

# VanillaDirect Barcode Payment Service

## Terms and Conditions

Below are the terms and conditions (“Terms”) applicable to the VanillaDirect Barcode Payment Service. By accepting or using the Barcode Payment Service, you agree to be bound by and comply with these Terms.

### Instructions

You may use your Barcode to make a payment or add value to your Account by going to a participating retailer, providing the Barcode to the cashier, and tendering the amount of your Payment and the applicable convenience fee, if any. If the Barcode has an expiration date, it expires on the date and time set forth with the Barcode. If you wish to make a payment after the Barcode has expired, you will need to obtain a new Barcode.

A list of participating retailer locations will be provided by the Payee. A convenience fee established by us and the Payee may be charged by the participating retailer at the time that you make your Payment. If you do not accept the convenience fee (if applicable), do not proceed with the Barcode payment transaction. You may be required to provide identification to complete your Payment. You may not cancel any Payment once it has been initiated. Retain the paper receipt you receive from the participating retailer as a record of your transaction. You can also review your e-receipt containing full Payment information here (<http://www.payithere.com/ereceipt>) for any past Barcode Payment transactions. For questions regarding crediting of Payment and all other customer service inquiries, please contact the Payee to whom Payment is intended.

### Definitions

- “Account” means the account established with a Payee for purposes of receiving goods and/or services provided by such Payee, to which funds may be applied in payment of amounts owed for the provision of such goods and/or services.
- “Barcode” means the barcode generated by the Payment Service which identifies your Account with the Payee.
- “Payee” means the third-party biller, online merchant or other third party that holds your Account and to whom Payment is intended.
- “Payment Service” means the service which allows you to use the Barcode to make a payment or add value to your Account with the Payee.

- “Payment” means your payment of funds to be credited to the Account identified by the Barcode.
- “you” and “your” mean the person who has received the Barcode and is authorized to use the Barcode in accordance with these Terms.
- “we,” “us,” and “our” means InComm Financial Services, Inc., its respective affiliates, successors and assignees, and each of their respective officers, directors, employees, agents, representatives, successors and assignees.

#### Use of the Payment Service

- The Payment Service is provided by InComm Financial Services, Inc. and InComm Financial Services California, Inc. You May contact InComm by phone at 1-844-661-0115 or by mail at P.O. Box 826, Fortson, Georgia 31808. The Payment Service is not available outside the Fifty United States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.
- Your ability to make a Payment to your Account, and the permitted amount of any Payment, remains subject to authorization by the Payee and any applicable terms and conditions established by the Payee. Funds remitted through your use of the Payment Service will be made available or credited, as applicable, by the Payee in accordance with the terms and conditions established by the Payee. Please contact the Payee directly for further information. We are not responsible for any delay with respect to when funds remitted to the Payee will be made available or credited to you, or any failure of the Payee to accept or properly process any funds remitted to it.
- We may revoke, suspend or otherwise deny your ability to use the Barcode or Payment Service at any time without cause or notice, including by declining an authorization for any illegal transaction or other actions that put the Payment Service at material risk, or by limiting the number or amount of Payments that may be made by you or with a Barcode. Use of a Barcode and the Payment Service is subject to applicable law and all applicable rules of any clearinghouse or payment network involved in collecting or processing your Payment.
- The Barcode has no value associated with it and may only be used to identify your account to which you may direct a Payment. You are responsible for all Payments initiated using the Barcode.
- Refunds may be given or denied in Payee’s sole discretion and to the extent permitted by law. InComm Financial Services, Inc. is not responsible or liable for refunds except as required by law.
- By accepting the Barcode or using the Barcode to make a Payment, you agree that you may receive your transaction receipt electronically.

#### Information Collection

- You may be asked to provide personal identification information in connection with your use of the Payment Service. Please see our Privacy Policy, available at [www.payithere.com/privacy](http://www.payithere.com/privacy), for further information, including how we use, share and safeguard the information that we collect. Your personal identification information may be subject to the Payee’s privacy policy as well—please contact the Payee directly for further information about the Payee’s privacy practices.
- You agree that we may monitor and record your telephone and electronic communications with us at any time, without further notice to you or any party to the communication.

### **Your Representations and Warranties**

- By using the Payment Service, you represent and warrant to us that:
- you are at least eighteen (18) years of age (or nineteen (19) if you reside in a state where the age of majority is nineteen (19));
- you are a U.S. citizen or legal alien residing in one of the fifty (50) states, the District of Columbia, Puerto Rico or the U.S. Virgin Islands;
- any personal information that you provide to us in connection with the Payment Service is true, correct and complete; and
- you have received, and agree to be bound by and comply with, these Terms.
- If you are under eighteen (18) (or nineteen (19) if you reside in a state where the age of majority is nineteen (19)), your parent or guardian may authorize you to use their Barcode and in doing so agrees to be bound by and comply with these Terms.

