

Kenton County School District | It's about ALL kids.

## Issue Paper

**DATE:**

06/9/2025

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve a sales contract between SmartPass, Inc. and Dixie Heights High School for the 2025-2026 school year.

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of the Board

**HISTORY/BACKGROUND:**

Dixie Heights High School believes in order to ensure a safe environment which is free from disruptions we must have a way to limit the number of students leaving class, prevent potential conflicts, and maintain a real time record of students who are in/out of class. A digital pass interface system allows for the following: contactless hall pass system that does not interrupt class, limits the number of hall passes available at any given time, prevents specific students from being out of class at the same time, increased safety protocols by keeping a real time account of students who have left class, and allows for administration, counselors and nurses to schedule passes for students to visit the office.

**FISCAL/BUDGETARY IMPACT:**

\$4808.49 (3.79 per student) will be paid using SBDM Instructional funds.

**RECOMMENDATION:**

Approval to a sales contract between SmartPass, Inc. and Dixie Heights High School for the 2025-2026 school year.

**CONTACT PERSON:**

Roger Stainforth/Teresa Catchen

  
Principal/Administrator

  
District Administrator

  
Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

**Dixie Heights High School****Quote #23288**

Quote Expires: July 31, 2025

SmartPass Standard Plan	\$5,116.50
Subtotal	\$5,116.50
Discounts	- \$308.01
<b>Total</b>	<b>\$4,808.49</b>

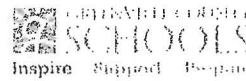
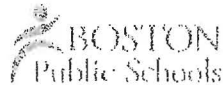
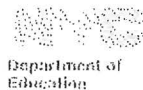
~~\$3.79~~ \$3.56 x 1350 students

1 Year: July 1, 2025 - June 30, 2026

**Ready to Purchase?**

Email [billing@smartpass.app](mailto:billing@smartpass.app) to submit a Purchase Order or pay with a credit card.

10,000+ Principals and School Leaders Use SmartPass Every Day



**SmartPass Terms of Service:** For SmartPass products, by submitting a payment or purchase order, and through your ongoing use of the SmartPass services, you agree to the SmartPass Terms of Service available at [smartpass.app/terms](https://smartpass.app/terms) and Privacy Policy available at [smartpass.app/privacy](https://smartpass.app/privacy). The Terms of Service and Privacy Policy are hereby incorporated by reference and such Terms of Service and/or Privacy Policy may be updated at any time.

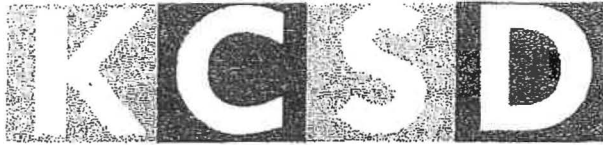
If you need a W-9, you can view it at [smartpass.app/w9](https://smartpass.app/w9)

**For your convenience, pay via ACH using the following details:****Beneficiary Information**

Name: SmartPass Inc.  
Account Number: 5500374698  
Account Type: Checking  
Address: Dept. 434, P.O. Box 4458, Houston, TX 77210-4458

**Receiving Bank Details**

ABA Routing Number: 084201278  
Bank Name: Cadence Bank  
Bank Address: Tupelo, MS



Kenton County School District | It's about ALL kids

## THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

Dr. Henry Webb, Superintendent of Schools

### VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

#### Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

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Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*, and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

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student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

SmartPass, Inc.

Vendor Name

228 Park Ave S #92675 New York, NY 10003-1502

Vendor Address

(610) 424-4544

Vendor Telephone

billing@smartpass.app

Vendor Email Address

*Mary Anne Laracochea*

Signature by Vendor's Authorized Representative

Mary Anne Laracochea

Print Name

05-17-2024

Date

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### Addendum to Order and Agreement

SMARTPASS, INC. (hereinafter the "SmartPass") and Kenton County School District (hereinafter the "Client"), agree that this Addendum to Order and Agreement ("Addendum") is hereby incorporated and made a part of the Agreement and its referenced and incorporated terms and conditions (collectively the "Agreement"). If any conflicts or inconsistencies exist between or among this Addendum and the Agreement, SmartPass and Client agree that the provisions of this Addendum shall supersede and prevail.

