the SMBX.com (the "Site"), which facilitates securities offerings (the "Offerings") by small and medium business owners ("SMBOs"), entrepreneurs ("Founders") and early stage, start-up companies ("Startups"). The Offerings are made pursuant to:

- Regulation Crowdfunding of the Securities Act of 1933 ("Reg Crowdfunding Offerings"), which are facilitated either through the portion of the App or Site operated by SMBX, Inc.; and/or
- Regulation D of the Securities Act of 1933 ("Reg D Offerings"), which are facilitated through the portion of the App or Site operated by SMBX Inc.; and/or
- Regulation A of the Securities Act of 1933 ("Reg A+ Offerings"), which are presented through the portion of the App or Site operated by SMBX Inc.

Your ability to participate in a particular Offering may depend on your income or net worth and/or your recent participation in certain other Offerings, as described further below. By using this App or Site, you are agreeing to the terms and conditions of this SMBX Investor Agreement, which includes, by reference, SMBX Terms of Service (the "Terms of Service") and the other agreements listed in Section 1 below (collectively, this "Agreement"), and you are agreeing to the following terms, among others, with respect to your use of the App or Site as a registered member of the App and Site (a "Member").

## TERMS OF THIS AGREEMENT

### Table of Contents

1. General; Documents Incorporated by Reference into this Agreement
2. Agreements with respect to the App and Site and all Offerings
3. Agreements with respect to Reg Crowdfunding Offerings
4. Agreements with respect to Third Party providers

## 1. GENERAL; DOCUMENTS INCORPORATED BY REFERENCE INTO THIS AGREEMENT

This Agreement between you and SMBX Inc. sets forth the terms and conditions for your access to the App and Site and your use of the information, features, products, services and tools on the App and Site (the "Services").

This Agreement incorporates by reference the Terms of Service. You represent that you have read the Terms of Service and agree that the Terms of Service govern your use of the App, Site and the Services (as those terms are defined in the Terms of Service). Capitalized terms used in this Agreement that are not otherwise defined herein have the meaning given to them in the Terms of Service.

This Agreement should be read carefully before using any Services or continuing to access the App or Site. By using the App or Site in any manner, including but not limited to visiting or browsing the App or Site, you agree and consent to, and you agree to be bound by, the Terms of Service, this Agreement, the Privacy Policy, and all other operating agreements, rules, policies and procedures that may be published by SMBX from time to time on the App and Site, each of which is incorporated by reference and each of which may be updated by SMBX from time to time without notice to you.

Your use of the App or Site is governed by the version of this Agreement in effect on the date of use. **We may modify these terms and conditions at any time and without prior notice, and you agree to be bound by this Agreement as so modified. It is your responsibility to visit the link accessible on the App and Site home page periodically to review the most current terms and conditions of this Agreement for changes.** You acknowledge that by accessing the App or Site after we have made changes to this Agreement, you are agreeing to the terms and conditions of this Agreement as modified.

The terms and provisions of the following agreements and other documents are incorporated into this Agreement by reference:

- The App and Site's Terms of Service;
- The information on the App and Site about the particular Small & Medium Business or Startup (such information, the "Small & Medium Business Information" or "Startup Information");
- SMBX Disclosure Statement, which sets forth general information about securities investments made through SMBX App or Site;
- The Indication of Interest or the Investment Commitment ("Investment Contract") through the purchase or selling of financial securities, as applicable, submitted by you with respect to a particular Offering (if applicable);
- The terms of each Offering (the "Offering Terms") in which you invest, as provided to you and set forth in the applicable documents;
- For a Reg Crowdfunding Offering, this will include: (i) the Small & Medium Business' or Startup's Form C; and (ii) the Small & Medium Business' or Startup's SMBX profile;
- Any other information provided to you with respect to an Offering or the App and Site via the App and Site.

**You should carefully read each of the above documents before subscribing to an Offering. You alone are responsible for ensuring that you are aware of all of the terms of this Agreement and your rights and responsibilities under it. You may have additional agreements with SMBX, and you are responsible for understanding the content of those agreements.**

## 2. AGREEMENTS WITH RESPECT TO THE APP AND SITE AND ALL OFFERINGS

### 2.1 GENERAL ACKNOWLEDGMENTS

- You understand and acknowledge that SMBX is not responsible for any content on the App and Site provided by any third parties, including Small & Medium Businesses and Startups, and any service providers or other third parties, or any content provided to you in connection with your use of the App or Site even if that information is distributed to you on behalf of a third party by SMBX, and is not liable for any type of loss or damage associated with your use of the App or Site.
- You acknowledge that nothing on the App and Site constitutes a recommendation to buy securities or any other type of investment advice to you by SMBX, and any investment risk is solely your own. You are not a client of SMBX Inc., or any of their affiliates.
- You acknowledge that SMBX does not independently verify information regarding Small & Medium Businesses and Startups (although SMBX does conduct some diligence on information provided by Small & Medium Businesses and Startups as required by Regulation Crowdfunding) or endorse any Small & Medium Businesses or Startup for direct or indirect investment, and that information on the App and Site has been prepared without reference to any particular Member's investment requirements or financial situation. You agree to abide by this and other agreements between you and SMBX and service providers that govern or relate to your use of the App, Site or the services available on the App and Site.
- You understand that the App and Site offers different types of Offerings for investment, each of which operate under different regulatory regimes and requirements, and that each type of Offerings may have its own unique risks and levels of regulatory involvement. (Note: SMBX currently only offers Regulation CF investments but reserves the right to expand our offering types and include Regulation D and Regulation A+ at a later date. All terms and agreements will be updated with additional offering type information as required.)
- You acknowledge that you have been provided access to additional sources of information regarding your investment in the Small & Medium Business or Startup, including the information that is incorporated into this Agreement by reference, such as the Small & Medium Business and Startup Information, the Bond Prospectus and/or Offering Terms, and the Disclosure Statement.

### 2.2 RISKS GENERALLY ASSOCIATED WITH ALL OFFERINGS

You should consult your own legal, tax and financial advisers regarding the suitability, desirability and appropriateness of purchasing interests through an Offering. You should also carefully consider the following risks prior to investing through an Offering:

#### 2.2.1 Significant Risk of Loss; Not a Complete Investment Program

An investment in a Small & Medium Business or Startup involves significant risks, only some of which are described in this Agreement, and is suitable only for investors who have limited need for liquidity in their investment, who can afford the potential loss of their investment and who otherwise meet the conditions for eligibility set forth in this Agreement. A direct or indirect investment in a Small & Medium Business or Startup is not intended as a complete or diversified investment program and should represent only a small portion of a potential investor's investment portfolio.

