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OFFICE OF THE ATTORNEY GENERAL

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November 26, 2024

**By Email**

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Re: Wind down of SmileDirectClub, Inc. and certain of its affiliates

This letter confirms the agreement (the "Agreement") between (i) the Office of the New York State Attorney General ("OAG"), (ii) HPS Investment Partners, LLC acting in its capacity as the agent to the Lenders (as defined below) ("Lenders' Agent") to the SDC U.S. SmilePay SPV ("SDC SPV"), (iii) Healthcare Finance Direct, LLC ("HFD"), and (iv) SDC SPV to address refunds of installment payments for former customers of SmileDirectClub, Inc. and its

consolidated subsidiaries including SDC Financial, LLC and SmileDirectClub, LLC (together with SmileDirectClub, Inc., “SDC”) who were on SDC’s SmilePay program, had not completed their treatment plans,<sup>1</sup> and were current on their installment payments, in each case, as of SDC’s December 8, 2023 wind down. HFD, SDC SPV, and Lenders’ Agent are collectively referred to as the “Collecting Parties.” The Collecting Parties and the OAG are collectively referred to as the “Parties.” The Agreement shall be effective when it is executed by each of the Collecting Parties and the OAG, who shall be the last party to execute the Agreement (the “Effective Date”).

## Background

SmileDirectClub, Inc. was a publicly traded company that, along with its subsidiaries including SDC Financial, LLC and SmileDirectClub, LLC, offered aligner therapy for teeth straightening to customers nationwide through an online teledentistry platform. The clear aligner therapy that SDC offered included an initial kit of aligners shipped to each customer’s home, access to 24/7 customer care, remote clinical monitoring through completion of treatment, and access to SDC’s teledentistry platform. SDC also promised customers who purchased its aligners a “LifeTime Smile Guarantee,” through which SDC committed to providing eligible customers who complied with the requirements of the guarantee (i) a full refund within the first 30 days of receiving initial aligners; (ii) a pro rata refund after that time; and (iii) free aligner “touch-ups” for life. To receive free aligner “touch-ups” after treatment, customers were required to order retainers every six months, wear the retainers as prescribed, be approved for a new aligner by a state-licensed dentist or orthodontist affiliated with SDC, and be current on their payments.

Some of SDC’s customers paid for SDC’s aligner treatment in a single up-front payment. The majority of SDC’s customers paid in installments through SDC’s SmilePay program. The terms of the SmilePay program were set forth in a Retail Installment Contract (“RIC”) between SDC and each customer who elected to join the SmilePay program. The SmilePay program generally involved a \$250 up-front payment made to SDC, followed by 26 monthly installment payments of approximately \$89 per month that HFD, as payment processor for SDC, automatically withdrew from the customer’s bank account, debit card or credit card pursuant to the terms of the RIC.

SDC’s U.S. receivables consisting of the installment payments owed by SDC’s customers through the SmilePay program were sold or contributed to SDC SPV, a bankruptcy-remote special purpose vehicle. SDC SPV pledged those receivables as collateral for a credit facility provided by certain investment funds and accounts managed by Lenders’ Agent (the “Lenders”) to SDC SPV pursuant to a loan agreement dated April 27, 2022 (the “Loan Agreement”). Pursuant to a Guaranty dated April 27, 2022, in procuring the loan from the Lenders to SDC SPV, SDC Financial, LLC and SmileDirectClub, LLC provided a limited recourse guaranty to

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<sup>1</sup> In determining the universe of customers who had not completed their treatment plans, in response to feedback from the OAG, the Collecting Parties represent that five days were added after the shipment date to account for the delivery time of the initial aligners, and 12 days were added after the order date to account for the manufacturing and delivery of any touch up aligners.

cover any losses, damages, liabilities and claims, costs and expenses incurred as a result of the occurrence of several identified events, including the failure of SmileDirectClub, LLC and its affiliates to have fully performed their obligations relating to each receivable as of the date acquired by SDC SPV such that the amounts owed by the customers on the RICs were not “fully earned.” The Loan Agreement also required that SDC SPV enter into and maintain in effect a Servicing Agreement with SmileDirectClub, LLC and Lenders’ Agent pursuant to which all receivables acquired by SDC SPV were serviced and collected by SmileDirectClub, LLC subject to its ability to delegate to HFD as the Sub-Servicer.

