

# Debtfolio

## Terms of Service

**Effective Date: October 1, 2022**

Debtfolio is a collection of tools and services facilitating debt sales, collections, media management, and related features. The software is developed and maintained by Vivid Tech Services, LLC. These Terms of Service (“Terms”) cover your use and access to our website, software, mobile app, communications, products, and services (collectively, “Debtfolio” or “Services”).

Our Privacy Policy explains how we collect and use your personal data. By visiting our site or using any of our Services, you agree to these Terms and acknowledge and agree to the collection, use, and disclosure of your personal data in accordance with our Privacy Policy on behalf of yourself and all Authorized Users (defined below) who use the Services under your account.

**Important Notice Regarding Arbitration for U.S. residents:** WHEN YOU AGREE TO THESE TERMS, YOU AGREE TO RESOLVE ALL DISPUTES WITH VIVID TECH SERVICES THROUGH SMALL CLAIMS COURTS OR THROUGH ARBITRATION ON AN INDIVIDUAL BASIS, RATHER THAN JURY TRIALS OR CLASS ACTIONS. PLEASE REVIEW SECTION 12 “DISPUTES” FOR DETAILS REGARDING ARBITRATION.

### 1. Your Use of the Services

- a. **Eligibility.** In order to use the Services, you need to (1) be 18 years or older, and (2) have the power to enter into legally binding contracts under applicable law. You will not allow any person or entity to access or use the Services using your account other than individuals who have been designated and authorized by you (each an “Authorized User”). You may permit Authorized Users to use the Services, provided that you ensure that each Authorized User complies with all applicable terms and conditions of the

Terms, and you are responsible for acts or omissions by Authorized Users in connection with their use of the Services.

- b. **Using our Services.** The Services are the property of Vivid Tech Services. So long as you comply with these Terms, we grant you a limited, nonexclusive, non-transferable, revocable license to use the Services. To the extent any component of the Services may be offered under an open source license, we'll make that license available to you and the provisions of that license may expressly override some of these Terms.
- c. **Our intellectual property rights.** Our Services are protected by copyright, trademark and other applicable laws. Vivid Tech Services and its licensors exclusively own all right, title, and interest in and to the Services, including all associated intellectual property rights. These Terms don't grant you any right, title, or interest in the Services, Debtfolio's trademarks, logos and other brand features.
- d. **Your responsibilities.** Your use of our Services must comply with our "User Rules and Prohibitions" outlined in Section 4 below. Content in the Services may be protected by others' intellectual property rights. You may not copy, upload, download, or share content unless you have the right to do so. Debtfolio may review your conduct for compliance with these Terms, but we are not obligated to do so. You may use our Services only as permitted by applicable law, including export control laws and regulations.
- e. **Service modifications.** We're constantly modifying and improving our Services. Debtfolio reserves the right to modify, suspend, or discontinue functions and features of the Services, at any time, without notice or liability to you.
- f. **Account password and security.** You are responsible for safeguarding your password to the Services and keeping your account information current and accurate. Don't share your account credentials or give others access to your account, except to Authorized Users. You understand that you are responsible for all use of your username and password on the Services, and if your username or password is lost or stolen, or if you believe there has been unauthorized access to your account by a third party, you must notify us immediately and change your password.

## 2. Telephone, Text, and Video Communications

- a. **Consent to telephone and text communications.** By creating an account, you agree to receive communications from Debtfolio, including text message and telephone calls to the telephone number you provided, and push notifications. These communications may be live or pre-recorded messages sent by or on behalf of Debtfolio, its representatives or contractors, or third party service providers. Message and data rates may apply. You may also opt out of receiving SMS messages from us by replying “STOP” from the mobile device receiving the messages.
- b. **Consent to monitoring and recording.** You acknowledge and agree that telephone calls, text messages, video communications, in-app messages, and other communications between you and Debtfolio, including its agents and affiliates, may be monitored and recorded for purposes of quality control and training, as well as providing and improving our Services.

## 3. Feedback

We welcome any feedback you have about our Services, but please note that we may use any comments, information, ideas, concepts, or suggestions in any communication you send us without any obligation to you.

## 4. User Rules and Prohibitions

We’ve established a few ground rules for you to follow when using the Services to make sure the Services are enjoyable for everyone. You agree not to do - or assist anyone in doing - the following:

- a. Post, upload, publish, submit, or transmit any content that: (i) infringes, misappropriates, or violates a third party’s patent, trademark, trade secret, moral rights, or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation; (iii) is fraudulent, false, misleading, or deceptive; (iv) is defamatory, obscene, pornographic,

vulgar, or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances;

