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## NEW TERMS OF USE

Effective Date: April, 1<sup>st</sup>, 2023.

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

### Introduction

Thank you for visiting Smokegt.com, an online service that is operated by **Cigars & More, LLC**, (“Company”, “we”, or “us” or “our”). Please read these Terms carefully before using this website and any other websites and any online services, software or apps which are owned and operated by Company that post a link to these Terms (the “Service”). By visiting or otherwise using the Service in any manner, you agree to the then posted Terms and any applicable Additional Terms (defined below), to be bound by them, that you have read and understood them, and represent that you are twenty-one (21) years of age or older. You also acknowledge, agree and consent to our data practices as described in our [Privacy Policy](#)

These Terms affect your legal rights, responsibilities and obligations and govern your use of the Service, are legally binding, limit Company’s liability to you and require you to indemnify us and to settle certain disputes through individual arbitration. **If you do not wish to be bound by these Terms and any Additional Terms, do not use the Service and uninstall Service downloads and applications.**

### Additional Terms

In some instances, additional or different terms, posted on the Service, apply to your use of certain parts of the Service (individually and collectively “**Additional Terms**”). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise. Our Additional Terms include [Shipping Information](#), our [Return Policy](#), and other official rules for promotional games.

### Updates to these Terms and Additional Terms

We may prospectively change these Terms and Additional Terms by posting new or changed terms on the Service as more fully explained [here](#).

### Quick Links

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

#### • Grants and Limitations of Rights

- o We only grant you a limited revocable license to use the Service subject to rules and limitations. [More](#)
- o You grant us a broad license to the content you submit and to your profile. You retain ownership of and responsibility for your content. We have the right to manage our Service to keep its content appropriate. [More](#)
- o Your use of our Service is subject to various restrictions designed to protect the Service and users. [More](#)

#### • Limitations on Your Remedies

As permitted by applicable law,

o We also disclaim most warranties and provide the Service “As Is”. [More](#)

o Our liability is greatly limited. [More](#)

o Your equitable or injunctive relief rights are limited. [More](#)

• **Dispute Resolution**

o As permitted by law, you agree to waive jury trial and class actions. [More](#)

• **Availability of Service**

o We may change or discontinue our Service, or your right to access it, in whole or in part. [More](#) Our Service is intended for access from and use in the U.S.A. [More](#)

**1. OWNERSHIP AND YOUR RIGHTS TO USE THE SERVICE AND CONTENT.**

**A. Ownership.** The Service and all of its content (“**Content**”), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein (“**Intellectual Property**”), are owned or controlled by Company, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of Company, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. Company owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

**B. Your Rights to Use the Service and Content.**

(i) Your right to use the Service and content is subject to your strict compliance with these Terms and the Additional Terms. Your right to access and use the Service and the Intellectual Property shall automatically terminate upon any violations. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Service and the content is personal to you, you may not assign nor transfer your right; any attempt to do so is void. You may, for your personal, non-commercial, lawful use only (collectively, the following are the “**Company Licensed Elements**”):

(1) Display, view, use, and play the content on a computer, mobile or other internet enabled or permitted device (“**Device**”) and/or print one copy of the content (excluding source and object code in raw form or otherwise) as it is displayed to you;

(2) Stream the content using any of the widgets and/or other digital streaming internet video players, if any, provided on the Service;

(3) Subject to any applicable Additional Terms, if the Service includes a “Send to Friend,” social media sharing or similar tool that allows you to initiate and send to one of your friends a communication that includes content, or to post our content to third-party services or your own site or online service, and the tool is operational, use the tool to do so; provided, however, that you do not do so in any manner that violates applicable law or third-party rights or reflects negativity on us, and only send to recipients who are at least twenty-one (21) years of age and who you have permission to contact. In the event you receive anything in

consideration from us related to sending or posting a message (e.g., coupon based on sales related to a cigar collection you posted, sweepstakes entries, etc.) you represent you will disclose the receipt of this consideration as part of the message and will include any specific disclosures otherwise required by us;

(4) If the Service includes a “Download” link next to a piece of content (including, without limitation, an image, an icon, a wallpaper, a music track, a video, a trailer, an RSS feed), you may only download a single copy of such content to a single Device;