SDC filed for Chapter 11 bankruptcy on September 29, 2023. SDC SPV was not one of the Chapter 11 debtors. On November 14, 2023, SDC SPV entered into a separate Service Provider Agreement directly with HFD pursuant to which HFD agreed to service and collect substantially all of SDC’s U.S. receivables. On December 8, 2023 (the “Wind Down Date”), SDC announced the wind down of its global operations. On the Wind Down Date, SDC posted an “FAQ” page on its website stating that it had decided to “wind down its global operations,” had ceased offering all dental aligner products or services, and would no longer honor its previous commitments to customers, including the LifeTime Smile Guarantee. The FAQ also advised customers that: “SmilePay customers are expected to continue to make all monthly payments until payment has been made in full per the terms of our SmilePay Program.”

On December 12, 2023, the OAG sent a cease-and-desist letter to SDC expressing concern that SDC was collecting installment payments from former customers (and advising former customers they were still responsible for such payments) even though the customers were no longer being offered the complete bundle of related services and benefits that they were promised. SDC responded by letter dated December 15, 2023, and directed the OAG to HFD and the Lenders’ Agent as relevant parties.

Counsel for Lenders’ Agent proactively contacted the OAG the same day that SDC responded to the OAG’s cease-and-desist letter. The OAG and Lenders’ Agent proceeded to engage in discussions, during which Lenders’ Agent represented to the OAG that down payments for the SmilePay program, payments for the purchase of retainers from SDC, and single up-front payments for SDC’s aligners and related services were not property of SDC SPV, and thus were not subject to the Lenders’ liens. Lenders’ Agent confirmed to the OAG that monthly installment payments owed by SDC’s former customers pursuant to RICs serviced by HFD were subject to the Lenders’ liens. Lenders’ Agent also confirmed that, since the Wind Down Date, the Lenders, as secured parties, had been exercising control over the collection of—and receiving—those payments. On behalf of the Collecting Parties, Lenders’ Agent has cooperated with the OAG to negotiate the compensation plan reflected in this Agreement addressing these installment payments.

## Agreement

The OAG and the Collecting Parties agree as follows:

1. Certification of Compensation for Customers Who Never Received Aligners.
  - a. The Collecting Parties represent that, to the best of their knowledge and based on the information provided by SDC, a total of 80 former customers of SDC (i) had an active RIC as of the Wind Down Date; (ii) had ordered initial aligners from SDC as of the Wind Down Date; and (iii) did not receive their initial aligners (the “No Aligner Customers”).
  - b. HFD certifies that, as of the Effective Date, it has (i) fully credited or canceled any and all installment payments for No Aligner Customers<sup>2</sup>; and (ii) notified each No Aligner Customer that they need not make any payments on their RICs.
2. Compensation for Customers Within First 30 Days of Treatment.
  - a. The Collecting Parties represent that, to the best of their knowledge and based on the information provided by SDC, a total of 3,907 former customers of SDC (i) had an active RIC as of the Wind Down Date; (ii) had received initial aligners from SDC in the 30 days preceding the Wind Down Date; and (iii) were not delinquent<sup>3</sup> on installment payments under their RIC as of the Wind Down Date (the “Under 30 Days Customers”).
  - b. Within 10 business days of the Effective Date, Lenders’ Agent shall direct HFD to initiate an automatic refund of three installment payments<sup>4</sup> charged to each Under 30 Days Customer, and HFD shall abide by that direction. This automatic refund shall be applied by reducing such customer’s outstanding balance on their installment payments. In the event that the automatic refund amount exceeds such customer’s outstanding balance of installment payments, the amount of the automatic refund in excess shall be made to such customer’s bank account, debit card account, or credit card account on file with HFD, or to the extent a refund made by those means is unsuccessful, a check shall be issued to the customer at their last known address on file with HFD.
  - c. Additionally, Lenders’ Agent shall direct HFD to initiate a “step-up” refund of all other installment payments for each Under 30 Days Customer who complies with the claims process described in paragraph 4 below, subject to the Compensation

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<sup>2</sup> For the avoidance of doubt, this means that any installment payments received from No Aligners Customers have been refunded and no future payments will be collected pursuant to their RICs.

<sup>3</sup> For the avoidance of doubt, the parties agree that customers who, upon learning of SDC’s winddown, disputed with their credit card companies pre-wind down charges from 60 days prior to the Wind Down Date, are still eligible for compensation under this Agreement, provided that they were not delinquent as of the Wind Down Date.