**Provisions:**

1. Section 10.1. of the Terms of Use; Governing Law and Disputes is hereby amended to reflect the application of the laws of the State of Kentucky with exclusive jurisdiction resting in the State and Federal Courts located in the Eastern District of Kentucky.

**SmartPass:**

**SMARTPASS, Inc.**

Signature: \_\_\_\_\_



Name: Mary Anne Laracochea

Title: Vice President of Operations

**Customer:**

**Kenton County School District**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



# Terms of Use

SmartPass is a software solution by SmartPass, Inc., a Delaware Corporation, ("SmartPass", "we," "our," "us," or "Licensor". SmartPass is a platform designed to manage student hall passes, student identification cards and related services (the "Services"). Our website, located at [www.smartpass.app](http://www.smartpass.app) and the Services provided through the website or our application (collectively the "Site") is provided to the user or the person using our Services or accessing our Site. The following terms and conditions, including those documents incorporated herein by reference (collectively, the "Terms") are a legal agreement between SmartPass on the one hand, and you and your employer (collectively, "Client") on the other. By approving a Quote, having access to, receiving, and/or using the Services provided by SmartPass you agree, on behalf of Client, without limitation or qualification, to be bound by and to comply with these Terms. Client may not use the Hosted Service unless it accepts these Terms and has the power and legal right to form a contract with SmartPass under these Terms. Any individual using, accessing or procuring Services in the name of or as part of such individual's responsibilities within an organization, or who submits to the Hosted Service data controlled by such organization, represents and warrants that such individual is authorized and intends by those actions to bind such organization to these Terms.

Each Quote will be deemed to incorporate these Terms as published by SmartPass on the effective date of such Quote.

## 1. Definitions.

**"Agreement"** means these Terms and each Quote agreed by the parties.

**"Client Data"** means any electronic data, information or material, including content created by Users and personal information, provided or submitted to SmartPass by Client or Users to or through the Hosted Service.

**"Hosted Service"** means, collectively, those hosted service(s) set forth in an Quote(s) made available by SmartPass, using (and including) SmartPass's cloud platform, proprietary software and associated documentation.

**"Quote"** means the an online or written Quote or account setup form for the Service or another written agreement, submitted by Client and accepted by SmartPass from time to time, specifying, among other things, the number of licenses, services, fees, the Service Term and other charges as agreed to between the parties, but which does not contain any modifications of or amendments to these Terms unless expressly agreed by the Client and SmartPass.

**"Service Term"** means the term during which SmartPass will provide the Services to Client as specified in each Quote. Each Service Term commences upon the later of the execution of the Quote for such Service Term or the designated Service Term start date on such Quote.

**"Users"** means Client's employees and contractors who are authorized to use the Hosted Service or students authorized by a Staff User to use the Hosted Service as a student.

## **2. Services.**

**A. Hosted Service.** Subject to these Terms, SmartPass grants Client and its Staff Users a non-exclusive, non-transferable, non-sublicensable right during the Service Term to access and use the Hosted Service, and SmartPass will make the Hosted Service available to for its intended pedagogical purpose in accordance with these Terms and the Quote(s). Client's use of the Hosted Service is subject to the limitation on the number of Users specified in the relevant Quote and payment of the fee specified in the relevant Quote if Client exceeds the User limit. SmartPass may in its sole discretion change the Hosted Service without materially decreasing the functionality of the Hosted Service. Other than as expressly set forth in these Terms, no license or other rights are granted in the Services, SmartPass expressly reserves all such rights and all title and interest in and to the Services and all intellectual property rights therein.

**B. Access.** SmartPass will provide Client's Users access to the Hosted Service pursuant to password protected user accounts. SmartPass will send instructions to Users, including Client-designated administrator Users (each an "Admin") regarding the administrative tools made available to Client, and will provide Admins with

appropriate administrative credentials. The Admin tools and other User tools allow a variety of actions, including, for example, the creation of additional Admins, approving or rejecting individuals as Users, viewing and allowing the viewing of the information of other users, and editing or deleting from the Hosted Service information (including Client Data) submitted by other Users. All actions taken using the Admin and User tools will be deemed approved by Client.