(5) Download, install and use one copy of any software, including apps, that we make available on or through the Service (“**Software**”) on your Device in machine-executable object code form only and make one additional copy for back-up purposes; provided, however, that you understand and agree that (i) by allowing you to download the Software, Company does not transfer title to the Software to you (i.e., you own the medium on which the Software is recorded, but the Software's owner (which may be Company and/or its third-party Software licensor) will retain full and complete title to such Software); (ii) you may not copy, modify, adapt, translate into any language, distribute, or create derivative works based on the Software, except as expressly authorized in these Terms or applicable Additional Terms, without the prior written consent of Company; (iii) you may not assign, rent, lease, or lend the Software to any person or entity and any attempt by you to sublicense, transfer, or assign the Software will be void and of no effect; and (iv) you may not decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Software by any means whatsoever, except to the extent the foregoing restriction is prohibited by applicable law;

(6) If made available to you, obtain a registered personal account (and/or related username and password) on the Service and interact with the Service in connection therewith;

(7) Link to the Service from a website or other online service, so long as: (a) the links only incorporate text, and do not use any Company names, logos, or images, (b) the links and the content on your website do not suggest any affiliation with Company or cause any other confusion, and (c) the links and the content on your website do not portray Company or its products or services in a false, misleading, derogatory, or otherwise offensive manner, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third-party or are otherwise objectionable to Company. Company reserves the right to suspend or prohibit linking to the Service for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third-party; and

(8) Use any other functionality expressly provided by Company on or through the Service for use by users, subject to these Terms (including, without limitation, functionality to create and/or post User-Generated Content (as defined below)) and any applicable Additional Terms.

### **C. Rights of Others.**

In using the Service, you must respect the intellectual property and rights of others and Company. Your unauthorized use of content may violate the rights of others and applicable laws, and may result in your civil and criminal liability. If you believe that your work has been infringed via the Service, see [Section 5](#) below.

### **D. Reservation of all Rights Not Granted as to Content and Service.**

These Terms and any applicable Additional Terms include only narrow, limited grants of rights to use and access the Service and content. No right or license may be construed, under any legal theory, by implication,

estoppel, industry custom, or otherwise. ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED BY COMPANY AND ITS LICENSORS AND OTHER THIRD PARTIES. *Any unauthorized use of any content or the Service for any purpose is prohibited.*

### **E. Third-Party Services.**

We are not responsible for third parties or their content, advertisement(s), apps or sites (“**Third-Party Services**”). For instance, portions of the Service may be integrated into or linked to third-party sites, platforms and apps that we do not control. Similarly, we may make ads and third-party content or services, which we also may not control, available to you on or via our Service. This may include the ability to register or sign in to our Services using Facebook Connect or other third-party tools, and to post content on third-party sites and services using their plug-ins made available on our Services. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for Third-Party Services. If you are accessing or using the Service through Apple, Android, or any other platform, these are Third-Party Services.

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## **1. CONTENT YOU SUBMIT**

### **A. User-Generated Content.**

You grant us a non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, transferable and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of any material or information you post or submit to us (on or via the Service, or by means other than the Service, including without limitation via our social media pages and accounts such as Facebook, Twitter and LinkedIn) (“Submissions”), and derivative works thereof, for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same, all without any obligation to you not required by applicable law, or explicit terms of our [Privacy Policy](#) or applicable Additional Terms. As permitted by applicable law, and subject to any explicit terms of our [Privacy Policy](#) and applicable Additional Terms, you also irrevocably consent to our use and association of your name (and, if part of a Submission, your likeness) in connection with your Submissions and derivatives thereof. As permitted by applicable law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. In addition, we and our successors, assigns and licensees retain all of the rights held by members of the general public with regard to your Submissions. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to contest existing or future Intellectual Property rights relating to your Submissions.

**B. Appropriate Content and Alerting Us of Violations.** We expect UGC to be appropriate for a general audience, but do not undertake to monitor it, and you consent to potentially encountering content you find offensive or inappropriate. We may include venue and content rules as Additional Terms. If you discover any content that violates these Terms or any applicable Additional Terms, then you may report it by emailing us at [info@smokegt.com](mailto:info@smokegt.com). For alleged infringements of Intellectual Property rights, see [Section 5](#) .

