**TERMS OF SERVICE**

**EFFECTIVE DATE: August 1, 2021**

These general Terms of Service govern the use and access to the 401(play), LLC (“we” or “401(play)”) website located at www.401play.com (“Website”) and related applications, services and content made available through the Website (collectively “Website Services”). Terms and conditions with respect to any subscriptions to 401(play)’s employer-employee vacation funding account services is governed by a separate written services agreement executed by and between 401(play) and such client and is NOT governed by these Terms of Service governing use of this Website.

By accessing or using any part of the Website and Website Services, you agree to be bound by this Terms of Service.

**This Terms of Service includes provisions for binding arbitration on an individual basis –which includes a waiver of a right to a jury trial or a right to file a class action. See Section 7, Binding Arbitration.**

Internet technology, and the applicable laws, rules and regulations change frequently. We reserve the right to make changes to this Terms of Service at any time. Continued access and/or use of the Website and/or Website Services in any manner constitutes consent to any updated Terms of Service that may be posted on the Website.

1. **Feedback Submissions License.** We consider any suggestions, ideas, proposals or other material submitted to 401(play), whether solicited or unsolicited, (collectively, the "Feedback") to be non-confidential and non-proprietary. We shall not be liable for the disclosure, use or exploitation of such Feedback. You hereby grant to 401(play) a worldwide, non-exclusive, perpetual, irrevocable, royalty-free and transferable right and license to incorporate, use, publish and exploit the Feedback for any purpose whatsoever, commercial or otherwise, without compensation or accounting.
2. **Communications Consent**.
   1. **Email.** By entering your email to request information regarding 401(play) services, you agree to receive emails directly from 401(play). You may unsubscribe from marketing communications at any time.
   2. **SMS Messages**. By providing your mobile phone number and by opting into mobile phone-based notifications, you hereby consent to the receipt of notifications via short messages services (“SMS”), which may be subject to fees and costs charged by your cell phone provider. You may opt out by unsubscribing in response to SMS, contacting [support@401play.com](mailto:support@401play.com) or as available through the message preferences on your mobile phone’s notifications/settings tab**.**
3. **Privacy.** 401(play) will only use personal information collected through the Website in accordance with our Privacy Policy.
4. **Use Restrictions.**  You will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Website and/or Website Services or any software, documentation or data related thereto. **You will not sell, resell, license, sublicense, distribute, rent or lease the Website or Website Services to any third party for any purpose, commercial or otherwise.**
5. **Prohibited Conduct.** In your use of the Website, you may not:

* Violate any law, statute, ordinance or regulation;
* Infringe upon any patent, copyright, trademark, trade secret, right of publicity or other third party rights;
* Impersonate another person or entity, misrepresent your affiliation with a person or entity, or create or use a false identity;
* Distribute or transmit any code, virus or any other technologies, whether now known or yet to be developed, that may harm the Website or its users;
* Modify, adapt or hack the Website or modify another Website or mobile application so as to falsely imply that it is associated with the Website;
* Distribute or post spam, unsolicited or bulk electronic communications to the Website or its users;
* Use any robot, spider, scraper or other automated means to access the Website for prohibited or illegal purposes;
* Take any action that imposes, or may impose, an unreasonable or disproportionately large load on the Website’s infrastructure;
* Interfere or attempt to interfere with the proper working of the Website, its services or tools; or
* Bypass the Website’s robot exclusion headers or other measures we may use to prevent or restrict access to the Website.

1. **Customer Questions.** Questions may be directed by email to [support@401play.com](mailto:support@401play.com) to address any issues you may have regarding your use of the Website and Website Services.

1. **Binding Arbitration.** EXCEPT AS OTHERWISE STATED HEREIN, ANY CLAIM OR CONTROVERSY WITH 401(PLAY), LLC ARISING OUT OF OR RELATING TO THE WEBSITE, WEBSITE SERVICES AND/OR THIS TERMS OF SERVICE (INCLUDING ITS FORMATION, INTERPRETATION, PERFORMANCE AND BREACH) SHALL BE SETTLED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES, EXCLUDING ANY RULES OR PROCEDURES GOVERNING OR PERMITTING CLASS ACTIONS. ANY JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE FEDERAL ARBITRATION ACT SHALL GOVERN THE INTERPRETATION AND ENFORCEMENT OF THIS TERMS OF SERVICE.