<sup>4</sup> The total dollar amount of the automatic refund for all Under 30 Days Customers is \$1,043,169.

Cap in paragraph 5 below, and HFD shall abide by that direction.<sup>5</sup> This step-up refund shall be applied by reducing such customer's outstanding balance on their installment payments. In the event that the step-up refund amount exceeds such customer's outstanding balance of installment payments, the amount of the step-up refund in excess shall be made to such customer's bank account, debit card account, or credit card account on file with HFD, or to the extent a refund made by those means is unsuccessful, a check shall be issued to the customer at their last known address on file with HFD.<sup>6</sup>

3. Compensation for Customers in Treatment Over 30 Days.

- a. The Collecting Parties represent that, to the best of their knowledge and based on the information provided by SDC, no more than 24,421<sup>7</sup> former customers of SDC (i) had an active RIC as of the Wind Down Date; (ii) had received aligners from SDC more than 30 days preceding the Wind Down Date; (iii) could potentially still be in aligner treatment (including midcourse corrections or refinements) as of the Wind Down Date; and (iv) were not delinquent<sup>8</sup> on installment payments under their RIC as of the Wind Down Date (the "Over 30 Days Customers" and together with the Under 30 Days Customers, the "Step-Up Eligible Customers").
- b. Within 10 business days of the Effective Date, the Lenders' Agent shall direct HFD to initiate an automatic refund of up to one installment payment to each Over 30 Days Customer, and HFD shall abide by that direction.<sup>9</sup> This automatic

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<sup>5</sup> For the avoidance of doubt, this means that, for any Under 30 Days Customer who complies with the claims process, any installment payments received will be credited or refunded subject to the Compensation Cap, and no future payments will be collected pursuant to the RIC. Under 30 Days Customers who received an automatic payment in the amount of their outstanding balance as of the Wind Down Date are not eligible to receive a step-up payment because the Collecting Parties would have already refunded all payments that the Collecting Parties received and there will be no outstanding RIC balance.

<sup>6</sup> By way of example, the Lenders' Agent represents that if an eligible Under 30 Days Customer who only made one installment payment complies with the claims process described in paragraph 4 below, such customer would receive a total refund of \$89 made to his or her bank account, debit card account, or credit card account on file with HFD and his or her remaining installment payments will be canceled, subject to the Compensation Cap described in paragraph 5.a.

<sup>7</sup> The Collecting Parties represent that SDC did not provide treatment data for 4,451 of these 24,421 customers. These 4,451 customers had received aligners from SDC after December 8, 2022. Despite the lack of treatment data for these customers, the Collecting Parties will make automatic refunds to these customers as provided in paragraph 3.b, and honor any Refund Request Forms submitted by these customers for step-up refunds, provided that the customer was current as of the Wind Down Date and ordered his or her aligners no more than one year before the Wind Down Date. In calculating the step-up refund amount for these 4,451 customers, the Collecting Parties agree to assume a treatment plan length of 7 months and 15 days.

<sup>8</sup> For the avoidance of doubt, the parties agree that customers who, upon learning of SDC's winddown, disputed with their credit card companies pre-wind down charges from 60 days prior to the Wind Down Date, are still eligible for compensation under this Agreement, provided that they were not delinquent as of the Wind Down Date.

<sup>9</sup> For the avoidance of doubt, the Lenders' Agent agrees to calculate the automatic refund of installment payments to each Over 30 Days Customer as the lesser of (i) one installment payment (\$89) or (ii) the estimated maximum amount of the step-up refund for which the customer is eligible under paragraph 3.c. below. Using this calculation, the total dollar amount of the automatic refund for the Over 30 Days Customers is \$2,022,560.47.

refund shall be applied by reducing such customer's outstanding balance on their installment payments. In the event that the automatic refund amount exceeds such customer's outstanding balance of installment payments, the amount of the automatic refund in excess shall be made to such customer's bank account, debit card account, or credit card account on file with HFD, or to the extent a refund made by those means is unsuccessful, a check shall be issued to the customer at their last known address on file with HFD.