### 2.2.2 Small & Medium Businesses or Startups may be Early Stage Venture Companies with High Risk of Failure

Small & Medium Business or Startups may be early stage venture companies. Venture investments involve a high degree of risk and many or most venture company investments lose money and fail at a particularly high rate. You may ultimately receive cash, securities, or a combination of cash and securities (and in some cases nothing at all). If you receive securities, the securities may not be publicly traded, and may not have any significant value.

### 2.2.3 Lack of Operational Record

Each Small & Medium Business or Startup may have limited or no operational record.

### 2.2.4 Limitation on Liability; Indemnification

This Agreement, including the Terms of Service and the Bond Prospectus, limit the liability of The SMBX, and provide for indemnification in certain circumstances.

## 2.3 PRIVACY

SMBX maintains a Privacy Policy, which is available on the App and Site and incorporated into this Agreement.

## 2.4 USE OF NAME

You consent to the disclosure by SMBX of your name (or, if you are acting on behalf of a company or entity, the name of such entity) on the App and Site. Without limiting such consent, or any other lawful use of your name by SMBX, you specifically consent to disclosure by SMBX to potential investors in a Fundraising that you have submitted a Bond Prospectus with respect to that Fundraising, and to disclosure by SMBX to any Small & Medium Business, Startup or Member, or combination of Small & Medium Businesses, Startups or Members, that you have invested in one or more Small & Medium Businesses or Startups through the App or Site, and the number of such investments. You may withdraw this consent at any time by contacting SMBX.

## 2.5 ELECTRONIC COMMUNICATIONS

SMBX requires that you consent to delivery of all communications via electronic communications. Please see the Electronic Consent that is available on the App and Site and incorporated into this Agreement.

## **3 AGREEMENTS WITH RESPECT TO REG CROWDFUNDING OFFERINGS**

### **3.1 GENERAL ACKNOWLEDGMENTS**

- You understand and acknowledge that, while SMBX will verify such information to the extent such verification is required under applicable law, it may rely on the truthfulness of your representations regarding your income, net worth, and/or your prior participation in Reg Crowdfunding Offerings in the prior 12 months when determining whether to permit you to participate in a particular Reg Crowdfunding Offering.
- You acknowledge that you are limited in the amount you may invest in offerings under Regulation Crowdfunding over any 12 month period and that, even though SMBX will ask you about these investment amounts and store data regarding such amounts on the App and Site, you alone are responsible for complying with all investment limitations applicable to all such Offerings, both through the App and Site and not through the App and Site;
- You understand that any investment you make in a Reg Crowdfunding Offering on the App or Site will be in a security of the particular Small & Medium Business or Startup ("Small & Medium Business Securities" or "Startup Securities"), and that neither SMBX nor any of its affiliates will be involved in the setting of the Offering Terms or the management of the Small & Medium Business or Startup.
- You represent that you have or you will review the educational materials provided to you on SMBX App, Site or portion of the App or Site prior to making each investment in a Reg Crowdfunding Offering.

### **3.2 INVESTOR REPRESENTATIONS**

You represent and warrant to SMBX (or any Third Party Funding Portal as applicable) that the answers you provided to the questions in the Investor Disclosures pages are correct and complete and may be relied upon by SMBX or any Third Party Funding Portal (as applicable) in determining whether you are eligible to invest in Offerings that are listed on the App or Site. You represent that you are using the App or Site with the intent to make any potential investments for yourself or your institution, and not with the view to sell or otherwise distribute your investment(s) in a Small & Medium Business or Startup outside of the SMBX platform. You agree that if any event occurs or circumstance arises that materially adversely affects your annual income or net worth, or causes any other statement made in your Investor Disclosures to become untrue or misleading in any material respect (including with respect to other investments made by you under Regulation Crowdfunding in the prior 12 months), then prior to investing in Businesses or

Startups through the App or Site, you will complete a new Investor Disclosures to determine if you are still eligible to invest in Businesses or Startups listed on the App or Site. You acknowledge that Businesses or Startups in which you invest may rely, and that SMBX, any Third Party Funding Portal (if applicable), Small & Medium Businesses, Startups, and their principals, affiliates, and other parties may rely, on the information you have provided to SMBX or any Third Party Funding Portal in your Investor Disclosures to determine if you are eligible to invest in Businesses or Startups. You represent that you have read and understand the risks contained in the Small & Medium Business Information or Startup Information.

## **3.3 CHOOSING AND MAKING INVESTMENTS**

### **3.3.1 Services of SMBX with Respect to Reg Crowdfunding Offerings**

SMBX operates the portions of the App and Site that present Reg Crowdfunding Offerings by Small & Medium Businesses and Startups. Members are not clients of SMBX or any Third Party Funding Portal. Although SMBX evaluates potential Businesses and Startups and determines which Businesses or Startups will be able to engage in Reg Crowdfunding Offerings on the App and Site, you acknowledge and agree that this evaluation is limited to certain predetermined, objective criteria and does not constitute an endorsement of any particular Business or Startup or a recommendation that Members invest in any particular Business or Startup, and does not establish an advisory relationship between you and SMBX.

For all Small & Medium Businesses and Startups listed on SMBX App and Site, SMBX performs a limited review of the information provided by each Business and Startup to determine whether it is appropriate for inclusion on the App and Site (including, among other things, to determine whether SMBX has a reasonable basis for believing that the Business or Startup complies with Regulation Crowdfunding). The information reviewed includes all information in the Business or Startup's profile and in its Form C. This review is not intended to verify any information provided by the Businesses or Startups regarding their operations, assess the likelihood that a Business or Startup will succeed or generate investment returns, or otherwise inform or influence any investment decisions by investors. Neither SMBX nor its affiliates performs any separate due diligence on the Businesses or Startups. Some of the Businesses and Startups listed on SMBX App and Site may have been considered for, but not listed by a Third Party Funding Portal.

You acknowledge that as a Member of the App and Site, you are not in an investment advisory relationship with SMBX.