ANY ARBITRATION UNDER THIS TERMS OF SERVICE WILL BE ON AN INDIVIDUAL BASIS ONLY. THE PARTIES EXPRESSLY **WAIVE** THEIR RIGHT TO FILE OR JOIN A CLASS ACTION OR PRIVATE ATTORNEY GENERAL ACTION, OR TO CONSOLIDATE THEIR ARBITRATION WITH OTHER ARBITRATIONS. YOU ARE **WAIVING YOUR RIGHTS** TO HAVE YOUR CASE DECIDED BY A **JUDGE OR JURY**. IF ANY PROVISION OF THIS ARBITRATION AGREEMENT IS FOUND UNENFORCEABLE, THE UNENFORCEABLE PROVISION SHALL BE SEVERED AND THE REMAINING PROVISIONS SHALL REMAIN ENFORCEABLE.

The AAA’s rules, as well as forms for initiating arbitration proceedings, are available at www.adr.org. When initiating a request to arbitrate with the AAA, you must also send a copy of the completed form to: [support@401play.com](mailto:support@401play.com) and by mail to: **401(play), LLC, Attention: Legal 401(play), LLC at 5901 Wyoming Blvd. NE, Albuquerque, NM 87109.**

**Exception – Small Claims Court Claims.** Notwithstanding the parties’ agreement to resolve all disputes through arbitration, either party may seek relief in small claims courts for disputes or claims within the scope of that court’s jurisdiction.

1. **Reservation of Rights; Intellectual Property.** All right, title and interest in the Website and Website Services shall at all times remain solely and exclusively the property of 401(play), including, but not limited to:
   1. **Copyrights.** The Website’s logos, design, text, graphics, and other files, and the selection arrangement and organization thereof, are owned by 401(play), LLC (2021). All rights reserved.**‍**
   2. **Trademarks.** The Website and its logos, page headers, custom graphics, button icons and scripts are trademarks or trade dress of 401(play), LLC. **‍**
   3. **Ownership and Use.**  Nothing within this Terms of Service or your use of the Website or Website Services gives you a right or license to use any of our copyrights, trade names, trademarks, service marks, logos, domain names, or any other 401(play) intellectual property rights.