**C. Restrictions.** Client shall not itself or cause or permit others to: (a) disassemble, reverse engineer, or decompile the Hosted Service or otherwise attempt to access any of technology underlying the Hosted Service; (b) access the administrative interfaces of the Hosted Service for the purposes of competitive analysis, benchmarking, or designing, modifying, or otherwise creating



any service or software program, or any portion thereof, that performs functions similar to the functions performed by the Hosted Service; or (c) copy, sublicense, or provide access or other dissemination of any element of the Hosted Service, in whole or in part, to any third party.

**D. Support.** SmartPass will provide reasonable email support for the Hosted Service during normal business hours (between the hours of 7:00 am and 7:00 pm EST on business days).

### **3. Data Handling, Feedback.**

**A. Client Data.** As between SmartPass and Client, all Client Data remains the sole property of Client. Client grants to SmartPass a non-exclusive license during the Service Term to use and reproduce the Client Data to the extent necessary to provide, maintain, and improve the Services. SmartPass will also have the right during and after the Service Term to (a) use and analyze data about the use of the Hosted Service by Client and Users in order to maintain and improve the Services, and (b) to disclose statistics aggregating Client and User usage data with SmartPass's other clients' data for marketing and other purposes; provided that such data and statistics are not used except as de-identified or aggregated in a manner which renders identification of natural persons infeasible, and are never disclosed to any third party (except SmartPass subcontractors in connection with the provision of the Services) other than in an aggregated format from which neither the identity of Client nor the identity of any natural person can reasonably be derived.

#### **B. Data Compliance.**

1. SmartPass has implemented commercially reasonable and appropriate technical and organizational measures intended to secure Client Data from accidental loss and from unauthorized access, use, alteration or disclosure.
2. SmartPass will not use or sell the personal information of Users to market or advertise to Users or their or families or guardians.
3. Client Data may include personal information from education records that are subject to the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time ("**FERPA**"). To the extent that Client Data includes such education records ("**Education Records**"), SmartPass will comply with FERPA, and will not disclose or use Education Records received from or on behalf of Client (or its Users) except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by Client. For the purposes of FERPA, SmartPass shall be considered a "school official".

4. The Children's Online Privacy and Protection Act, 15 U.S.C. 6501-6506 ("COPPA") requires that online service providers obtain clear and verifiable parental consent before collecting personal information from children under 13. SmartPass does not and will not knowingly collect any information from children under the age of 13. To the extent a Client or User provides information related to a child under the age of 13, the Client or User are solely responsible for complying with COPPA and represent and warrant that the Client or User has fully complied with COPPA by, among other things, receiving the appropriate consent from parents and/or having the requisite authority to provide such information to SmartPass, and for us to collect such information.

**C. The terms and conditions of the SmartPass Privacy Policy** (which may be viewed at <http://smartpass.app/privacy> is incorporated herein by reference, shall apply to individual Users' use of the Service, and Client and User hereby acknowledge and agree to the terms thereof. The SmartPass Privacy Policy may be amended from time to time. Any changes shall be effective as to Users upon the earlier of Client's approval of such changes (an exchange of emails to suffice) or the beginning of the next Service Term after notice is provided.

**D. Suggestions, Ideas and Feedback; Client Data.** SmartPass shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or any other party relating to the Service.

## **4. Client Responsibilities.**

**A. Responsibility.** Client shall: (a) have sole responsibility for all activities that occur under Client's User accounts and for all Client Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Service and notify SmartPass promptly of any such activity; and (c) comply with all applicable local, state, federal, and foreign laws (including the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time) in using the Hosted Service.