You also acknowledge that none of SMBX, any Third Party Funding Portal, or any of their affiliates advises Members on the merits of a particular investment or transaction or provides legal or transactional advisory services to Members. The information, materials and services made available on the App and Site do not constitute a recommendation, endorsement, or any other form of investment advice to Members by SMBX, any Third Party Funding Portal or their affiliates to buy or sell any securities or other financial instruments. Neither SMBX nor any Third Party Funding Portal provides any legal, tax, investment, financial or other advice to Members. The content of the App and Site has been prepared without reference to any particular Member's

investment requirements or financial situation. You expressly agree that the information, materials and services made available on the App and Site are not a substitute for the exercise of independent judgment and expertise. You should always seek the assistance of a professional for advice on investments, tax, the law, or other similar matters.

### 3.3.2 Investments in Reg Crowdfunding Offerings through Small & Medium Business Securities or Startup Securities

In Reg Crowdfunding Offerings, SMBX provides Small & Medium Businesses and Startups an opportunity to raise funds by allowing Members to invest directly in Businesses and Startups seeking capital from both accredited and non-accredited investors. Small & Medium Businesses and Startups seeking to raise money through Regulation Crowdfunding are limited to raising a maximum of \$1 million through Reg Crowdfunding Offerings in a single 12 month period, and are subject to certain investment limitations for all investors, as described below in Section 4.3.8 – "Investor Eligibility Requirements."

Members participating in Reg Crowdfunding Offerings will invest in Small & Medium Business Securities or Startup Securities, which will be debt or equity securities issued by the Small & Medium Business or Startup. The terms of the Small & Medium Business Securities or Startup Securities purchased in Reg Crowdfunding Offerings will vary depending on the type of security offered by a Business or Startup. Investors should carefully consider the terms of the Small & Medium Business Securities or Startup Securities in which they invest and read the educational materials available on the App or Site about each type of security.

The terms of your investment in the Small & Medium Business or Startup will be set forth in the Small & Medium Business Information or Startup Information and will be governed by the investment contract between you and the Small & Medium Business or Startup. The Business or Startup may reject your investment for any reason or for no reason in its discretion.

Once you complete and submit an investment commitment/order through placing a buy order on the SMBX app and the order has been confirmed successful, your authorized bank account linked to the SMBX platform (which was authorized by you during your account set up) will be asked to transfer your investment fund(s) into an escrow account maintained by a third party escrow bank for the benefit of the Small & Medium Business or Startup raising funds through the SMBX Portal. You agree that by authorizing your bank account linkage to the SMBX platform during account set up and by placing a successful order through the SMBX portal, you will provide all funds required to complete the transaction promptly. If your account has insufficient funds or there are other bank transfer issues at the time that you submit your investment commitment/order, your investment in the Small & Medium Business or Startup may not be processed. Investors who have submitted successful investment commitments and have transferred the required funds will be given preference based on the time of the order over those who have only submitted an investment commitment/order. If your investment is rejected, your funds will be returned to you without interest. At the end of each successful offering's auction, all winning investments (bid orders) will receive an email notifying them of the total number of bonds allocated to them. At this time, investors are required to reconfirm their investments within 5 business days based on the official determination of the final clearing yield (the interest

yield that the bonds will earn interest on). If investors do not reconfirm their bids by the 5 business days deadline, their investments will be cancelled and their funds will be returned to their bank accounts based on standard ACH processing timeframes. During the 5 business day reconfirmation process (this may potentially require up to 12 business days to determine a “successful” offering, especially in the event there is a 2<sup>nd</sup> reconfirmation process required for any further material changes to an offering), SMBX will determine the final group of investors who will receive the winning bonds, at which point securities will be delivered to them by bond certificates via email and reflected in their SMBX portfolios. If you have questions regarding on this or any other process relating to the Reg CF offerings, please direct them to [support@thesmbx.com](mailto:support@thesmbx.com).

Your investment in Small & Medium Business or Startup Securities may only be processed if a predetermined Funding Target is reached in a particular Reg Crowdfunding Offering by the deadline set forth in the Small & Medium Business or Startup Information ("Target Deadline") provided on the App or Site. Funds designated for investment in a Small & Medium Business or Startup will not be invested in the Business or Startup until and unless the Funding Target is reached by the Target Deadline. If the Funding Target is not reached by the Target Deadline, your funds will be returned to you without interest within 7 days of the termination of the Fundraising. If the Funding Target is reached prior to the Target Deadline and the Business or Startup desires to move the Target Deadline up, SMBX will provide you with at least five business days’ notice of such change. Otherwise, SMBX will close the Fundraising at the time of the Target Deadline if the Funding Target has been reached. You will receive notice from SMBX when a Business or Startup for which you have submitted an investment commitment/order has closed, and whether your investment in the Business or Startup will be processed.

You may revoke/cancel your investment in a Business or Startup during the Fundraising by canceling the bid order via the app (see Help Q&A for more information on how to cancel your bid order). You may also revoke/cancel your investment at any time up until 48 hours before the Target Deadline. After that, your investment in the Business or Startup can be processed. SMBX will not take physical custody of your funds as highlighted above (the funds will be moved to a third party escrow bank for safekeeping until which the offering has fully closed and then transferred to the Business or Startup).

You acknowledge that, in Reg Crowdfunding Offerings, if the Funding Target is not reached, your funds will be returned to you without interest, within 7 days of the termination of the Fundraising.

### 3.3.3 Limitation on Subscriptions

You acknowledge that no Small & Medium Business or Startup for which you submit an investment commitment/order has any obligation to accept your investment, and that any fraction of the investment amount stated on the investment page of the App, Site and/or in the investment commitment/order may be accepted, or your investment may be rejected entirely, for any reason. If you submitted funds in excess of the investment amount accepted, the excess funds will be returned to you without interest in a manner determined in the sole discretion of the Business or Startup.



### 3.3.4 Aggregate Subscriptions

With respect to any Regulation Crowdfunding Offerings in which you invest, you agree that you will not use the App or Site to invest more than you are permitted to invest in any 12 month period under Reg Crowdfunding, as discussed further below in Section 4.3.8.

### 3.3.5 Limitation of Liability and Indemnification

The Terms of Service, this Agreement, and the Small & Medium Business / Startup Agreement limit the liability of SMBX, and provide for indemnification in certain circumstances. You acknowledge that SMBX, or any member, manager or employee thereof, shall not be liable in connection with any information or omission of information contained in materials prepared or supplied by a Small & Medium Business or Startup or other third party or developed in reliance on information provided by a Small & Medium Business or Startup. You acknowledge that such materials may include, but are not limited to, information available through the App or Site, and materials distributed to investors by SMBX. You acknowledge that the information regarding Small & Medium Businesses or Startups presented on the App or Site is provided by the Small & Medium Businesses or Startups and not by SMBX. You acknowledge that none of SMBX, or their members, managers, or employees approves or reviews information prepared or supplied by a Small & Medium Business or Startup or otherwise undertakes any due diligence with respect to a Small & Medium Business or Startup and shall not be liable with respect to the past, present, or future performance or non-performance by a Small & Medium Business or Startup of the activities described in such information. You acknowledge that you understand that the information provided by companies on the App or Site may not be sufficient or suitable to support an informed investment decision.