- c. Additionally, Lenders' Agent shall direct HFD to initiate a "step-up" refund of installment payments to each Over 30 Days Customer who complies with the claims process described in paragraph 4 below, subject to the Compensation Cap in paragraph 5 below, and HFD shall abide by that direction. The amount of this step-up refund shall be calculated by (i) multiplying the percentage of time remaining on the Over 30 Days Customer's then-current treatment plan as of the Wind Down Date by the total amount of installment payments provided for by the Over 30 Days Customers' RIC, and then (ii) subtracting the automatic refund already received by such Over 30 Days Customer pursuant to paragraph 3.b above.<sup>10</sup> This step-up refund shall be applied by reducing such customer's outstanding balance on their installment payments. In the event that the step-up refund amount exceeds such customer's outstanding balance of installment payments, the amount of the step-up refund in excess shall be made to such customer's bank account, debit card account, or credit card account on file with HFD, or, to the extent a refund made by those means is unsuccessful, a check shall be issued to the customer at their last known address on file with HFD.

#### 4. Claims Process for Step-Up Compensation.

- a. Within 10 business days of the Effective Date, HFD shall post an updated "SmileDirectClub FAQ" webpage at the web address <https://gohfd.com/smile-direct-club-faq/> that summarizes the refunds and claims process provided for by this Agreement. The text of the FAQ shall be agreed upon by the Collecting Parties and the OAG.
- b. Within 10 business days of the Effective Date, HFD shall send a Notice of Claim and a Refund Request Form (defined below) to each Step-Up Eligible Customer at their last known email address informing each Step-Up Eligible Customer (i) of the amount of the automatic refund received; (ii) of the estimated maximum amount of the step-up refund for which the customer is eligible;<sup>11</sup> and (iii) how to submit the Refund Request Form. To receive a step-up refund, Step-Up Eligible Customers must submit the Refund Request Form. The Refund Request Form will be a simple form that can be completed and sent online ("Refund Request

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<sup>10</sup> For the avoidance of doubt, Over 30 Days Customers who received an automatic refund under paragraph 3.b in the amount of the estimated maximum amount of the step-up refund for which the customer would otherwise be eligible under paragraph 3.c shall not be entitled to receive a separate step-up refund.

<sup>11</sup> These estimates shall be provided to HFD by Lenders' Agent on or before the Effective Date.

Form”). The text of the Notice of Claim and the Refund Request Form shall be agreed upon by the Collecting Parties and the OAG.

- c. Step-Up Eligible Customers shall have 90 calendar days from the date of email delivery of the Notice of Claim (the “Claims Period”) to submit a Refund Request Form. 45 calendar days after the commencement of the Claims Period, HFD shall re-send the Notice of Claim with the hyperlinked Refund Request Form to the last known email address of any Step-Up Eligible Customer.
- d. Lenders’ Agent shall pay all costs of administration and implementation of the claims process provided for in this Agreement, and shall be ultimately responsible for all refunds, credits, and/or payments to be made pursuant to this Agreement.

5. Compensation Cap and Payment of Step-Up Refunds.

- a. The total amount of compensation provided pursuant to this Agreement by the Collecting Parties to the customers described in paragraphs 2 and 3 above, shall in no event exceed \$4,800,000 (the “Compensation Cap”).
- b. Within 20 business days of the expiration of the Claims Period, the Collecting Parties shall provide to the OAG a report of (i) the number of Step-Up Eligible Customers who submitted a Refund Request Form within the Claims Period (the “Step-Up Customers”); (ii) the amount of the step-up refunds for Step-Up Customers calculated under paragraphs 2.c and 3.c above, without regard to the Compensation Cap (in total, the “Step-Up Refund Amount”); and (iii) the amount of automatic refunds provided to Step-Up Eligible Customers under paragraphs 2.b and 3.b. above (the “Automatic Refund Amount,” and together with the “Step-Up Refund Amount”, the “Total Refund Amount”). If the OAG has a reasonable, good faith dispute about any of the above amounts, it shall notify the Collecting Parties no later than 20 business days after receiving the report, and shall set forth the basis for each such dispute. The Parties shall meet and confer in good faith to resolve any such dispute and agree on the appropriate amounts within the next 10 business days. To the extent that the OAG believes additional information is reasonably necessary to resolving such dispute, it agrees to request such information from the Collecting Parties in writing during this 30-day period. The Collecting Parties shall cooperate with the OAG in providing such information to the OAG in a timely manner.
- c. If the Total Refund Amount exceeds the Compensation Cap, the portion of the Step-Up Refund Amount allocated to each Step-Up Customer shall be reduced by an equal percentage across all Step-Up Customers such that the Total Refund Amount equals the Compensation Cap. Additionally, if the Total Refund Amount exceeds the Compensation Cap, the report provided to the OAG pursuant to paragraph 5.b above shall also include the revised amount of step-up refunds to be issued to each Step-Up Customer, after application of the Compensation Cap.