### **3. SERVICE AND CONTENT USE RESTRICTIONS.**

#### **A. Service Use Restrictions.**

You agree that you will not: (i) use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Intellectual Property; (iii) engage in any activities through or in connection with the Service that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third-party, or are otherwise objectionable to Company; (iv) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Service by any means whatsoever or modify any Service source or object code or any Software or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user’s access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, Company, or other users of the Service; (vi) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other content protection or access control measure) of the Service or any feature that restricts or enforces limitations on use of or access to the Service or the Content; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms or any applicable Additional Terms.

#### **B. Content Use Restrictions.**

You also agree that, in using the Service, you: (i) will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, “bot”, spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other Intellectual Property and other notices contained in such content; (iv) will not use such content in a manner that suggests an unauthorized association with any of our or our licensors’ products, services, or brands; (v) will not make any modifications to such content (other than to the extent of your specifically permitted use of the Company Licensed Elements, if applicable); (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third-party or on any third-party application or website, or otherwise use or exploit such content in any way for

any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with the prior written consent of an officer of Company or, in the case of content from a licensor, the owner of the content; and (vii) will not insert any code or product to manipulate such content in any way that adversely affects any user experience or the Service.

### **C. Availability of Service and Content.**

Company, in its sole discretion without advance notice or liability, may immediately suspend or terminate the availability of the Service and/or Content (and any elements and features of them), in whole or in part, for any reason, in Company's sole discretion, and without advance notice or liability.

## **4. CREATING AN ACCOUNT.**

### **A.**

If you register with us or create an account, you are solely responsible and liable for the security and confidentiality of your access credentials and for restricting access to your Device and for all activity under your account. Usernames and passwords must be personal and unique that do not violate the rights of any person or entity, and is not offensive. We may reject the use of any password, username, or email address for any reason in our sole discretion. You are solely responsible for your registration information and for updating and maintaining it. You will immediately notify us [here](#) of any unauthorized use of your account, password, or username, or any other breach of security, but will remain responsible for any unauthorized use thereafter. You will not sell, transfer, or assign your account or any account rights. By creating an account, you consent to receive electronic communications from Company (e.g., via email or by posting notices to the Service). These communications may include notices about your account (e.g., payment authorizations, password changes and other transactional information) and are part of your relationship with us.

### **B.**

Accounts may only be set up by an authorized representative of the individual that is the subject of the account and who is of the age of majority. We do not review accounts for authenticity, and are not responsible for any unauthorized accounts that may appear on the Service. Likewise, we do not warrant or guarantee that compliance with these Terms of Service will be sufficient to comply with your obligations under applicable laws where you reside or where you use the Service. For any dispute as to account creation or authenticity, we shall have the sole right, but are not obligated, to resolve such dispute as we determine appropriate, without notice.

You must be of legal smoking age or older to access this Service. We restrict our Service and marketing contact list to individuals who have certified that: 1. they are at least twenty-one (21) years old, 2. they want to be added to our contact list in order to receive content, offers, and advertising from us, and 3. they understand that providing false information may constitute a violation of law. We take the prevention of underage use very seriously. Our products should never be used by anyone under the legal age.

## **5. PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT.**

If you are a copyright owner who would like to send us a notice pursuant to the Digital Millennium Copyright Act ("DMCA") to identify content or material posted on the Service that is infringing that you would like removed from our Service, or if you are a user whose work has been removed in response to such a notice of infringement and would like to file a DMCA counter-notice, you may submit such notice to us by following the instructions:.

**A.**

DMCA Notice. Company asks our users to respect the intellectual property rights of others. It is our policy to respond appropriately to clear notices of alleged copyright infringement, as set forth more fully below. In Company's sole discretion, Company may remove content that may be infringing on another person's intellectual property rights with or without notice to the potential infringer. In accordance with the U.S. Digital Millennium Copyright Act ("DMCA") and other applicable law, Company has adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers.

**B.**

If we remove or disable access in response to a DMCA Copyright Infringement Notice, we will make a good faith attempt to contact the owner or administrator of the affected content so that they may make a counter-notification. If you own a copyright in a work (or represent such a copyright owner) and believe that your (or such owner's) copyright in that work has been infringed by an improper posting or distribution of it via the Service, then you may send us a written notice that includes all of the following:

- (i) a legend or subject line that says: "DMCA Copyright Infringement Notice";
- (ii) a description of the copyrighted work that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works;
- (iii) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the full URL of the page(s) on the Service on which the material appears);
- (iv) your full name, address, telephone number, and e-mail address;
- (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- (vi) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the copyright owner (or, if you are not the copyright owner, then your statement must indicate that you are authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed); and
- (vii) your electronic or physical signature.