### **Limited Liability**

WE WILL NOT BE LIABLE TO YOU FOR: DELAYS OR MISTAKES RESULTING FROM ANY CIRCUMSTANCES BEYOND OUR CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF GOVERNMENTAL AUTHORITIES, NATIONAL EMERGENCIES, INSURRECTION, WAR, OR RIOTS; THE FAILURE OF THE PAYEE TO PERFORM OR PROVIDE GOODS OR SERVICES, OR ANY OTHER ACT OR OMISSION OF THE PAYEE; COMMUNICATION SYSTEM FAILURES; OR FAILURES OR MALFUNCTIONS ATTRIBUTABLE TO ANY INTERNET SERVICE OR PAYMENT SYSTEM. IN THE EVENT THAT WE ARE HELD LIABLE TO YOU, YOU WILL ONLY BE ENTITLED TO RECOVER YOUR ACTUAL DAMAGES. IN NO EVENT SHALL YOU BE ENTITLED TO RECOVER ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES (WHETHER IN CONTRACT, TORT OR OTHERWISE), EVEN IF YOU HAVE ADVISED US OF THE POSSIBILITY OF SUCH DAMAGES. THIS PROVISION SHALL NOT BE EFFECTIVE TO THE EXTENT OTHERWISE REQUIRED BY LAW. TO THE EXTENT PERMITTED BY LAW, YOU AGREE THAT YOUR RECOVERY FOR ANY ALLEGED NEGLIGENCE OR MISCONDUCT BY US SHALL BE LIMITED TO THE TOTAL AMOUNT OF YOUR PAYMENT AND ANY RELATED CONVENIENCE FEE PAID BY YOU, IF ANY.

### **Disclaimer of Warranties**

EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO YOU, AND HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE BARCODE OR PAYMENT SERVICE, OR RELATING TO OR ARISING OUT OF THESE TERMS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **Dispute Resolution and Arbitration**

YOU AND WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY CLAIM, DISPUTE, OR CONTROVERSY (“CLAIM”) ARISING OUT OF OR RELATING IN ANY WAY TO I) THIS AGREEMENT; II) THE BARCODE; OR III) THE PAYMENT SERVICE, WILL BE RESOLVED BY BINDING ARBITRATION CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) UNDER ITS CONSUMER ARBITRATION RULES OR IN SMALL CLAIMS COURT.

This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act (9 U.S.C. 1-16). THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. THE ARBITRATOR MUST FOLLOW THIS AGREEMENT AND CAN AWARD THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING ATTORNEYS' FEES).

We will pay the initial filing fee to commence arbitration, and any arbitration hearing that you attend shall take place in the federal judicial district of your residence.

ARBITRATION OF YOUR CLAIM IS MANDATORY AND BINDING. NEITHER PARTY WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM THROUGH A COURT. IN ARBITRATION, NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL OR TO ENGAGE IN DISCOVERY, EXCEPT AS PROVIDED FOR IN THE AAA CONSUMER ARBITRATION RULES. Under those rules, the arbitrator may direct 1) specific documents and other information to be shared between the consumer and business, and 2) that the consumer and business identify the witnesses, if any, they plan to have testify at the hearing. The AAA's rules may be obtained at [www.adr.org](http://www.adr.org), or by calling the AAA at 877-495-4185. To commence an arbitration, you must file a copy of your written arbitration demand with the AAA (either online at [www.adr.org](http://www.adr.org) or by mail addressed to AAA, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043).

All determinations as to the scope, interpretation, enforceability and validity of this Agreement shall be made final exclusively by the arbitrator, which award shall be binding and final. Judgment on the arbitration award may be entered in any court having jurisdiction.

CLASS ACTION WAIVER. YOU AND WE EACH AGREE THAT ANY PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. If a court or arbitrator determines in an action between you and us that this Class Action Waiver is unenforceable, the arbitration agreement will be void as to you. JURY TRIAL WAIVER. If a claim proceeds in court rather than through arbitration, YOU AND WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.

This arbitration provision, including the class action waiver and jury trial waiver, shall survive: i) the termination of the Agreement; ii) the bankruptcy of any party; iii) any transfer, sale or assignment of your Barcode or the Payment Services to any other person or entity; or iv) expiration or termination of the Barcode or the Payment Services. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall remain in force.

IF YOU DO NOT AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT, DO NOT USE THE PAYMENT SERVICE. CONTACT YOUR PAYEE TO CANCEL THE BARCODE, AND REQUEST AN ALTERNATIVE METHOD OF MAKING YOUR PAYMENT, IF APPLICABLE.

## Miscellaneous Terms

- **Amendments.** We may, to the extent permitted by applicable law, amend these Terms at any time by posting the amended Terms on our website, [www.payithere.com/terms](http://www.payithere.com/terms) (“Website”), and any such amendment shall be effective upon such posting to the Website. However, if the change is made for security purposes, we can implement such change immediately, without prior notice to you and before such change may be posted to the Website. The current Terms are available on the Website.
- **Assignment.** The Barcode and your rights and obligations under these Terms may not be assigned. We may transfer our rights and obligations under these Terms.
- **Governing Law.** These Terms will be governed by and construed in accordance with the laws of the State of South Dakota without regard to its conflict of laws principles.
- **Waiver/Severability.** We do not waive our rights by delaying or failing to exercise them at any time. If any provision of these Terms shall be determined to be invalid or unenforceable under any rule, law, or regulation of any governmental agency, local, state, or federal, the validity or enforceability of any other provision of these Terms shall not be affected.
- **Section Headings.** Section headings in these Terms are for convenience of reference only, and shall not govern the interpretation of any provision of these Terms.
- **English Language Controls.** Any translation of these Terms is provided for your convenience. The meanings of terms, conditions and representations herein are subject to definitions and interpretations in the English language. Any translation provided may not accurately represent the information in the original English.
- **Entire Understanding.** These Terms set forth the entire understanding and agreement between you and us with respect to the Barcode and Payment Service, whether written or oral, with respect to its subject matter and supersede any prior or contemporaneous understandings or agreements with respect to their subject matter.

These terms and conditions are effective 2/2021.