- d. Lenders' Agent shall direct HFD to apply step-up refunds to Step-Up Customers as provided for in paragraphs 2.c and 3.c above within 25 business days after submitting the report described in paragraph 5.b to the OAG. However, if the OAG disputes any of the calculations in such report as set forth in paragraph 5.b, the time period to apply any refunds to Step-Up Customers is extended to 10 business days after such disputes are resolved by the Parties.

6. Miscellaneous.

- a. The OAG has agreed to the terms of this Agreement based on representations made to the OAG by Lenders' Agent. Lenders' Agent relied on information and data provided by SDC to HFD in developing and negotiating this Agreement.<sup>12</sup> Each Collecting Party represents that: (i) it is not aware of any facts or information that would cause it to question the accuracy of the information provided by SDC; and (ii) it has not made and is not aware of any material representations to the OAG that it has reason to believe are inaccurate or misleading. If any material representation by a Collecting Party is later found to be knowingly or intentionally materially inaccurate or misleading, this Agreement is voidable by the OAG in its sole discretion.
- b. Acceptance of this Agreement by OAG is not an approval or endorsement by OAG of any Collecting Party's policies, practices or procedures, and no Collecting Party shall make any representation to the contrary.
- c. This Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.
- d. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
- e. Nothing contained in this Agreement shall be construed as depriving any person of any private right under the law, nor shall it prevent any of the Collecting Parties from asserting any defense or making any argument in any private individual or class action.
- f. This Agreement shall continue in full force and effect on any successor, assignee, or transferee of any of the Collecting Parties. Each Collecting Party shall include in any such successor, assignment, or transfer agreement, a provision that binds the successor, assignee, or transferee to the terms of the Agreement.

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<sup>12</sup> Specifically, the Collecting Parties represent that they relied on the December 8, 2023 data tape received from SDC, which included detailed information on 100% of the accounts receivable for order date, balance, and delinquency; and 92.3% of the accounts receivable for shipping date and treatment length. Lenders' Agent represents that it adjusted for the incomplete data and grossed up based on these percentages, and that the figures used throughout the Agreement are estimates of the accounts receivable balance to the extent of such gross-up.



Thank you for your cooperation in this matter. Please sign below to acknowledge your acceptance of the terms of this Agreement.

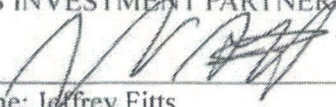
Very truly yours,

OFFICE OF THE NEW YORK STATE  
ATTORNEY GENERAL


By: Jane M. Azia  
Name: Jane Azia  
Title: Bureau Chief,  
Consumer Frauds and Protection Bureau

By signing below, each of the Collecting Parties agrees that it has read the above Letter Agreement and understands and agrees to its contents. The Parties to this Letter Agreement agree that a faxed, PDF or electronic signature shall count as the original.

HPS INVESTMENT PARTNERS, LLC as Lenders' Agent

By:   
Name: Jeffrey Fitts  
Title: Managing Director

HEALTHCARE FINANCE DIRECT, LLC

By: DocuSigned by:   
Name: Willie Shoffner  
Title: President

SDC U.S. SMILEPAY SPV

By: \_\_\_\_\_  
Name: Daniel Wang  
Title: Member of the Board of Trustees

Agreement Dated: November 26, 2024

By signing below, each of the Collecting Parties agrees that it has read the above Letter Agreement and understands and agrees to its contents. The Parties to this Letter Agreement agree that a faxed, PDF or electronic signature shall count as the original.

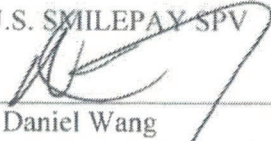
HPS INVESTMENT PARTNERS, LLC as Lenders' Agent

By: \_\_\_\_\_  
Name: Jeffrey Fitts  
Title: Managing Director

HEALTHCARE FINANCE DIRECT, LLC

By: <sup>DocuSigned by:</sup> Willie Shoffner  
Name: Willie Shoffner  
Title: President

SDC U.S. SMILEPAY SPV

By:   
Name: Daniel Wang  
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Agreement Dated: November 26, 2024