Company will only respond to DMCA Notices that it receives by mail, e-mail, or facsimile at the addresses below:

By Mail: 5004 E. Fowler Ave, Unit C, Suite 139, Tampa, FL 33617

By E-mail: [cigarsandmore@gmail.com](mailto:cigarsandmore@gmail.com)

It is often difficult to determine if your copyright has been infringed. Company may elect to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and Company may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

We may send the information that you provide in your notice to the person who provided the allegedly infringing work. That person may elect to send us a DMCA Counter-Notification.

Without limiting Company's other rights, Company may, in appropriate circumstances, terminate a repeat infringer's access to the Service and any other website owned or operated by Company.

### C.

Counter-Notification. If access on the Service to a work that you submitted to Company is disabled or the work is removed as a result of a DMCA Copyright Infringement Notice, and if you believe that the disabled access or removal is the result of mistake or misidentification, then you may send us a DMCA Counter-Notification to the addresses above. Your DMCA Counter-Notification should contain the following information:

- (i) a legend or subject line that says: "DMCA Counter-Notification";
- (ii) a description of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled (please include the full URL of the page(s) on the Service from which the material was removed or access to it disabled);
- (iii) a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
- (iv) your full name, address, telephone number, e-mail address, and the username of your Account;
- (v) a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or, if the address is located outside the U.S.A., to the jurisdiction of the United States District Court for the Middle District of North Carolina), and that you will accept service of process from the person who provided DMCA notification to us or an agent of such person; and
- (vi) your electronic or physical signature.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

If we receive a DMCA Counter-Notification, then we may replace the material that we removed (or stop disabling access to it) in not less than ten (10) and not more than fourteen (14) business days following receipt of the DMCA Counter-Notification. However, we will not do this if we first receive notice at the addresses above that the party who sent us the DMCA Copyright Infringement Notice has filed a lawsuit asking a court for an order restraining the person who provided the material from engaging in infringing activity relating to the material on the Service. You should also be aware that we may forward the Counter-Notification to the party who sent us the DMCA Copyright Infringement Notice.

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## 6. NOTICES, QUESTIONS AND CUSTOMER SERVICE.

You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: 5004 E. Fowler Ave, Unit C, Ste 139, Tampa FL 33637 (Attn: Legal Department). If you have a question regarding the Service, you may contact Company Customer Support by sending an email to [cigarsandmore@gmail.com](mailto:cigarsandmore@gmail.com). You acknowledge that we have no obligation to provide you with customer support of any kind and that customer



service personnel cannot change or waive Terms or applicable Additional Terms.

## **7. PRODUCT SPECIFICATIONS; PRICING; TYPOGRAPHICAL ERRORS.**

Cigars & More LLC and its companies market our products and services to tobacco consumers age twenty-one (21) or older only. We strive to accurately describe our products or services offered on the Service; however, we do not warrant that such specifications, pricing, or other content on the Service is complete, accurate, reliable, current, or error-free. As permitted by applicable law, Company shall have the right to refuse or cancel any orders in its sole discretion. Your orders are offers to purchase subject to our acceptance, which we may reject or cancel subject to refund. If we charged your credit or other account prior to rejection or cancellation, we will reissue credit to your account. Additional Terms may apply. If a product you purchased or accepted from Company is not as described, as permitted by applicable law, your sole remedy is to return it, to cancel the purchase and receive a credit for the purchase price.

## **8. ARBITRATION AND DISPUTE TERMS.**

### **A. Forum Selection/Jurisdiction.**

Jurisdiction and venue for any controversy, allegation, or claim arising out of or relating to the Service, the Content, your UGC, these Terms, or any applicable Additional Terms, (collectively, "Dispute") shall take place before the Broward County Clerk of Superior Court or the United States District Court for the Southern District of Florida Court. Each party submits to personal jurisdiction and venue in Fort Lauderdale, Florida for any and all purposes.

