

# GCPay™ Terms of Use

Last Updated July 2023

These GCPay Terms of Use (the “**Terms**”) are made by and between Hart Business Solutions, LLC, (“**GCPay**”) and you and your company, and your company's authorized End Users (as defined below), (“**You**” or “**Company**”) governs your use of and access to the GCPay sites, technology, intellectual property, and related materials (the “**GCPay Platform**” or “**Platform**”). GCPay reserves the right to modify these Terms at any time, in its sole discretion, upon notice to You. Your continued use of the Services (as defined below) shall serve as acceptance of the updated Terms.

You represent and warrant that You have the authority to enter into these Terms on behalf of yourself or Company. If You do not have such authority, or if You do not agree with these Terms, You must not accept these Terms and may not use the GCPay Platform.

## Definitions

“End User” means any user of the GCPay Platform with a valid and active login.

“Intellectual Property” means any and all GCPay material, including software, trademarks, trade names, inventions, copyrights, algorithms, know-how, and trade secrets.

“Services” means the software services provided to End Users on the GCPay Platform.

## 1. The Services

- 1.1. **Access.** Access to the GCPay Platform is granted in the absolute discretion of GCPay and may be terminated or suspended at any time. Access is permitted by username and password only and each End User must have a unique username and password. You are responsible for protecting the confidentiality of all usernames and passwords registered to your account, and You accept responsibility for all actions which occur under such names and passwords. You may access and use Services on the GCPay Platform for (i) internal business use only; and (ii) not for resale, reuse or provision to any third party. The GCPay Platform contains Intellectual Property which may not be used by You for any purpose without prior written permission of GCPay. GCPay reserves the right to limit the period of time during which Your access is available for any reason, in its sole discretion. Your use of the GCPay Platform should not be viewed as your backup, archival, or storage service. You agree that you will follow all of GCPay’s policies, guidelines, and other documentation at all times while accessing and using the GCPay Platform. In addition, you acknowledge that as part of the Services, GCPay may share your data with our third party service providers and with other third parties to present other related products or services.
- 1.2. **Prohibited Practices.** As part of your access to and use of the Services on the GCPay Platform, you may not: (i) take any action to re-identify any information or re-associate any such information provided to you in an anonymized format with any personally identifiable information; (ii) make derivative works, distribute, modify or otherwise use the Services, Intellectual Property, and GCPay Platform for public or non-business purposes without prior written permission from GCPay and its licensors, as applicable; (iii) reverse engineer, decompile or disassemble the GCPay Platform, except and only to the extent that applicable law expressly permits, despite this limitation; (iv) disseminate, upload or transmit viruses, worms, or any other malicious or invasive code; (v) interfere with or circumvent any security features of the GCPay Platform or Services; (vi) publish the GCPay Platform for others to copy; (vii) rent, lease, lend or sublicense the Services or the GCPay Platform, including any Intellectual Property; or (viii) use the Services and the GCPay Platform to gain competitive knowledge or a competitive advantage or set up a competitive product or services to GCPay. Any of the aforementioned practices are strictly prohibited and GCPay reserves all rights available under applicable law to correct or remedy any prohibited practices under this Agreement. In addition, GCPay may remove or delete Your access immediately and without notice upon any discovery or suspicion of a prohibited practice by You.
- 1.3. **Unauthorized Access.** You agree that you and each End User shall not disclose to or share any username or password with any third parties or use such username or password for any unauthorized purposes. You are solely responsible for any liability or damages resulting from any failure to maintain the confidentiality of an End User username and password and GCPay shall not be liable for any losses that may result from any unauthorized use of the Services or the GCPay Platform or failure to maintain appropriate confidentiality measures. You agree that you are solely and fully responsible and liable for all activities that occur under Your account. You agree to immediately notify GCPay if you suspect any breach of security such as loss, theft, or unauthorized disclosure or use of any username or password. You represent and warrant that You will not use the GCPay Platform in any manner or for any purposes that are unlawful or prohibited by this Agreement.

- 1.4. **Third Party Sites; Third Party Content**. As part of accessing the Services and the GCPay Platform, You may access or use third party sites and third party content. Any third party links to other internet sites are provided solely as a convenience and do not constitute an endorsement of the contents of the linked sites. GCPay is not responsible for any third party content or any third party linked sites and makes no representations about the accuracy of such content. Users are informed that use of linked sites is at the users own risk.
- 1.5. **Responsible Use**. You are required to disclose any known or suspected security vulnerability. GCPay does not condone any malicious or illegal behaviour in the identification and reporting of security vulnerabilities and you must not engage in any activity that violates applicable laws. You can responsibly disclose potential security vulnerabilities to GCPay by emailing [security@payapps.com](mailto:security@payapps.com). By emailing us, you will be deemed to have accepted our Responsible Disclosure Program terms. Enclosed in your disclosure you must include details of the potential or known security vulnerability with sufficient information to enable our security team to reproduce your steps, including but not limited to (i) the date the vulnerability was observed; (ii) the location of the vulnerability (e.g. URL, domain etc); (iii) an explanation of the potential security vulnerability; (iv) a list of products and services that may be affected (where possible); (v) steps you have taken to reproduce the vulnerability; (vi) any prior conditions (e.g. logged in, not logged in, previous actions etc) where applicable; (vii) names of any files that were uploaded to our systems; (viii) the names of any accounts you have created (where applicable); and (ix) your contact information. Any personal information you provide will be managed in accordance with our Privacy Policy.
- 1.6. **Lien Waivers**. The Services may include or provide access to and the ability to electronically sign Lien Waivers (as defined by applicable law), subject to the terms and conditions of Section 9 “Electronic Consent” of this Agreement. You agree that you are authorized or have the ability to authorize a representative to electronically sign one or more Lien Waivers and that any such signature is valid and binding under this Agreement and applicable law. Lien Waivers may be conditional or unconditional. GCPay shall hold the Lien Waiver and make available to you and any authorized End User any and all Lien Waivers once payment has been verified as received. You agree and acknowledge that Lien Waivers are binding upon signature regardless of whether any payment has been furnished and you agree to indemnify and hold harmless GCPay from and against any claim invalidating any such Lien Waiver signed electronically through the Services.

