

## spendwell™ SMS Terms and Conditions

Last Modified: February 2022

PLEASE CAREFULLY REVIEW THE FOLLOWING TERMS AND CONDITIONS BEFORE REGISTERING FOR AND USING THE SPENDWELL SHORT MESSAGE SERVICE OR SMS, PROGRAM ("SMS SERVICE"). BY REGISTERING FOR AND USING THE SMS SERVICE OR BY OTHERWISE INDICATING THAT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU HAVE ENTERED INTO A LEGALLY BINDING AGREEMENT WITH INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC. ("INCOMM") (REFERRED TO HEREIN AS "WE," "OUR" AND/OR "US"), AND YOU REPRESENT AND WARRANT THAT YOU ARE 18 YEARS OF AGE OR OLDER (or nineteen (19) years of age if you reside in a state where the age of majority is nineteen (19)) AND RESIDE IN THE UNITED STATES. WE ARE WILLING TO PROVIDE YOU THE SMS SERVICE ONLY IF YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. AS A SPENDWELL ACCOUNTHOLDER ("USER"), YOUR USE OF THE SMS SERVICE IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THE SPENDWELL™ BANK ACCOUNT DEPOSIT ACCOUNT AGREEMENT, WHICH IS INCORPORATED HEREIN BY REFERENCE. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST NOT COMPLETE YOUR REGISTRATION FOR THE SMS SERVICE, AND/OR YOU MUST STOP USING THE SMS SERVICE.

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### 1. Definitions

The SMS Service is provided by us through the facilities of a wireless service provider(s) selected by you ("Wireless Service Provider"). A "Technology Provider" is a third-party provider of technology services necessary to operate the SMS Service. "Equipment" means the wireless receiving equipment through which you intend to access and use the SMS Service. "System" means the computer hardware and software owned or operated by us or any Technology Provider and used in providing the SMS Service.

## 2. No Amendment of Existing Terms and Conditions for spendwell Bank Accounts

THE TEXT MESSAGES (OTHERWISE KNOWN AS SHORT MESSAGE SERVICE OR "SMS") THAT YOU SELECT TO BE PROVIDED TO YOU THROUGH THE SMS SERVICE ARE FOR CONVENIENCE PURPOSES ONLY AND DO NOT AMEND, SUPPLEMENT, CHANGE OR REPLACE ANY OTHER NOTICE OR INFORMATION THAT YOU MAY RECEIVE OR MAY HAVE RECEIVED IN CONNECTION WITH YOUR SPENDWELL BANK ACCOUNT, INCLUDING, BUT NOT LIMITED TO, ANY INFORMATION PROVIDED TO YOU ON THE MYSPENDWELL.COM WEBSITE AND/OR MOBILE SITE (COLLECTIVELY, "SPENDWELL SITE"). IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT YOUR SPENDWELL BANK ACCOUNT OR THE STATUS OF YOUR SPENDWELL BANK ACCOUNT, YOU SHOULD CALL CUSTOMER SUPPORT:

**spendwell**™ Bank Account 1-833-609-8472

### 3. SMS/Text Messages

You may opt in on the **spendwell** Site to receive the SMS Service on or through your wireless device or other Equipment. If you opt in to receive the SMS Service, you agree to receive via SMS communications otherwise known as "text messages" from us at the U.S. mobile number you have provided and verified for such purposes.

The SMS Service allows Users who have successfully opted into the SMS Service, and who have successfully verified their U.S. mobile number(s), to use SMS to conduct certain inquiries with respect to their spendwell Bank Account, such as, for example, to check their balance, to view a designated number of the most recent transactions involving their spendwell Bank Account, etc. The user can text BAL or BALANCE (for current balance), HIST or HISTORY (for a list of recent transactions), GOALS (for goal(s) balance), HELP and APP (to download the spendwell mobile app). The user can also sign up to receive the following texts about their account; low balance alert, subaccount low balance alert, money added and available balance.

The SMS Service also allows only those users who have successfully opted into the SMS Service, and who have successfully verified their U.S. mobile number(s), to receive text notifications when another spendwell accountholder has sent money to or requested money from them. The text message is a notification only and is not transactional.

In addition to those messages, you understand that, as part of the SMS Service, you also may receive error messages, confirmatory messages and other similar administrative messages, such as texts about possible fraudulent activity, from us via text at your U.S. mobile number you have provided for such purposes. You may also receive messages about promotions and offers specific to your account. Message frequency may vary.

You understand that your Wireless Service Provider's message and data rates may apply to messages sent and received in connection with the SMS Service (including, without limitation, any error messages, confirmatory messages or other administrative messages that you may receive in connection with your use of the SMS Service), and may appear on your Wireless Service Provider's bill or deducted from your pre-paid wireless balance.