### **B. Pre-Arbitration Notification.**

Company and you agree that it would be advantageous to discuss and hopefully resolve any Disputes before formal proceedings are initiated; provided, however, that Company need not do so in circumstances where its claims of Intellectual Property rights are concerned ("IP Disputes," with all other disputes referred to as "General Disputes"). The party making a claim – whether you or Company – shall send a letter to the other side briefly summarizing the claim and the request for relief. If Company is making a claim, the letter shall be sent, via email, to the email address listed in your Company account, if applicable. If no such information exists or if such information is not current, then we have no notification or delay obligations under this Section 8.B. If you are making a claim, the letter shall be sent to 5004 E. Fowler Ave, Unit C, Ste 139, Tampa FL 33637 (Attn: Legal Department). If the Dispute is not resolved within sixty (60) days after notification, the claimant may proceed to initiate proceedings as set forth in this Section 8. Either you or Company, however, may seek provisional remedies (such as preliminary injunctive relief, subject to Section 8.D) before the expiration of this sixty (60)-day period.

### **C. Arbitration of Claims.**

#### **(i) Forums for Arbitration.**

Unless you give us notice of opt-out within five (5) business days of your first use of the Service, addressed to: 5004 E. Fowler Ave, Unit C, Ste 139, Tampa FL 33637 (Attn: Legal Department), and upon expiration of the applicable sixty-day period and to the fullest extent not prohibited by applicable law, all Disputes shall be submitted to JAMS ([www.jamsadr.com](http://www.jamsadr.com)) for final and binding arbitration under its Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less, to be held in Hillsborough County, Florida, before a

single arbitrator. If the matter in dispute is between Company and a consumer, the matter shall be submitted to JAMS in accordance with its Policy on Consumer Arbitration Pursuant to Pre- Dispute Clauses Minimum Standards of Procedural Fairness. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by JAMS. We may have the right to pay the JAMS fees if required for arbitration to be enforceable. The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates' lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator's award is based. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the arbitrator's award; provided, however, that prior to the appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek pendente lite relief (subject to the provisions of these Terms waiving or limiting that relief) in a court of competent jurisdiction in Hillsborough County, Florida, or, if sought by Company, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section; provided further, however, that the losing party shall have fifteen (15) business days after the issuance of the arbitrator's decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the Hillsborough County Clerk of Court or, in the case of you, such other court having jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award.

**(ii) Nature, Limitations, and Location of Alternative Dispute Resolution.**

In arbitration, as with a court, the arbitrator must honor the terms of these Terms (and any Additional Terms) and can award the prevailing party damages and other relief. HOWEVER, WITH ARBITRATION (A) THERE IS NO JUDGE OR JURY, (B) THE ARBITRATION PROCEEDINGS AND ARBITRATION OUTCOME ARE SUBJECT TO CERTAIN CONFIDENTIALITY RULES, AND (C) JUDICIAL REVIEW OF THE ARBITRATION OUTCOME IS LIMITED. All parties to the arbitration will have the right, at their own expense, to be represented by an attorney or other advocate of their choosing. If an in-person arbitration hearing is required, then it will be conducted in the "metropolitan statistical area" (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator's fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require Company to pay a greater portion or all of such fees and costs in order for this Section to be enforceable, then Company will have the right to elect to pay the fees and costs and proceed to arbitration. Discovery will be permitted pursuant to the applicable arbitration rules. The arbitrator's decision must consist of a written statement stating the disposition of each claim of the Dispute and must provide a statement of the essential findings and conclusions on which the decision and any award (if any) is based. Judgment on the arbitration decision and award (if any) may be entered in or by any court that has jurisdiction over the parties pursuant to Section 9 of the Federal Arbitration Act. This arbitration provision shall survive termination of these Terms or the Service.

**D. Limitation on Injunctive Relief.**

AS PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL

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

#### **E. Governing Law.**

These Terms and any applicable Additional Terms, General Disputes and IP Disputes, and any other claim brought by you against Company or by Company against you pursuant to this Section 9, or otherwise related to the Service, Content, Company Licensed Elements, UGC or other Company products or services, will be governed by, construed, and resolved in accordance with, the laws of the State of Florida, U.S.A., without regard to its conflicts of law provisions that might apply the laws of another jurisdiction. This Section 8 shall be governed solely by the Federal Arbitration Act, 9 U.S.C. § 1, et seq., and not by the law of any state, and is enforceable pursuant to its terms on a self-executing basis. You and Company agree that we intend that this Section 8 satisfies the “writing” requirement of the Federal Arbitration Act. This Section 8 can only be amended by mutual agreement. Either party may seek enforcement of this Section 8 in any court of competent jurisdiction. The arbitrator shall determine any and all challenges to the arbitrability of a claim.