**B. Hosted Service Guidelines.** Client shall use the Hosted Service solely for its internal purposes as contemplated by these Terms and shall not use, or allow Users to use, the Hosted Service in a manner inconsistent with such purpose, including without limitation: (a) attempting to gain unauthorized access to, interfere with or disrupt the integrity or performance of the Hosted Service, computer systems, or networks related to the Hosted Service or any data contained in any of those; or (b) harassing or interfering with any User's use and enjoyment of

the Hosted Service.

## 5. Fees & Payment.

**A. Fees.** Client shall pay the fees as specified in each Quote. Fees are non-refundable except as otherwise specifically set forth in these Terms. In the event of termination for convenience by SmartPass, Client will be entitled to a pro-rated refund. SmartPass reserves the right to charge fees for certain features. SmartPass will notify you when we intend to charge for a service or feature. You will always have the choice whether to use those features. If you continue to use any service or feature after you have been notified of any applicable fees, that use constitutes your acceptance of any new or increased fees.

**B. Payment Terms.** Amounts due shall be payable thirty (30) days from the invoice date. All quotes and payments made under these Terms shall be in United States dollars. Late payments shall bear interest at the lower of one and one-half percent (1.5%) per month or the maximum rate permitted by law. If Client's account is ten (10) days or more overdue, in addition to any of its other rights or remedies, SmartPass reserves the right to suspend the Service provided to Client, without prior notice or liability to the Client, until such amounts are paid in full. Client shall pay all of SmartPass's reasonable fees, costs and expenses (including reasonable attorney's fees) if legal action is required to collect outstanding undisputed balances.

**C. Taxes.** SmartPass's fees are exclusive of all taxes, levies, or duties of any nature ("**Taxes**"), and Client is responsible for payment of all Taxes, excluding only taxes levied by SmartPass's local taxing authority on SmartPass's income. If SmartPass has the legal obligation to pay or collect taxes for which Client is responsible pursuant to this Section 5.3, the appropriate amount shall be invoiced to and paid by Client, unless Client provides SmartPass with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 6. Confidentiality.

**A. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all information of a party ("**Disclosing Party**") which the Disclosing Party designates in writing as being confidential when it discloses such information to the other party ("**Receiving Party**"), including without limitation these Terms, the Hosted Service and any nonpublic information regarding the same, business and marketing plans, technology and technical information, product designs, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Confidential Information shall not include any information that: (a) is or becomes generally known to the public without the Receiving Party's

breach of any obligation owed to the Disclosing Party; (b) was independently developed by the Receiving Party without the

Receiving Party's breach of any obligation owed to the Disclosing Party; or (c) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party.

**B. Protection.** Neither party will disclose the other party's Confidential Information, or use the other party's Confidential Information for any purpose other than to perform its obligations or exercise its rights under these Terms. Each party will protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. Further, to the extent that Client is subject to a freedom of information act, open records law or similar legislative or regulatory obligations ("**Disclosure Laws**"), Client agrees that it will treat SmartPass's Confidential Information as subject to exemption from disclosure as "confidential commercial information" or any similar category of information subject to exemption from disclosure to the maximum extent possible under the relevant Disclosure Laws.

**C. Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior written notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure. Without limiting the generality of the foregoing, Client agrees that it will provide SmartPass with the maximum notice period and right to object to disclosure of SmartPass Confidential Information available under the applicable Disclosure Laws.

**D. Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## **7. Warranties & Disclaimers.**

**A. Warranties.** Each party represents and warrants that it has the legal power to enter into these Terms, and that it has the right and authority to grant to rights granted under this Agreement.

**B. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, SMARTPASS MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES,

INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **8. Limitation of Liability and Action.**

### **A. Limitation of Liability.**

1. IN NO EVENT SHALL SMARTPASS HAVE ANY LIABILITY HEREUNDER FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT SMARTPASS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
2. IN NO EVENT SHALL SMARTPASS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, UNDER ANY THEORY OF LIABILITY, EXCEED THE GREATER OF \$10,000.00 OR THE AMOUNTS ACTUALLY PAID BY CLIENT FOR THE SERVICE DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

**B. Limitation of Action.** No action (regardless of form) arising out of the Agreement may be commenced by either party more than two (2) years after the expiration of the Service Term for the Service(s) to which such action pertains.