You may cancel your enrollment in the SMS Service at any time by replying "STOP" to any SMS Service text message you receive from us or by texting "STOP" to 62029, and you understand that, for your protection, you may receive a text message on your U.S. mobile number confirming your cancellation. If you require information or assistance, reply "HELP" to any text

message you receive from us or text "HELP" to 62029, or call Customer Support at the following toll-free number:

**spendwell™** Bank Account 1-833-609-8472

#### **4. Fees**

As of the date you have agreed to this Agreement, we do not charge for use of the SMS Service or access to the Information (defined below). However, your Wireless Service Provider may levy fees or charges for receipt or sending of messages by your Equipment through the SMS Service, and you are solely responsible for such charges, which may appear on your wireless bill or deducted from your pre-paid wireless balance.

You are also responsible for any fees associated with use of the Equipment and you represent that you are the owner or authorized user of the Equipment that you use to sign up for and to use the SMS Service, and that you are authorized to approve any applicable charges.

#### **5. Information**

We are providing you with access to various types of information through the SMS Service which may include, without limitation, your Account and other financial information directions (the "Information") solely for your own use and not for further redistribution. The Information is our property and is protected by applicable law. We reserve any rights not expressly granted herein. All Information is believed to be accurate and timely (subject to any delays), but we and our Technology Providers do not warrant or guarantee such accuracy or timeliness.

#### **6. Availability/Interruption/Termination**

The SMS Service and System are available through your Equipment when it is within the operating range of your Wireless Service Provider. Note that the SMS Service may not be available on all Equipment, or through all wireless carriers, and not all functionalities of the SMS Service are available on all Equipment, or through all wireless carriers. Participating carriers are AT&T, T-Mobile®, Verizon Wireless, Sprint, Boost, U.S. Cellular, Google Voice, Cellular One, MetroPCS, Cellcom, Cellular South, Carolina West Wireless, Interop, ClearSky, nTelos, and Virgin Mobile. The carriers do not guarantee that alerts will be delivered and will not be liable for delayed or undelivered messages.

The SMS Service is subject to transmission limitation or interruption. You acknowledge and agree that we are not responsible for performance degradation and delays due to conditions on the Internet or due to the Equipment, or actions of your Wireless Service Provider or the Technology Providers. You acknowledge that we and the Technology Providers shall not be liable to you if the SMS Service in a given location is not available. If the SMS Service is not available within your intended location, you agree that your sole remedy shall be to cease using the SMS Service.

We have the right to terminate the SMS Service or this Agreement at any time, for any purpose, without notice to you, except as required by applicable law.

#### **7. Use of SMS Service/Equipment**

You agree not to use the SMS Service for any unlawful or abusive purpose or in any way, which damages our property or interferes with or disrupts the System or other users. Resale of the SMS Service is prohibited without prior contract arrangements with us and any required regulatory approvals. You are responsible for ensuring that your Equipment is compatible with the SMS Service and System and meets federal standards.

## **8. Privacy and Security**

Any information provided to us by you in association with the SMS Service shall be governed by our Privacy Notice and we will endeavor to keep your messages private, subject to such Privacy Notice, viewable only by you (or the intended recipient of your messages, as designated by you, as applicable), us, your Wireless Service Provider and our Technology Providers. However, you acknowledge and agree that we shall not be liable for any messages you request or request be sent while using the SMS Service as they are delivered over facilities not under our control. Further, you acknowledge and agree that parts of the SMS Service are provided via wireless systems which use radios (and other means) to transmit communications over complex networks. We do not guarantee that your use of the SMS Service will be private or secure, and we are not liable to you for any lack of privacy or security you may experience. You are fully responsible for taking precautions and providing security measures best suited for your situation and intended use of the SMS Service. We have the right to access the content of your **spendwell** Bank Account and/or wireless account with your Wireless Service Provider for the purpose of identifying and resolving technical problems and/or service-related complaints.

You authorize our monitoring and recording of voice calls and text messages to us concerning your **spendwell** Bank Account or the SMS Service and consent to our use of automatic dialing equipment to contact you. We have the right to intercept and disclose any messages over our facilities in order to protect our rights or property. We may need to look at your messages sent or received in connection with the SMS Service if we believe it is necessary to protect us or others from injury or damage. We reserve the right to take any appropriate action if we become aware of any use of the SMS Service we believe violates any law or is otherwise wrongful.

## **9. Passwords and Unauthorized Usage**

If your Equipment is lost or stolen or if SMS Service is fraudulently used, you must immediately notify us. We have the right to interrupt or restrict SMS Service to your Equipment, without notice to you unless required by applicable law, if we suspect fraudulent or abusive activity, or for any other reason in our discretion. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we prescribe. Failure to cooperate may result in your liability for all fraudulent usage.

## **10. Changes to this Agreement**

We may change, modify or supplement this Agreement, including, for example, adding or modifying the SMS Service's features, from time to time by modifying the "Last Modified" date at the beginning of this Agreement and posting such change or modification on our website at [myspendwell.com/legal](https://myspendwell.com/legal). Any modifications to this Agreement will only affect your and our respective rights and obligations from the effective date of the change(s) and thereafter. If you do not agree with the modified Agreement, you must cease using the SMS Service. If you continue to use the SMS Service after a change in the SMS Service or to this Agreement, you agree to such change and its applicability to you.