- b. Use, display, mirror, or frame the Services or any individual element within the Services, Debtfolio's name, any Debtfolio trademark, logo, or other proprietary information, or the layout and design of any page or form contained on a page, without Debtfolio's express written consent;
- c. Attempt to probe, scan, or test the vulnerability of any Debtfolio system or network or breach any security or authentication measures;
- d. Avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Debtfolio or Debtfolio's providers or any other third party (including another user) to protect the Services;
- e. Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, or other form of solicitation using the Services;
- f. Use any meta tags or other hidden text or metadata using Debtfolio's trademark, logo URL, or product name without Debtfolio's express written consent;
- g. Use the Services, or any portion thereof, for any commercial purpose or in any manner not permitted by these Terms;
- h. Attempt to decipher, decompile, disassemble, or reverse engineer any of the software used to provide the Services;
- i. Interfere with, or attempt to interfere with, the access of any user, host, or network, including sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- j. Collect or store any personally identifiable information from the Services or from other users of the Services without their express permission;
- k. Impersonate or misrepresent your affiliation with any person or entity;
- l. Violate any applicable law or regulation; or
- m. Encourage or enable any other individual to do any of the foregoing.

Debtfolio is not obligated to monitor access to or use of the Services or to review or edit any content, but we reserve the right to do so. We reserve the right to remove, suspend, delete, or disable access to any content or user account, at any time and without notice. We also reserve the right to refuse to support a requested to-do, at any time and without notice, if we, at our sole discretion, consider it offensive, abusive, illegal, in violation of these Terms or any posted policies, or if we believe at our sole discretion that a user is intentionally submitting an excessive and unreasonable number of to-dos. We have the right to investigate violations of these Terms and any conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

## **5. Copyright Policy**

We respect the intellectual property rights of others and ask that you do too. In appropriate circumstances we will terminate the account of any user who repeatedly infringes or is believed to be repeatedly infringing the rights of copyright holders.

## **6. Termination**

These Terms will continue to apply to you until terminated by either you or Debtfolio. You are free to stop using the Services at any time and may request deletion of your account by emailing [support@debtfolio.co](mailto:support@debtfolio.co). Debtfolio may in its sole discretion delete your account, terminate these Terms, or suspend access to or terminate your account, at any time and without notice, including in the event of your actual or suspected unauthorized use of the Services, breach of these Terms, or if we withdraw or terminate the Services. If you or Debtfolio terminate these Terms, or if Debtfolio suspends or terminates your access to the Services, you agree that Debtfolio shall have no liability or responsibility to you, and Debtfolio will not refund any amounts that you have already paid to the fullest extent permitted by law. Upon any termination, discontinuation or cancellation of the Services or your account, the following Sections will survive: 3, 4, 5, 7, 8, 9, 10, 11, 12.

## **7. Disclaimer of Warranties**

Debtfolio strives to provide great services, but there are certain things we can't guarantee. You acknowledge and agree that to the fullest extent permitted by law, the SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, VIVID TECH SERVICES AND ITS EMPLOYEES, AGENTS, CONSULTANTS, CONTRACTORS, OR AFFILIATES MAKE NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, ABOUT THE SERVICES, AND EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness, or reliability of any information or content on the Services. Finally, you acknowledge and agree that Debtfolio has the right to unilaterally abandon development of the Services at any time without any obligation or liability to you or any third party.

## **8. Indemnity**

To the fullest extent permitted by law, you agree to indemnify and hold Debtfolio and its affiliates, and their respective officers, directors, employees, and agents, harmless from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (a) your access to or use of the Services; (b) your violation of these Terms or any applicable law or regulation; (c) your User Content; (d) your interaction with any user; (e) your request for products and/or services from a third-party merchant, including any injuries, losses, or damages of any kind arising in connection with such third-party merchant products and/or services; or (f) your request for Debtfolio Partner services, including any injuries, losses, or damages of any kind arising in connection with such Debtfolio Partner services. Debtfolio reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate in asserting any available defenses.

## 9. Limitation of Liability

IN NO EVENT SHALL VIVID TECH SERVICES OR ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONSULTANTS, CONTRACTORS, OR AFFILIATES BE LIABLE TO YOU OR ANY OTHER PARTY FOR (a) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, (b) ANY LOSS OF USE, DATA, BUSINESS, GOODWILL, OR PROFITS, (c) SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE, OR (d) THE COST OF SUBSTITUTE SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THESE EXCLUSIONS OR LIMITATIONS WILL APPLY REGARDLESS OF WHETHER Debtfolio OR ANY OF ITS EMPLOYEES, AGENTS, CONSULTANTS, CONTRACTORS, OR AFFILIATES HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, VIVID TECH SERVICES, ITS EMPLOYEES', AGENTS', CONSULTANTS', CONTRACTORS', OR AFFILIATES' AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM SHALL BE STRICTLY LIMITED TO \$100.00 USD. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. YOU ACKNOWLEDGE AND AGREE THAT THESE LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND VIVID TECH SERVICES.