### 3.3.6 Fees Charged in Respect of Reg Crowdfunding Offerings

SMBX does not charge a fee to Investors who invest in a Reg Crowdfunding Offerings. All buying and selling activities on the SMBX Platform are free of charge to investors.

### 3.3.7 Investing in Small & Medium Business or Startup Securities

The Small & Medium Business or Startup Securities offered to Investors in Reg Crowdfunding Offerings will not be registered under the 1933 Act or the securities laws of any state or any other jurisdiction. Small & Medium Businesses or Startups will generally set a minimum subscription amount for investment for each Fundraising, which will generally be \$10 at a minimum.

### 3.3.8 Investor Eligibility Requirements

In accordance with Regulation Crowdfunding's requirements, you are not permitted to invest more than a certain amount in offerings made under Regulation Crowdfunding (including those not made through the App or Site) during any single 12 month period, which amount is determined based on your own financial circumstances. In particular, if your annual income or net worth is less than \$107,000, you may only invest a maximum amount equal to the greater of

\$2,200 or 5 percent of the lesser of your annual income or your net worth. If both your annual income and net worth are equal to more than \$107,000, you may only invest a maximum amount equal to 10 percent of the lesser of your annual income or net worth, but you may not invest more than \$107,000 through all Regulation Crowdfunding offerings.

Further, you understand and agree that SMBX is permitted under Regulation Crowdfunding to rely on your representations regarding your compliance with these investment limits when determining whether to permit you to participate in a Reg Crowdfunding Offering.

### **3.4 RISKS ASSOCIATED WITH REG CROWDFUNDING OFFERINGS**

You should consult your own legal, tax and financial advisers regarding the suitability, desirability and appropriateness of purchasing interests in a Small & Medium Business or Startup. You should also carefully consider the following risks prior to investing in a Small & Medium Business or Startup:

#### **3.4.1 General**

An investment in a Small & Medium Business or Startup involves significant risks, only some of which are described in this Agreement, and is suitable only for sophisticated investors who have limited need for liquidity in their investment, who can afford the potential loss of their investment and who meet the conditions for eligibility set forth in this Agreement. An investment in a Small & Medium Business or Startup is not intended as a complete investment program. Many Small & Medium Business or Startups are early stage businesses or venture companies that involve a high degree of risk and many or most early stage businesses and venture investments lose money. In the event of a Liquidity Event (if any), you may ultimately receive cash, securities, or a combination of cash and securities (and in some cases nothing at all). If you receive securities, the securities may not be publicly traded or traded at a significant value below its initial par value.

#### **3.4.2 No Guarantee of Investment Returns**

SMBX does not guarantee the future performance or financial results of any Small Business or Startup, and an investment in a Small Business or Startup may result in a gain or loss upon termination or liquidation of your investment.

#### **3.4.3 Restrictions on Resale or Transfer**

The Small & Medium Business or Startup Securities are issued in a transaction exempt from registration under the 1933 Act and are not registered thereunder or any other law of the United States, or under the securities laws of any state or other jurisdiction. Small & Medium Business or Startup Securities purchased through the App or Site in Reg Crowdfunding Offerings cannot be resold, pledged, assigned or otherwise disposed of during the one-year period starting with the date of purchase, unless they are sold or transferred: (1) to the Small & Medium Business or Startup itself; (2) to an "accredited investor" (as defined in as defined in Regulation D under the 1933 Act); (3) in connection with a registered offering of the Small & Medium Business or Startup

Securities with the SEC; (4) to a family member of the Investor, or to a trust of the Investor or one of its family members; or (5) in connection with the Investor's death or divorce.

However, even if you are able to sell or transfer your Small & Medium Business or Startup Securities, there is a limited market for the sale of Small & Medium Business or Startup Securities, and there is no guarantee that a market will develop in the future for the Small & Medium Business or Startup Securities you purchase. Therefore, if you require liquidity in your investment, you should not invest in a Small & Medium Business or Startup.

### 3.4.4 No Control Over Management of the Small & Medium Businesses or Startups

You will not have any right to manage, influence or control the management or operations of Small & Medium Businesses or Startups. In particular, you will not have, or will have only limited, voting rights associated with your Small & Medium Business or Startup Securities (for equity fundraisers only), but in any event will not have voting powers to direct the management decisions of the Small & Medium Business or Startup. You must refer to the voting provisions in the relevant investment contract that controls your investment. The success of any Small & Medium Business or Startup investment depends on the ability and success of the management of the Small & Medium Business or Startup, in addition to economic and market factors. In the case of fixed income fundraisers through securities offerings using the bond product, a bond is basically a loan that can be bought or sold, so therefore, you will not have any voting rights associated with your Small & Medium Business or Startup bonds as well.

### 3.4.5 No Control Over Startup Future Valuation

Valuations may fluctuate considerably and the price paid for Small & Medium Business or Startup Securities by you may bear limited or no relationship to future valuations of the Small & Medium Business or Startup's securities in any market that may develop for such securities, whether private or public.

### 3.4.6 Limited Information About Small & Medium Businesses or Startups

Due to the nature of private companies, there may be limited information—financial, operating or otherwise—regarding each Small & Medium Business or Startup. You should read and understand the risk factors contained in the Small & Medium Business or Startup Information, including the Form C, before investing in Small & Medium Business or Startup Securities. Each Small & Medium Business or Startup is solely responsible for providing risk factors, conflicts of interest, and other disclosures that you should consider when investing in Small & Medium Business or Startup Securities.

### 3.4.7 No Assurance of Profit

An equity investment in Small & Medium Business or Startup Securities may not generate profits for you. A return on investment will depend upon successful liquidity of a Small & Medium

Business or Startup's securities and thus, the ultimate value of any investment depends upon factors beyond your or SMBX's control. You will typically not receive returns, if any, until a Liquidity Event, which may not occur for many years. You must therefore bear the economic risk of an investment for an indefinite period of time.