## 2. **Term; Termination.**

- 2.1. **Term**. These Terms shall commence upon your E-Consent (defined in 9.1 below) and shall continue until terminated by You or GCPay pursuant to the terms and conditions herein.
- 2.2. **Termination**. GCPay may terminate these Terms and Your access to and use of the Services and GCPay Platform at any time for any reason by disabling Your access to the Services and GCPay Platform. You may terminate these Terms at any time for any reason upon notice to GCPay at [accounts@gcpay.com](mailto:accounts@gcpay.com). Upon Your notice, GCPay will provide access to the GCPay Platform for five (5) days before disabling Your use and access to the Services and the GCPay Platform.
- 2.3. **Effect of Termination**. Upon any termination of these Terms, You agree to return or destroy any Intellectual Property and confirm such destruction. Any terms that by their nature should reasonably survive termination, shall survive.

## 3. **Confidentiality.**

- 3.1. While using or accessing the GCPay Platform, you may share certain proprietary, non-public information (“Confidential Information”) with GCPay or you may have access to GCPay Confidential Information. Each party will keep confidential, will not disclose, sell or transfer or otherwise use in any manner other than as necessary to exercise its rights and perform its obligations under these Terms of Use and will take reasonable steps to protect the other party’s confidential information from being accessed by unauthorised individuals, entities or other third-parties. You will not share any GCPay Confidential Information without the express written consent of GCPay.
- 3.2. Each party may share each other’s confidential information with legal, governmental or regulatory authorities if required to do so, or if required by law. We may also share your information in accordance with our Privacy Policy and these Terms of Use or on a similar confidential basis with our affiliates, advisers, auditors and financiers, and any third parties carrying out due diligence on our business.

## 4. **Intellectual Property; License.**

GCPay (or its third party licensors) own exclusively all Intellectual Property supplied or licensed to You relating to the Services and the GCPay Platform, even if it was created or modified for or suggested by You, including any and all feedback. GCPay grants You a limited, worldwide, non-exclusive, non-sublicensable, royalty-free, non-transferable and

revocable license to access and use the Services, the GCPay Platform and any related Intellectual Property.

## **5. Representations and Warranties.**

You represent and warrant that (i) You are authorized to enter into these Terms on behalf of yourself or Company; (ii) You will not violate any applicable law in your use of the GCPay Platform or Services; and (iii) Your use of the Services or the GCPay Platform will not infringe any third party's intellectual property rights.

## **6. Disclaimer of Warranties.**

- 6.1. ALL PRODUCTS, SERVICES, INFORMATION, GCPAY CONTENT, TEXT, AND RELATED GRAPHICS CONTAINED WITHIN OR AVAILABLE THROUGH THE SERVICES AND THE GCPAY PLATFORM ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS. GCPAY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE OPERATION OF PLATFORM, THE GCPAY TECHNOLOGY, SOFTWARE, MAINTENANCE SERVICES, SUPPORT SERVICES, DELIVERABLES, RESOURCES, EQUIPMENT, GCPAY CONTENT, OR OTHER ITEMS OR SERVICES PROVIDED BY GCPAY UNDER THESE TERMS AND THE RESULTS TO BE DERIVED FROM THE USE THEREOF. GCPAY FURTHER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF (i) MERCHANTABILITY OR SATISFACTORY QUALITY, (ii) FITNESS FOR A PARTICULAR PURPOSE, (iii) TITLE, AND (iv) NON-INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE, OR COURSE OF PERFORMANCE.
- 6.2. WITHOUT LIMITING THE FOREGOING, GCPAY DOES NOT WARRANT OR REPRESENT THAT THE SERVICE AND GCPAY PLATFORM WILL OPERATE ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE GCPAY PLATFORM AND ITS SERVERS WILL BE FREE OF VIRUSES AND OTHER HARMFUL COMPONENTS, OR THAT THE GCPAY CONTENT WILL BE ACCURATE, COMPLETE, RELIABLE, CURRENT, OR ERROR-FREE.