## 10. Disputes (for U.S. residents)

- a. **Mandatory arbitration of disputes.** You and Vivid Tech Services agree that any dispute, claim or controversy arising out of your use of the Services, or relating to these Terms or the breach, termination, enforcement, interpretation, or validity thereof, including any dispute relating to these arbitration provisions themselves, will be resolved **through final and binding individual arbitration by a single arbitrator and not in a class, representative, or consolidated action or proceeding**, except as set forth under the

“Exceptions to agreement to arbitrate” below. This includes disputes arising out of or relating to interpretation or applicability of this “Mandatory arbitration of disputes” section, including its enforceability, revocability, or validity. This arbitration provision shall survive termination of these Terms.

- b. **Arbitration procedures.** The American Arbitration Association (AAA) will administer the arbitration under its Consumer Arbitration Rules. The arbitration will be held in the United States county where you live, unless we both agree to another location or to desk arbitration.
- c. **Arbitration costs.** The AAA rules will govern payment of all arbitration fees. Vivid Tech Services will not seek its attorneys’ fees and costs in arbitration unless the arbitrator determines that your claim is frivolous. If we prevail in arbitration we’ll pay all of our attorneys’ fees and costs and won’t seek to recover them from you.
- d. **Injunctive and Declaratory Relief.** Except as provided in Section 12(f) below, the arbitrator shall determine all issues of liability on the merits of any claim and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. To the extent that either party seeks public injunctive relief (that is, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that litigation of any issues of public injunctive relief shall be stayed pending the outcome of the merits of any individual claims in arbitration.
- e. **Exceptions to agreement to arbitrate.** Notwithstanding the mandatory arbitration agreement in Section 12(a), either you or Vivid Tech Services may (1) assert claims, if they qualify, in a U.S. small claims court; or (2) bring an individual action seeking only injunctive or other equitable relief from a court to prevent or stop unauthorized use or abuse of the Services or infringement or misappropriation of intellectual property without first engaging in arbitration described above. If the agreement to arbitrate is

found not to apply to you or your claim, you agree to the exclusive jurisdiction of the state and federal courts of the State of Michigan to resolve your claim.

- f. **NO CLASS ACTIONS OR CLASS ARBITRATIONS.** You may only resolve disputes with Vivid Tech Services on an individual basis and may not bring a claim as a plaintiff or class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed. If this specific provision is found to be unenforceable, the entirety of this “Disputes” section will be deemed void.

## 11. Third party interactions

- a. **Links to third party websites and services.** Our Services may contain links to websites or services that are owned or operated by third parties. Debtfolio is not responsible for these third party websites or services, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to such third party websites or services. You use all links to third party websites and services at your own risk.
- b. **App stores.** Debtfolio may in the future launch an affiliated App. You acknowledge and agree that the availability of the Services is dependent on the third party from which you received the application license, e.g., the Apple iPhone or Android app stores (“App Store”). You acknowledge and agree that these Terms are an agreement between you and Debtfolio and not with the App Store. Debtfolio is solely responsible for its mobile app, including the content thereof and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the Services, you agree to pay all fees (if any) charged by the App Store in connection with the Services. You acknowledge and agree that Apple has no obligation to furnish any maintenance and support services with respect to our mobile app. In the event of any failure of the mobile app to conform to any applicable warranty, you may notify Apple, and Apple will refund the mobile app purchase price to you (if applicable) and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the mobile app. You agree to comply with, and

your license to use the Services is conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store's terms and policies). You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and you represent and warrant that you are not listed on any U.S. Government list of prohibited or restricted parties. You acknowledge and agree that each App Store (and its affiliates/subsidiaries) is an intended third party beneficiary of the Terms and has the right to enforce the terms and conditions of the Terms against you.

## 12. Miscellaneous

- a. **Governing law (for U.S. residents).** These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of Ohio except for its conflicts of laws principles. Except as otherwise set forth in the "Disputes" section above, the exclusive jurisdiction for all disputes, claims, or controversies that you and Debtfolio are not required to arbitrate will be the state and federal courts located in the State of Ohio. You and Vivid Tech Services each waive any objection to jurisdiction and venue in such courts.
- b. **Compliance with laws.** You acknowledge that the Services are subject to the export control laws and regulations of the United States. You warrant that you will comply in all respects with United States laws and regulations, as well as any applicable local, state, national, and foreign laws governing your use of the Services.
- c. **Entire agreement.** These Terms constitute the entire agreement between you and Vivid Tech Services with respect to the subject matter of these Terms, and supersedes all prior oral and written understandings, communications, or agreements not specifically incorporated herein.
- d. **Waiver, severability, and assignment.** Vivid Tech Service's failure to enforce a provision in these Terms is not a waiver of its right to do so later. If a provision in these Terms is found void or unenforceable, the remaining provisions of the Terms will remain in full

effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign any of your rights under these Terms, and any such attempt will be void. Debtfolio may assign its rights to any of affiliates or subsidiaries, or to any successor in interest of any business associated with the Services.

- e. **Modification.** Vivid Tech Services may modify these Terms from time to time. If a revision materially affects your legal rights, we will notify you in advance (e.g., via email). If you don't agree to the updates, please cancel your account before the updates become effective. By continuing to use or access the Services after the updates go into effect, you agree to be bound by the revised Terms.