For a fixed income (i.e. bond) investment in a Small & Medium Business or Startup, you will receive a fixed rate of return on a monthly basis. You will see both principal and interest repaid to you at the end of each calendar month in your SMBX wallet based on a bond investment's specific securities structure which includes bond maturity and yield (see individual bond prospectus for more details). Once cash has been credited to your wallet, you may use the funds towards purchasing new bonds or withdrawal to your bank account linked with SMBX.

### 3.4.8 Direct Investment in Small & Medium Businesses or Startups in Reg Crowdfunding Offerings

In Reg Crowdfunding Offerings, Investors will invest directly in the securities of Small & Medium Businesses or Startups. The Small & Medium Business or Startup will not be managed by SMBX or any of its affiliates or employees in any respect. The terms of any investment in a Small & Medium Business or Startup effected through a Reg Crowdfunding Offering will be set by the Small & Medium Business or Startup, and to the extent any negotiation occurs, it will be solely between a Investor and the Small & Medium Business or Startup.

### 3.4.9 Lack of Regulatory Oversight of Reg Crowdfunding Offerings and Offering Materials

SMBX is registered as a funding portal with the SEC and is a member of the Financial Industry Regulatory Authority ("FINRA"). As such, SMBX must submit certain information and materials to FINRA and the SEC and is subject to examination by FINRA and the SEC. In addition, Small & Medium Businesses or Startups must file with the SEC a disclosure document called a Form C and updates and amendments to the Form C. However, the funding portal regulatory regime and the Form C are not as comprehensive as the regulatory regime and disclosure documents that apply to offerings registered under the Securities Act of 1933, and, as a result, you may not receive the same level of disclosure and oversight that is available in registered offerings.

### 3.4.10 Review of Reg Crowdfunding Offering Documents by SEC and SMBX; No Indicator of Likely Success of Small & Medium Business or Startup or Guarantee of Investment Returns

Under Regulation Crowdfunding, a Small & Medium Business or Startup must file a Form C disclosure document with the SEC and provide the disclosure to prospective investors. As noted above, SMBX will perform a limited review of Small & Medium Businesses or Startups, including the information proposed to be provided to the SEC and potential investors, to determine whether to permit a Small & Medium Business or Startup to engage in Reg Crowdfunding Offerings on the App or Site. However, none of the SEC or SMBX will be reviewing any Startup's

Form C or other offering materials with the view to determine the likelihood of success of the Small & Medium Business or Startup's business strategy or the likelihood that it will generate investment returns. Further, the review of a Small & Medium Business or Startup's Form C by the SEC under Regulation Crowdfunding does not indicate the SEC's endorsement of such Small & Medium Business or Startup or its view with regard to the likely financial performance of the Small & Medium Business or Startup or the advisability of investing in such Small & Medium Business or Startup, and is not a guarantee of investment returns.

### 3.4.11 An Investment in a Small & Medium Business or Startup Does Not Offer a Complete Investment Program

An investment in a Small & Medium Business or Startup is not a complete or diversified investment program and should represent only a small portion of a potential investor's investment portfolio.

### 3.4.12 Possibility of Phantom Income

It is possible that your investment will result in "phantom income," which could require you to pay taxes on your investment even though the Small & Medium Business or Startup does not distribute any income (or does not distribute sufficient income to pay the taxes).

### 3.4.13 Other Specific Risks Associated with Investing in a Particular Small & Medium Business or Startup May Not Be Disclosed by the Small & Medium Business or Startup.

Each Small & Medium Business or Startup will disclose in the Small & Medium Business or Startup Information the particular risks associated with an investment in the Small & Medium Business or Startup. **YOU SHOULD CONSULT YOUR OWN LEGAL AND TAX ADVISERS REGARDING THE POSSIBLE TAX AND OTHER CONSEQUENCES OF BUYING, HOLDING, TRANSFERRING AND REDEEMING SMALL & MEDIUM BUSINESS OR STARTUP SECURITIES.**

## 3.5 CONFLICTS OF INTEREST ASSOCIATED WITH REG CROWDFUNDING OFFERINGS

### 3.5.1 General

SMBX will facilitate Reg Crowdfunding Offerings, and its affiliates, members, managers, officers and/or employees will manage other businesses, including, without limitation, those associated with SMBX, Inc. Each of SMBX and SMBX Inc. are affiliated and related parties. Certain inherent conflicts of interest arise from the activities of SMBX and its affiliates. You should carefully consider the conflicts of interest described in the Terms of Service, this Agreement, and on the App or Site prior to investing in a Small & Medium Business or Startup.

## 4. AGREEMENTS WITH RESPECT TO THIRD PARTY PROVIDERS

### 4.1 ELECTRONIC FUNDS TRANSFERS (EFTs)

#### Introduction to Electronic Funds Transfers

SMBX processes Electronic Funds Transfers (EFTs) as an efficient method to receive electronic deposits from investors, to purchase and redeem investments and to issue refunds to investors. EFTs are processed through the vehicles described below:

- The Automated Clearing House (ACH)
- The Fedwire
- Credit Card

#### Electronic Funds Transfers Agreement and Disclosure

This Electronic Funds Transfers Agreement and Disclosure (this Agreement) is the contract which covers you and our rights and responsibilities concerning the EFTs services offered to you by SMBX. In this Agreement, the words “you,” “your,” and “yours” mean an individual who signs up on the SMBX Platform (Platform) and utilizes the Platform to participate in offerings (and any authorized users). The words “we,” “us,” and “our” mean SMBX, Inc. EFTs are electronically initiated transfers of money from your bank account or credit card account, which you utilize the Platform to initiate, and which allow you to participate in SMBX offerings. By using any SMBX service, you agree to the terms and conditions in this Agreement and any amendments for the EFTs services offered.

In order to use the payment functionality of SMBX, you authorize us to share your identity, bank account data and credit card account data with North Capital Private Securities (NCPS), a broker-dealer registered with the Securities and Exchange Commission and the Financial Industry Regulatory Authority, Inc., and with North Capital Investment Technology (NCIT) for the purpose of processing your EFTs, and you are responsible for the accuracy and completeness of that data. You understand that you will access and are responsible for managing your bank account data and credit card account data through the Platform. You also authorize us and NCPS and NCIT to process EFTs as you direct through SMBX. You acknowledge that none of NCPS, NCIT or we will be liable for any loss, expense or cost arising out of EFT services provided through your use of SMBX, which are based on your instruction; NCPS and NCIT are third party beneficiaries to this Agreement.