#### **F. Class Action Waiver.**

As permitted by applicable law, both you and Company waive the right to bring any Dispute as a class, consolidated, representative, collective, or private attorney general action, or to participate in a class, consolidated, representative, collective, or private attorney general action regarding any Dispute brought by anyone else. Notwithstanding any provision in the JAMS Comprehensive Arbitration Rules and Procedures to the contrary, the arbitrator shall not have the authority or any jurisdiction to hear the arbitration as a class, consolidated, representative, or private attorney general action or to consolidate, join, or otherwise combine the Disputes of different persons into one proceeding. Notwithstanding the arbitration provision set forth above, if the provision regarding waiver of class, collective, representative, and private attorney general claims of this Section 8 is found to be void or otherwise unenforceable, any such class, collective, representative, or private attorney general claims must be heard and determined through an appropriate court proceeding, and not in arbitration.

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

#### **H. Small Claims Matters.**

Notwithstanding the foregoing, either of us may bring qualifying claims of General Dispute (but not IP Disputes) in small claims court, subject to Section 8.F.

#### **I.**

The provisions of this Section 8 shall supersede any inconsistent provisions of any prior agreement between the parties. This Section 8 shall remain in full force and effect notwithstanding any termination of your use of the Service or these Terms.

#### **9. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.**

##### **A. AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK AND THE SERVICE IS PROVIDED ON AN “AS IS,” “AS AVAILABLE,” AND “WITH ALL FAULTS” BASIS.**

To the fullest extent permissible by applicable law, Company and their direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, “**Company Parties**”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, Company Licensed Elements, UGC or other Company products or services, except as set forth in subsection C, below.

**B. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN, OR IN APPLICABLE ADDITIONAL TERMS, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, COMPANY PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS, OR THAT INFORMATION ON THE WEBSITE WILL BE COMPLETE, ACCURATE OR TIMELY. IF YOU DOWNLOAD ANY MATERIAL FROM THIS WEBSITE, YOU DO SO AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.**

**C. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY COMPANY PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY COMPANY PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) COMPANY PARTIES’ LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY COMPANY PARTIES TO THE EXTENT NOT WAIVABLE OR THAT CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST COMPANY PARTIES THAT IS NOT WAIVABLE OR THAT CANNOT BE LIMITED UNDER APPLICABLE LAW. C. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY COMPANY PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY COMPANY PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) COMPANY PARTIES’ LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY COMPANY PARTIES TO THE EXTENT NOT WAIVABLE OR THAT CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST COMPANY PARTIES THAT IS NOT WAIVABLE OR THAT CANNOT BE LIMITED UNDER APPLICABLE LAW.**

#### **10. LIMITATIONS OF OUR LIABILITY.**

**A. AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY COMPANY PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND**, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, Company Licensed Elements, UGC or other Company products or services, except, to the extent not waivable under applicable law, for direct damages for personal injury caused by a physical product manufactured, sold or provided by Company.

**B.**

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

**C. AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID COMPANY IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S).**

**D. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY COMPANY PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY COMPANY PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) COMPANY PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY COMPANY PARTIES TO THE EXTENT NOT WAIVABLE OR THAT CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST COMPANY PARTIES THAT IS NOT WAIVABLE OR THAT CANNOT BE LIMITED UNDER APPLICABLE LAW.**

## **11. UPDATES TO TERMS.**

It is your responsibility to review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Any new Terms or Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised or additional terms by discontinuing use of the Service.

## 12. GENERAL PROVISIONS.

### A. Company's Consent or Approval.

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

### B. Indemnity.

As permitted by applicable law, you agree to, and you hereby, defend (if requested by Company), indemnify, and hold Company Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Company Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your UGC; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms or any applicable Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) Company Parties' use of the information that you submit to us (including your UGC) subject to our [Privacy Policy](#) (all of the foregoing, "Claims and Losses"). You will cooperate as fully required by Company Parties, in the defense of any Claim and Losses. Notwithstanding the foregoing, Company Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Company Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a Company Party. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.