## **9. Term & Termination.**

**A. Term.** These Terms commence on the date a Quote is executed by both parties and, unless sooner terminated in accordance with these Terms, shall continue until the expiration of the last Service Term to expire. In the event of an inadvertent gap of fewer than ninety (90) days between the expiration of a Service Term and the execution of a new Quote intended to extend or renew the use of the Services, these Terms shall be deemed to not to have expired and to have continued in force through such inadvertent gap. SmartPass has the right to terminate a subscription immediately for any violation of the Terms of Use. SmartPass also has the right to terminate Services provided via this agreement for convenience with at least thirty (30) days written notice.

**B. Termination for Cause.** A party may terminate the Agreement for cause: (a) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured



at the expiration of the notice period; or (b) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

**C. Effect of Termination.** Upon the effective date of termination of this Agreement: (a) all then-active Quotes will terminate; (b) Client's use of the Services is terminated, and Client shall immediately cease accessing the Hosted Service except that for thirty (30) days after termination, Client may access the Hosted Service solely to downloading its Client Data; and (c) any and all payment obligations of Client incurred prior to the date of termination will immediately become due. The following provisions shall survive the termination or expiration of these Terms for any reason and shall remain in effect after any such termination or expiration: Sections 1, 2.3, 3, 5 (as to outstanding payment obligations) and 6 through 10.

## 10. General Provisions.

**A. Governing Law; Disputes.** This Agreement and all disputes relating hereto shall be governed exclusively by, and construed exclusively in accordance with, the laws of the State of Pennsylvania, without regard to its conflict of laws provisions. The federal and state courts located in the Eastern District of Pennsylvania shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement, and each party hereby submits to the personal jurisdiction and venue of such courts. The parties acknowledge and agree that any unauthorized disclosure or use of a party's confidential information or intellectual property would cause such party irreparable harm for which monetary damages would be inadequate. Accordingly, in the event of such a disclosure or use, the aggrieved party may seek injunctive or other equitable relief to enforce this Agreement in addition to any available legal remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**B. Relationship of the Parties.** This Agreement may not be construed to create or imply any partnership, agency or joint venture between the parties. SmartPass may utilize subcontractors to fulfill any of its obligations or exercise any of its rights hereunder, provided that SmartPass will remain responsible for such subcontractors' actions and omissions in connection with the Agreement as if SmartPass had itself acted or failed to act. There are no third-party beneficiaries to this Agreement.

**C. Force Majeure.** Except for a failure to make payments when due, party is not liable under any Agreement for non-performance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform.



**D. Notices.** To the extent notices can be delivered by the use of a designated feature of the user interface of the Hosted Service (e.g., Client termination notices or address changes), notice will be effective when delivered through such user interfaces. All other notices under this Agreement shall be in writing and sent by email, or personally delivered or sent by guaranteed overnight courier, by registered or certified mail, return receipt requested to SmartPass's address for notice set forth on the Quote and to Client at the address provided by Client in its Hosted Service account, means evidenced by a delivery receipt or by email. Notice shall be deemed to have been given upon actual delivery (evidenced as to email by a non-automated reply) or refusal of delivery.

**E. Waiver and Severability.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. If any provision of this Agreement is held to be contrary to law or unenforceable, the provision shall be changed and interpreted so as accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement.

**F. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party, not to be unreasonably withheld. Notwithstanding the foregoing, SmartPass may assign this Agreement without Client or User's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any purported assignment in breach of this Section shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties' respective permitted successors and permitted assigns.

**G. Counterparts.** Quotes may be executed in counterparts (including by exchange of PDF or similar documents), which taken together shall form one legal instrument.

**H. Entire Agreement and Construction.** These Terms and the Quote constitute the entire agreement between the parties as to its subject matter. No modification or waiver of these Terms shall be effective unless in writing and signed by the party against whom the modification or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in any Client order documentation (even if used as a Quote) shall be incorporated into or form any part of these Terms.

Updated June 8, 2023