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# SMALL & MEDIUM BUSINESS and STARTUP AGREEMENT

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I have read the Terms of Service (the "Terms of Service") and understand that the Terms of Service govern my use of the App, Site and the Services (as those terms are defined in the Terms of Service). If I am accessing the App, Site and/or using the Services on behalf of a Small & Medium Business or Startup (as defined in the Terms of Service), my agreement to this Small & Medium Business and Startup Agreement will be treated as the agreement of both me as an individual and for Small & Medium Business or Startup, and all references to "I" or "you" herein shall include Small & Medium Business or Startup.

I represent and warrant to SMBX, Inc. and SMBX (together, with their affiliates, "SMBX") that the information submitted about Small & Medium Business or Startup is correct and complete. I understand and agree that if any event occurs or circumstance arises that causes the information in Small & Medium Business or Startup's profile to be untrue or misleading in any material respect, then I must update such information to make it true and correct in all material respects prior to using the App, Site or any Services to raise capital. I agree that I am fully responsible for the accuracy of any information related to Small & Medium Business or Startup that I upload, and I am fully responsible for any and all consequences and claims related to any investment that is made in Small & Medium Business or Startup through the App or Site in reliance upon such information.

**I UNDERSTAND THAT THE OFFER AND SALE OF SECURITIES – INCLUDING, WITHOUT LIMITATION, STOCK, OPTIONS, CONVERTIBLE DEBT, WARRANTS AND OTHER SIMILAR INSTRUMENTS – IS REGULATED BY FEDERAL AND STATE LAW ("SECURITIES LAWS"), AND THAT IF I USE THE SERVICES AVAILABLE THROUGH THE APP AND SITE TO CONDUCT ANY TRANSACTION INVOLVING SECURITIES I MUST DO SO IN COMPLIANCE WITH APPLICABLE SECURITIES LAWS.**

**I UNDERSTAND THAT SMBX MAKES NO REPRESENTATION OR WARRANTY THAT TRANSACTIONS CONDUCTED THROUGH THE APP OR SITE WILL BE IN COMPLIANCE WITH APPLICABLE SECURITIES LAWS. I ACKNOWLEDGE THAT USE OF THE SERVICES AVAILABLE THROUGH THE APP OR SITE TO CONDUCT ANY TRANSACTION INVOLVING SECURITIES DOES NOT CONSTITUTE COMPLIANCE WITH APPLICABLE SECURITIES LAWS, AND MAY VIOLATE APPLICABLE SECURITIES LAWS IN CERTAIN JURISDICTIONS.**

**I UNDERSTAND THAT SMBX INC. IS NOT A "BROKER" OR "DEALER", AS THOSE TERMS ARE DEFINED IN SECTION 3(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED. I UNDERSTAND THAT SMBX IS A "FUNDING PORTAL" BUT IS NOT A "BROKER" OR A "DEALER."**

**IN ADDITION TO, AND NOT IN LIMITATION OF, THE DISCLAIMERS, EXCLUSIONS ON WARRANTIES AND LIMITATIONS ON LIABILITY SET FORTH IN THE TERMS OF SERVICE, I AGREE THAT TO THE FULLEST EXTENT PERMITTED BY LAW, SMBX SHALL HAVE NO LIABILITY FOR ANY LOSSES ARISING FROM OR RELATED TO ANY TRANSACTION IN SECURITIES CONDUCTED THROUGH THE SITE.**

In addition to, and not in limitation of, the indemnity set forth in the Terms of Service, I agree to defend SMBX Inc., SMBX, and their subsidiaries, affiliates, licensors and assignees and their respective officers, directors, managers, stockholders, members, agents, partners and employees (the "SMBX Indemnitees"), from and against any and all claims, actions, suits, demands or other proceedings brought by or on behalf of any third party, and to indemnify and hold SMBX Indemnitees harmless against any losses, liabilities and other damages (including, but not limited to, reasonable attorneys' fees), in any case arising out of or related to my use of the App, Site and the Services in connection with any transaction in securities. I understand this defense and indemnification obligation will survive following the termination of my use of the App, Site and the Services.

I agree that SMBX, Inc. or SMBX, as the case may be, shall have the right, but not the obligation, to list Small & Medium Business or Startup on the App or Site as a customer who uses the Services and in other materials promoting the Services. I further agree that if I use the App or Site to raise capital for Small & Medium Business or Startup, SMBX Inc. or SMBX has the right, during and after the term of this Agreement, to list Small & Medium Business or Startup and details of the transaction on the App, Site and in other materials promoting the Services.

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## PRIVACY POLICY

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Effective: July 1, 2019

This app and website privacy policy ("Privacy Policy") describes how SMBX, Inc., and SMBX ("SMBX," "we," "us," or "our") collect, use, and share information about users of our app and website, including SMBX.com, and associated services (collectively, our "App or Website"). By using our App or Website, you acknowledge and consent to our practices described below. Your use of our App or Website is also subject to our Terms of Use.

### Information We Collect

#### Information you provide us.

We receive information about you if you choose to provide it to us when you register for and create a profile on our App or Website. This information may include your legal name, street address, email address, photo, social security number, date of birth, net worth, income, status as an accredited investor, and your outside of SMBX Reg CF investments. If you choose to invest in a business through our App or Website, we will collect payment information from you, such as financial account information or payment card information. We may also collect information to help verify your identity such as a government issued ID and/or for income verification, such as a bank statement or W-2 form. If we are unable to verify your identity and/or income, we may be required to close your SMBX Account. Please note that we do not store your financial account information or payment card information, but we do store other personal information. If you



choose to add an investment entity to your profile or set up your account under an entity, we will also collect information about the entity.

If you would like to raise funding for your business with our App or Website, we collect information about you and your business, your fundraising terms, and payment information.

We also collect information when you post questions or comments on our App or Website, or when you contact us, including via email, phone, or social media.

## When you visit our App or Website.

We automatically collect certain information when you use our App or Website, including: (i) information about your interaction with our App or Website, including the actions you take, the pages or other content you view or otherwise interact with, and the dates and times of your visits; and (ii) device information, such as your IP address, operating system information, and web browser and/or device type and language.

## Information from other sources.

In order to provide the services on our App or Website, including verifying your identity and other information you provide us, we collect information about our users from third parties and combine it with other information we receive from or about our users.