## **11. No Warranties/Limitation of Liability**

### **A. No Warranties**

WE SPECIFICALLY DISCLAIM ANY RESPONSIBILITY FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY YOU OR ANY THIRD PARTY AND IN NO WAY WARRANT THE CAPABILITIES OF ANY SUCH EQUIPMENT OR SOFTWARE USED IN CONJUNCTION WITH THE SMS SERVICE. YOU EXPRESSLY AGREE THAT USE OF THE SMS SERVICE AND ACCESS TO THE SYSTEM ARE AT YOUR SOLE RISK. THE SMS SERVICE AND SYSTEM

ARE PROVIDED ON AN "AS IS" AND AN "AS AVAILABLE" BASIS. WE ARE NOT LIABLE FOR SMS SERVICE OR SYSTEM OUTAGES OF ANY DURATION. WE MAKE NO EXPRESS WARRANTY REGARDING THE SMS SERVICE, SYSTEM, OR THE EQUIPMENT AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. WE DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. WE ARE NOT THE MANUFACTURER OF THE EQUIPMENT AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. WE MAKE NO WARRANTY THAT THE SMS SERVICE OR SYSTEM WILL MEET YOUR REQUIREMENTS, OR THAT THE SMS SERVICE OR SYSTEM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO WE OR TECHNOLOGY PROVIDERS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SMS SERVICE OR AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SMS SERVICE. WE OR OUR TECHNOLOGY PROVIDERS MAY MAKE IMPROVEMENTS AND/OR CHANGES IN THE SMS SERVICE OR SYSTEM AT ANY TIME. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SMS SERVICE AND SYSTEM IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR EQUIPMENT OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

#### B. Limitation of Liability for the SMS Service

InComm, and its subsidiaries and affiliates, including their directors, officers and employees (collectively, the "InComm Companies" shall not be liable for any loss, injury, claim, liability or damage of any kind resulting in any way from (i) your use of the SMS Service, (ii) access to the System (iii) your use of any Equipment in connection with the SMS Service or for Equipment failure or modification, (iv) the content of Information or other materials included with or accessed via use of the SMS Service, (v) the failure to deliver any SMS Service messages, or the delivery of SMS Service messages at times different than the times that you may have designated, (vi) any acts or omissions of any Technology Providers or Wireless Service Providers, (vii) for system failure or modification, or (viii) any "force majeure" (i.e., any flood, extraordinary weather conditions, earthquake or other act of god, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction) or any other cause beyond the reasonable control of us or our Technology Providers. NEITHER THE INCOMM COMPANIES NOR THE TECHNOLOGY PROVIDERS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, RESULTING FROM THE USE OR THE INABILITY TO USE THE SMS SERVICE OR SYSTEM, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES OR RESULTING FROM ANY MESSAGES RECEIVED (OR NOT RECEIVED) OR SENT (OR NOT SENT) THROUGH THE SMS SERVICE, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE, EVEN IF WE AND/OR TECHNOLOGY PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

### C. Maximum Liability

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, OUR MAXIMUM LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED \$100.00. IN STATES WHERE SUCH LIMITATIONS ON LIABILITY ARE NOT PERMITTED, OUR LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

### D. Survival

THIS PARAGRAPH 11 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

#### **12. Indemnity**

You agree to indemnify and hold the InComm Companies harmless from and against any claim or demand, including reasonable attorneys' fees, made by any third party resulting from or arising out of your use of the SMS Service or System (or the SMS Service or System by persons using your password, your account or your Equipment) or your violation of this Agreement. This Paragraph 12 shall survive termination of this agreement.

#### **13. Assignment**

We may assign all or part of our rights or duties under this Agreement without such assignment being considered a change to the Agreement, and without notice to you. We are then released from all liability. You may not assign this Agreement without our prior written consent.

#### **14. Notices**

Written notices to you shall be effective three (3) days following the date deposited in the U.S. Mail addressed to your address as kept in our files or immediately upon transmission of an email to you at the email address kept in our files. Your notice must specify your name and U.S. mobile number (or other SMS address) used for the SMS Service. We will not give you notice of any subpoenas or court orders related to your **spendwell** Bank Account or use of the SMS Service unless required by law.

#### **15. Entire Agreement**

This Agreement, including all agreements referenced herein, represents the entire agreement between you and us with respect to the subject matter hereof, which may only be amended as described in this Agreement. If any part of this Agreement is found invalid, the balance of the Agreement remains enforceable.

#### **16. Governing Laws**

This Agreement, and any claim, dispute or controversy arising from or relating to this Agreement, is governed by and construed in accordance with the laws of the State of Florida (without regard to its conflict of laws rules) and applicable federal law. The legality, enforceability, and interpretation of this Agreement and the amounts contracted for, charged, and received under this Agreement will be governed by such laws. This Agreement is entered into between you and us in New York.

#### **17. Miscellaneous Provisions**

This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. The failure to

enforce any term of this Agreement on one occasion shall not prevent enforcement on any other occasion or the enforcement of any other term. Headings and captions shall not be considered included for purposes of interpretation or application hereof, but are for convenience only.