## **7. Indemnification.**

You agree to release, indemnify and hold GCPay and our affiliates and their officers, employees, directors and agents harmless from any and all losses, damages, expenses, including reasonable attorneys' fees, rights, and claims arising out of or relating to your use (including your employees, agents, or anyone using the GCPay Platform on behalf of You or Company) of the GCPay Platform, any GCPay content, your connection to the GCPay Platform, your violation of these Terms or Your violation of any rights of another. You hereby release and discharge GCPay from all claims, demands and causes of action, whether known or unknown, arising out of or related to any unauthorized access to or use of the GCPay Platform or any inaccuracy, errors or omissions contained therein. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

## **8. Limitation of Liability.**

- 8.1. YOU EXPRESSLY UNDERSTAND AND AGREE THAT GCPAY WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR DAMAGES FOR LOSS OF PROFITS, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF GCPAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE GCPAY PLATFORM; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (V) ANY OTHER MATTER RELATING TO THE SERVICES. IN NO EVENT WILL GCPAY'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED ONE HUNDRED DOLLARS (\$100).
- 8.2. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO

YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICES OR WITH THESE TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICES.

## 9. Electronic Consent.

- 9.1. **Consent.** You agree that any and all agreements, forms, notices, and other communications that GCPay provides or receives conducted by electronic means through the use of the GCPay.com website satisfy any legal requirement that such communications be in writing (“E-Consent”). This E-Consent applies to all interactions online concerning you, and GCPay and includes those interactions engaged in on any mobile device, including phones, smart-phones, and tablets. By exercising this E-Consent, GCPay may process your information and interact during all online interactions with you electronically. GCPay may also send you notices electronically related to its interactions and transactions. Disclosures may be provided online on our websites, and may be provided by email.
- 9.2. **Hardware and Software Requirements.** To access and retain any and all agreements, forms, notices, and other communications that GCPay provides electronically, you will need to use the following computer software and hardware: A PC or Mac compatible computer or other device capable of accessing the Internet, access to an e-mail account, and an internet browser software program that supports at least 128-bit encryption, such as Microsoft® Internet Explorer, Netscape® or Mozilla Firefox®. To read some documents, you may need a PDF file reader like Adobe® Acrobat Reader X® or Foxit®. You will need a printer or a long-term storage device, such as your computer’s disk drive, to retain a copy of any and all agreements, forms, notices, and other communications that GCPay provides for future reference. You may send any questions regarding the hardware and software requirements directly to GCPay at [accounts@gcpay.com](mailto:accounts@gcpay.com).
- 9.3. **Withdrawing Consent.** Your E-Consent is required to access and use the Services and the GCPay Platform. Contact GCPay directly if you wish to withdraw this E-Consent. If you decide to withdraw this E-Consent, the legal effectiveness, validity and enforceability of prior electronic disclosures and agreements will not be affected and you will not be able to access the Services or the GCPay Platform.
- 9.4. **Option for Paper.** You may request any disclosures in paper copy by contacting GCPay directly and GCPay will provide paper copies at no charge. To obtain a paper copy from GCPay, please email us at [accounts@gcpay.com](mailto:accounts@gcpay.com) with your request.

## 10. General Provisions.

- 10.1. **Governing Law.** This Agreement will be governed by Delaware law (without regard to conflicts of law provisions). Each Party exclusively submits to the jurisdiction of the United States District Court and any state court sitting in Delaware for purposes of all legal proceedings arising out of or relating to this Agreement.
- 10.2. **Entire Agreement.** These Terms contain Your entire understanding on the subject matters herein, and supersedes all prior discussions, representations and agreements. No rule of strict construction may be applied against any party on the basis that it was the drafter or creator of this Agreement. No course of dealing or individual waiver by either party will be deemed to alter the terms of the Agreement. You acknowledge that You received (or had access to) independent legal counsel. The section headings in this Agreement are solely for convenience and may not be used to interpret this Agreement.
- 10.3. **Severability and Waiver.** If any portion of the Agreement is stricken as invalid, the remaining portions will remain in full force and effect. Failure of either party to exercise any of its rights in a particular instance will not be construed as a waiver of those rights or any other rights for any purpose.
- 10.4. **Relationship of the Parties.** Nothing in this Agreement will constitute or create a partnership, joint venture, agency, or other relationship between the parties. To the extent either party undertakes or performs any duty for itself or for the other party as required by the Agreement, the party will be construed to be acting as an independent contractor. This Agreement is not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against a party by any third party claiming as a third-party beneficiary of this Agreement.
- 10.5. **Notice.** All notices to You shall be provided electronically either through the GCPay Platform or by posting to any GCPay website. All notices to GCPay shall be at the following address: [privacy@gcpay.com](mailto:privacy@gcpay.com); 1806 Summit Ave, Ste 300 PMB 2133, Richmond, VA 23230-4339, ATTN: Legal. Notice to you is deemed delivered on the date of posting by GCPay. Notice to GCPay is deemed delivered on: (i) the business day after the electronic notice is sent to GCPay; or, if applicable, the date of delivery via registered or certified U.S. mail.