## Third party services.

If you decide to register through or otherwise grant access to a third party social networking or authentication service that we may make available ("Integrated Service") in the future, such as Facebook, LinkedIn, or Google, we will collect certain personal information that you have provided to the Integrated Service (such as your name, email address, photo, and other information you make available via the Integrated Service) and an authentication token from the Integrated Service. The personal information collected from the Integrated Service may be used to register you on our App or Website and to provide some of the features of our App or Website. You may revoke our access to your account on the Integrated Service at any time by updating the appropriate settings in the account preferences of the respective Integrated Service. You understand that certain features of our Website may not be available to you if you choose to remove our access to your account with the Integrated Service.

## Cookies and other technologies.

When you visit our App or Website, we and our service providers collect certain information through the use of "cookies" and other technologies to better understand how our users navigate through our App or Website, learn what content is being viewed, and administer and improve our App or Website. Cookies are small text files that web servers place on an internet user's computer that are designed to store basic information and to recognize your browser. We may use both session cookies and persistent cookies. A session cookie disappears after you close your

browser. A persistent cookie remains after you close your browser and may be used by your browser on subsequent visits to our App or Website. We use Google Analytics cookies for data analytics purposes, and you can find more information on how Google uses data from these cookies at [www.google.com/policies/privacy/partners/](http://www.google.com/policies/privacy/partners/). Please consult your web browser to learn the proper way to modify its cookie settings. Please note that if you delete, or choose not to accept, cookies from our App or Website, you may not be able to utilize the features of our App or Website to their fullest potential.

Some of our service providers, including Google, use cookies and similar technologies to show you our ads on other websites across the Internet. These ads may be directed to you based on your past visits to our website and your use of our App or Website in order to provide you with the most relevant content. You can opt out of our service provider's use of cookies for directed marketing purposes by visiting the Network Advertising Initiative's [opt-out page](#). Please note that after opting-out, you will continue to see ads from these service providers, but they will not be based on your past activities.

## How We Use Information We Collect

We may use the information that we collect for the following purposes:

- To provide, improve, and personalize our App or Website;
- To monitor and analyze usage trends and preferences;
- To process payments and investments;
- To communicate with you, including for administrative, informational, promotional, and marketing purposes, and to respond to your requests or inquiries;
- To enforce this Privacy Policy or other terms to which you have agreed, and to protect the rights, property, or safety of us, our App or Website, our users, or any other person.

## How We Share Information We Collect

### Businesses You Invest In.

We may share your information with businesses that you invest in. The information about you that we share with the businesses you invest in may include your public profile information and your address, and email address.

### Other Users and the Public.

Please note that your profile page is viewable by other users and the public. For information on privacy settings available to you, please see the "Choices You Have With Your Information" section below. Any comments or information you submit or share on public areas of the App or Website, such as questions for founders, your bio, or a description of your business, can be read,

collected, or used by other users and the public. We are not responsible for the information you choose to submit or share on the public areas of our App or Website, such as investment pages or your public profile. We also share your information with other users when you send or receive direct messages from other users, Affiliates, Banks, and Partners. In order to provide the services on our App or Website, we may share your information with our affiliates and third parties, such as banks, portfolio companies, investment banking firms, accountants, and similar entities.

## Service providers.

We use service providers to provide certain services to us, such as analytics services, fraud detection, payment processing, and advertising and marketing services. We only provide our service providers with the information necessary for them to perform these services. Our analytics providers may collect information about your online activities over time and across different online services when you use our Website.

## Change of control.

In the event that SMBX is merged or sold, or in the event of a transfer or sale of some or all of our assets, we may disclose or transfer information we collect in connection with the negotiation and/or conclusion of such a transaction.

## Other disclosures.

We may disclose information about you to third parties if (a) we believe that disclosure is reasonably necessary to comply with any applicable law, regulation, legal process, or governmental request, (b) to enforce our agreements, policies, or terms of service, (c) to protect the security or integrity of our App or Website, (d) to protect the property, rights, and safety of us, our users, or the public, (e) to respond in an emergency which we believe in good faith requires us to disclose information to assist in preventing the death or serious bodily injury of any person, or (f) to investigate and defend ourselves against any third-party claims or allegations.

## Choices You Have With Your Information

You can update the information you provided us by accessing your account settings. Through your account settings, you can also hide some portions of your profile from other users or the general public on the Internet as well as hide your profile from search engines that collect information from our app or websites.

You can also opt out of promotional email communications at any time by clicking on the unsubscribe link in an email you received from us. You can also update your communication preferences through your account settings on our App or Website.

## Links to Other Websites

Our App or Website contains links to websites maintained by third parties. Please be aware that these third-party websites are governed by their own privacy policies and are not covered by our Privacy Policy. We are not responsible for the content or policies maintained by these websites. Please familiarize yourself with the privacy policy of any third-party websites you visit.

## Security of Your Information

The security of your information is important to us. We have implemented reasonable security measures to help protect the information in our care. However, no data transmission over the Internet or method of storage is 100% secure. As a result, while we strive to protect your information, we cannot and do not guarantee or warrant the security of information collected or otherwise obtained by us in connection with our App or Website.

## Children's Privacy

Our App or Website is not intended for children under the age of 13, and we do not knowingly collect personal information from children under the age of 13. If we learn that we have collected the personal information from a child under the age of 13, we will take steps to delete the information. If you are aware that a child under 13 has provided us with personal information, please contact us at [support@theSMBX.com](mailto:support@theSMBX.com).

## Do Not Track

Some web browsers incorporate a "Do Not Track" (DNT) feature. Because there is not yet an accepted standard for how to respond to a DNT signal, our websites do not currently respond to such signals.

## Processing in the United States

Please be aware that personal information may be transferred to and maintained on, servers or databases located outside your state, province, country, or other jurisdiction where the privacy laws may not be the same as those in your location. If you are located outside of the United States, please be advised that we transfer all information to the United States for storage and processing, and your consent to our Privacy Policy represents your consent to this transfer, storage, and processing.

## Changes to Our Privacy Policy

Please revisit this page periodically to stay aware of any changes to our Privacy Policy, which we may update from time to time. If we modify our Privacy Policy, we will make it available on our App or Website and indicate the effective date. In the event that the modifications materially alter your rights or obligations hereunder, we will make reasonable efforts to notify you of the change. For example, we may send a message to your email address, if we have one on file, or

generate a pop-up or similar notification when you access our App or Website for the first time after such material changes are made. Your continued use of our App or Website after the revised Privacy Policy has become effective indicates that you have read, understood, and agreed to the current version of our Privacy Policy.