### C. Operation of Service; Availability of Products and Services; International Issues.

Company controls and operates the Service from the U.S.A., and makes no representation that the Service is appropriate or available for use beyond the U.S.A. If you use the Service from other locations, you are doing so on your own initiative and responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.

### Export Controls.

You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S. law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

### E. Severability; Interpretation.

If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful,

void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the applicable Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.

#### **F. Investigations; Cooperation with Law Enforcement; Termination; Survival.**

As permitted by applicable law, Company reserves the right, without limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any applicable Additional Terms, (iii) use any information obtained by Company in accordance with its [Privacy Policy](#) in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by Company to comply with law enforcement or regulatory (e.g., federal Food and Drug Administration) requests or legal requirements in accordance with our [Privacy Policy](#), (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Service, in whole or in part, or, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third party. Any suspension or termination will not affect your obligations to Company under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from Company, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Company in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

#### **G. Assignment.**

Company may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Company.

#### **H. Complete Agreement; No Waiver.**

These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Company in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

#### **I. California Consumer Rights and Notices.**

California residents can obtain information on our privacy practices, including how we comply with the

California Online Privacy Protection Act and the California Shine the Light Act in our [Privacy Policy](#)

Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 1625 North Market Blvd., Suite N 112, Sacramento, California, 95834, or by telephone at (916) 445-1254. Hearing-impaired users can reach the Complaint Assistance Unit at TDD (800) 326-2297 or TDD (916) 322-1700. Their website is located at: <http://www.dca.ca.gov>.

#### **J. ADDITIONAL TERMS - TEXT PROGRAM TERMS AND CONDITIONS**

By signing up for the Smokegt.com, Inc. mobile messaging program (“**Program**”), you agree to these terms and conditions (“**Program Terms**”) and our general Terms of Use (which include mandatory arbitration of disputes and class action waiver, limitations on your rights and remedies and of our liability), consent to our practices described herein and in our Privacy Policy. and authorize Smokegt.com, Inc. (“**Company**” “us” “**we**” or “**us**”) to deliver, to the designated mobile phone number (registered or used to opt-in via short code), promotional and other text messages, including via an autodialer (i.e., automated dialing technology). The Program is a Service as defined in the Terms of Use. You are not required to accept the Program Terms as a condition of purchasing any property, goods or services and no purchase is necessary to subscribe to the Program. If you do agree, **you consent to receiving up to ten (10) promotional Program texts per month**, plus additional non-promotional texts. You understand and accept that short-form descriptions of Program message caps (e.g., “up to 10 msg/mo”) refer to only caps on promotional messages and not to non-promotional messages (e.g., responding to your HELP requests). Your subscription auto-renews each month until you unsubscribe.

**You can unsubscribe from the Program by texting “STOP” to the Program short code (currently 63052) or as a reply to a Program text you receive. You can also unsubscribe by calling us a (800) 574-3576.** You hereby consent to receive a text message confirming that you have unsubscribed, as well as other non-promotional text messages (such as when you text the short code to join or send us a HELP text or any unrecognized message and when we send you administrative messages such as if we change the short code). You understand that unsubscribing to the Program will not terminate your consent to receive other kinds of text alerts, such as if you have requested shipping confirmation text alerts. You must unsubscribe from each text program separately. Unsubscribing to the Program texts also will not unsubscribe you from emails from us. However, you can follow the unsubscribe link on our promotional emails to learn how to opt-out of JR Cigar promotional emails (you may still, however, receive non-promotional emails from us).

You agree to promptly notify us if your phone number changes or you do not continue to own and control the device assigned by your carrier to the number you provided us by calling us at (800)-574-3576.

The Program may not be available in all areas. You understand that message and data rates may apply and your carrier may charge you or deduct usage credit from your account when you text us or we text you and you consent to that. The Program may not be supported by all carriers and all devices. Check with your carrier for details. You represent and warrant that you are age 21 or older and are a U.S. resident using a U.S. mobile number to subscribe.

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More contact information

Sign up for Smokegt.com emails and get updates about weekly specials, events, & more!

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