1. **DMCA - NOTICE OF CLAIMED COPYRIGHT INFRINGEMENT.** If you have a good faith belief that your copyright has been infringed, you can download and submit a Notice of Claimed Infringement to 401(play)’s Designated Agent by email: [support@401play.com](mailto:support@401play.com).
2. **DISCLAIMER - NO TAX BENEFITS.** **THE VACATION FUNDING ACCOUNTS OFFERED BY 401(PLAY) IS NOT A TAX DEFERRED ACCOUNT AND DOES NOT PROVIDE AN EMPLOYEE WITH ANY TAX BENEFITS UNDER ANY STATE OR FEDERAL TAX LAWS.**
3. **NO INVESTMENT RECOMMENDATIONS OR PROFESSIONAL ADVICE. THE WEBSITE AND WEBSITE SERVICES ARE NOT INTENDED TO PROVIDE TAX, LEGAL, INSURANCE OR OTHER INVESTMENT ADVICE AND SHOULD NOT BE CONSTRUED AS OFFERING SUCH ADVICE. USERS ARE SOLELY RESPONSIBLE FOR PERFORMING THEIR OWN DUE DILIGENCE CONSULTATION BEFORE MAKING ANY TAX, LEGAL, INSURANCE OR OTHER INVESTMENT DECISIONS.**
4. **DISCLAIMER OF THIRD PARTY CONDUCT.** 401(PLAY) DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE WEBSITE AND WEBSITE SERVICES, INCLUDING THIRD PARTY HYPERLINKS AND/OR THIRD PARTY PRODUCTS AND SERVICES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, 401(PLAY) MAKES NO WARRANTIES REGARDING THIRD PARTY SERVICES, GOODS, PRODUCTS, CONTENT, OR RESOURCES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT AND WILL NOT BE LIABLE FOR YOUR USE OF OR RELIANCE ON SUCH THIRD PARTY SERVICES, GOODS, PRODUCTS, CONTENT, OR RESOURCES.
5. **DISCLAIMER OF WARRANTIES. TO THE EXTENT PERMITTED BY APPLICABLE LAW**, THE WEBSITE AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS, AND WEBSITE SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE WEBSITE ARE PROVIDED ON AN “**AS IS**” AND “**AS AVAILABLE**” BASIS. 401(PLAY) DOES NOT REPRESENT OR WARRANT THAT THE WEBSITE, WEBSITE SERVICES OR USE (I) WILL BE UNINTERRUPTED, TIMELY OR SECURE, (II) WILL BE FREE OF DEFECTS, INACCURACIES OR ERRORS, (III) WILL MEET YOUR REQUIREMENTS, OR (IV) WILL OPERATE IN THE CONFIGURATION OR WITH OTHER HARDWARE OR SOFTWARE YOU USE. **EXCEPT WHERE PROHIBITED BY LAW**, 401(PLAY) EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT AND WILL NOT BE LIABLE FOR YOUR USE OF OR RELIANCE ON THE WEBSITE, INFORMATION, CONTENT, MATERIALS, PRODUCTS, AND WEBSITE SERVICES.
6. **LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW**, NEITHER 401(PLAY) NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE WEBSITE AND/OR WEBSITE SERVICES WILL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS, SECURITY BREACH, LOST DATA OR LOSS OF GOODWILL) ARISING OUT OF, RELATING TO OR CONNECTED WITH THE USE OF THE WEBSITE, EVEN IF 401(PLAY) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **TO THE EXTENT PERMITTED BY APPLICABLE LAW**, IN NO EVENT WILL 401(PLAY)’S AGGREGATE LIABILITY, OR THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF, OR OF THE INABILITY TO USE, THE WEBSITE AND/OR WEBSITE SERVICES, **EXCEED $100.00**.
7. **INDEMNITY.** To the maximum extent permitted by law, you shall indemnify, defend and hold harmless 401(play), and its subsidiaries, affiliates, officers, directors, shareholders, employees, representatives, agents, volunteers, attorneys, managers, licensors, business partners and each of their respective successors and assigns (the “Indemnified Parties”) from and against all damages, losses, liabilities, claims, expenses, fees or costs (including, without limitation, reasonable attorneys’ fees and costs) incurred in connection with any claim, demand or action brought or asserted against any of the Indemnified Parties arising out of or relating to your (i) use of the Website and/or Website Services (ii) breach of this Terms of Service, (iii) violation of any third party right, including without limitation any intellectual property right, publicity, property or privacy right, and/or (iv) violation of applicable laws.
8. **Force Majeure.** 401(play) will not be liable or responsible for any delays in providing the Website or Website Services, as a result of any event beyond its reasonable control, including, without limitation, adverse weather conditions, internet outage or interruption of service, telecommunications or power outage, fire, flood, civil disobedience, labor disruptions, strikes, lockouts, government-ordered closures, pandemic, epidemic, freight, embargoes, terrorism, natural disaster, war or acts of God.
9. **Independent Contractor.** In providing the Website and Website Services, 401(play) is acting solely as an independent contractor. No agency, partnership, joint venture, employee-employer, or franchisor-franchisee relationship is intended or created by this Terms of Service.
10. **Severability**. If any provision contained in this Terms of Service, is or becomes invalid, illegal, or unenforceable in whole or in part, such invalidity, illegality, or unenforceability shall not affect the enforceability of the remaining provisions and portions, and the invalid, illegal, or unenforceable provision shall be deemed modified so as to have the most similar result that is valid and enforceable under applicable law.
11. **Modifications**. Our employees, volunteers or agents are not authorized to vary this Terms of Service. No modification of this Terms of Service shall be effective unless it is in writing and either signed by an authorized representative of 401(play) or posted on the Website.
12. **Assignment**. You may not assign any of the rights or obligations under this Terms of Service without the prior written consent of 401(play). 401(play) is free to assign this Terms of Service at any time.
13. **Successors and Assigns**. This Terms of Service is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.
14. **Governing Law**. This Terms of Service shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, without regard to or application of New Mexico’s conflict of law principles. The Parties consent to the jurisdiction of the state and federal courts located in the State of New Mexico and venue in Bernalillo County, New Mexico with regard to any controversy or claim arising out of or relating to this Terms of Service, or the breach thereof.
15. **No Waiver**. The failure or delay of either Party to exercise any right, power or privilege under this Terms of Service will not operate as a waiver thereof.
16. **Interpretation**. Headings are for reference purposes only and do not limit the scope or extent of such section.
17. **Notices.** All notices required or permitted to be given under this Terms of Service will be in writing and delivered to: **401(play), LLC, Attention: Legal, 401(play), LLC at 5901 Wyoming Blvd. NE Suite J151, Albuquerque, NM 87109** or by email at [support@401play.com](mailto:support@401play.com). All notices will be sent to you to the email provided by you or will be conspicuously posted on the Website.
18. **Entire Agreement.** This Terms of Service comprises the entire agreement between the parties with respect to the Website and Website Services and supersedes all prior or contemporaneous agreements, written or oral, between the parties regarding the subject matter contained herein.