## Contacting Us

If you have any questions, comments, or concerns about our Privacy Policy, please email us at [support@theSMBX.com](mailto:support@theSMBX.com)

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# ELECTRONIC CONSENT AND ELECTRONIC DELIVERY OF DOCUMENTS

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I agree that any time I click or have clicked on an "I Agree," "I Consent" or other similarly worded button or entry field with my mouse, keystroke or other device, my agreement or consent is legally binding and enforceable against me and is the legal equivalent of my handwritten signature on an agreement that is printed on paper. I agree to be bound by any affirmation, assent or agreement that I transmit, or have transmitted, to or through this website (the "**Platform**") by computer or other electronic device, including internet, telephonic and wireless devices, including but not limited to any consent I give or have given to receive communications from SMBX Inc. or any of its affiliates, including SMBX, as applicable ("**SMBX**") solely through electronic transmission.

I understand that, to the fullest extent permitted by law, any notices, disclosures, forms, privacy statements, bond certificates, reports or other communications, including any tax-related information or documents to the extent provided below (collectively, "**Communications**"), regarding the investments available on the Platform, and my investment in any such investments, may be delivered by electronic means, such as by e-mail or through our SMBX app or theSMBX.com. I consent to electronic delivery as described in the preceding sentence. In so consenting, I acknowledge that e-mail messages are not secure and may contain computer viruses or other defects, may not be accurately replicated on other systems or may be intercepted, deleted or interfered with, with or without the knowledge of the sender or the intended recipient. I also acknowledge that an e-mail from SMBX may be accessed by recipients other than me and may be interfered with, may contain computer viruses or other defects and may not be successfully replicated on other systems. I understand that SMBX gives no warranties in relation to these matters.

I consent SMBX to use my electronic signature to certify bond certificates for bonds that I successfully purchase. Each electronically signed bond certificate will be my authoritative copy of ownership for a specific series of bonds.

I consent to the delivery of tax documents or other financial statements (such as Internal Revenue Service ("IRS") Form 1099-INT) through email or <https://thesmbx.com>. I understand that I may withdraw this consent before my tax document is furnished. In providing this consent, I also acknowledge that I have received SMBX's Information on the Electronic Delivery of Tax Documents, included below.

I further understand and agree to each of the following:

- As long as my consent remains in effect, SMBX may provide all Communications to me electronically in lieu of providing paper Communications.
- **Hardware and software that I will need.** Electronic Communications may be provided to me via e-mail and/or the Platform. In order to view and retain the Communications, my computer or mobile hardware and software must, at a minimum, be capable of accessing the Internet, with connectivity to an Internet Service Provider or any other capable communications medium, and with software capable of viewing and printing a \*.pdf file created by Adobe Acrobat. Further, I must have a personal e-mail address capable of sending and receiving e-mail messages to and from SMBX. To print the documents, I will need access to a printer compatible with my hardware and the required software.
- If these software or hardware requirements change in the future, SMBX will notify me through the Platform.
- To facilitate these services, I must provide SMBX with my current e-mail address and update that information as necessary. Unless otherwise required by law, I will be deemed to have received any electronic Communications that are sent to the most current e-mail address that I have provided to SMBX.
- SMBX will not assume liability for non-receipt of notification of the availability of electronic Communications in the event my e-mail address on file is invalid, my e-mail or Internet service provider filters the notification as "spam" or "junk mail," there is a malfunction in my computer, browser, Internet service and/or software, or for any other reasons beyond the control of SMBX.
- I may withdraw my consent to receive Communications in electronic form by calling SMBX at (415) 869 8819. If I withdraw my consent to receive Communications in electronic form, SMBX may, at its option and in its sole discretion, (A) terminate my account with SMBX that was created through the Platform ("**My Account**"), (B) restrict or limit the actions I may take through or with respect to My Account, including, but not limited to, restricting my ability to purchase SMBX investment through My Account, and (C) charge me a fee of \$5 for each paper copy of each Communication that would have been provided to me electronically if I had not withdrawn my consent. Any withdrawal of my consent to receive electronic Communications will not affect or impact in any way the terms of this Agreement or my agreement to the Terms of Use Agreement for the Platform.

### Information on Electronic Delivery of Tax Documents

These provisions relate to my consent above to SMBX's provision of tax documents to me electronically. Prior to furnishing the tax documents electronically, the IRS requires that SMBX provide each investor with the following information:

- If I do not consent to receive the tax document electronically, a paper copy will be provided.
- My consent continues for every tax year until I withdraw my consent.
- I may log into My Account at theSMBX.com to access and print my tax documents. I may need Adobe Acrobat Reader to open the document and a device connected to my computer that can print. In the event a tax document is too large to open in the browser, I will be prompted by a dialog box to save the file to a location on my computer and open it using Acrobat Reader.
- To withdraw consent, I may call SMBX at (415) 869 8819 to request to withdraw my consent.
- If My Account is closed, my request for electronic delivery of tax documents will automatically terminate, and I will receive a paper copy of my tax documents by mail at the address that I have provided to SMBX.
- I may update my contact information by calling SMBX at (415) 869 8819.
- My tax documents are maintained for 10 years on theSMBX.com in case I ever need to access them again.

### Some Fine Print

**How SMBX is Compensated.** Our compensation varies. For Reg CF investments (currently only the bond product), SMBX may charge issuers up to 3.5% fee depending on the bond/loan structure. We also charge a \$100 annual maintenance fee to issuers through to the maturity of their bonds.

**Insiders Must Disclose Relationships.** Founders, employees, promoters, or anyone with a financial stake - past or present - in a company actively fundraising on SMBX must disclose their relationship with that company when communicating with other investors on the SMBX App or Site.

**Educational Materials.** Any investor on SMBX - especially those who have never made an investment previously - should read our educational materials on our app or website's FAQs. Educational materials are continually updated on our app and also <https://thesmbx.com/faq.php>

**Our Corporate Entities.** SMBX Inc. runs our app SMBX and theSMBX.com. SMBX is a registered funding portal that operates the portions of the app SMBX and theSMBX.com through which some Reg CF offerings are made.

**Screening & Curation.** SMBX screens issuers for signs of fraud and reserves the right to reject any company from fundraising. However, SMBX does not curate issuers nor offer any recommendation to invest. Issuers on SMBX are highlighted based on objective criteria and the ratings or endorsements of SMBX users.