



GIFT CARDS TERMS AND CONDITIONS

These Gift Card Terms and Conditions (the “**Gift Card Terms**”) form part of the Agreement, if Customer elects to enable the purchase of Gift Cards (as defined herein) for its Authorized Users on the SaaS Products. These Gift Card Terms set forth the terms and conditions under which Terryberry will provide gift card services, including Reward Codes products, (collectively, “**Gift Cards**”) to Customer, each party’s responsibilities hereunder, and the fees related thereto. If there is a conflict between the terms of these Gift Card Terms and the Agreement, these Gift Card Terms shall govern with respect to the Gift Card products described herein. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

1. PRICING AND PAYMENT OF FEES.

- 1.1. **Prices and Included Goods.** The price charged for a Gift Card will be listed in the order confirmation email. Prices shown do not include taxes or charges for shipping and handling or processing. All applicable taxes and charges, including any applicable processing fees, will be added to merchandise total and will be itemized in Customer’s invoice.

2. THIRD PARTY GIFT CARD SERVICES.

- 2.1. **Provision of Third Party Gift Card Services.** Terryberry will use commercially reasonable efforts to provide the Third Party Gift Services. Notwithstanding the forgoing, Terryberry does not guarantee the availability of Third Party Gift Services in respect of any or all Third Party Gift Cards, either at the time of any given transaction request, or for any period or duration during the term of the Agreement.

- 2.2. **Customer Acknowledgement.** Customer acknowledges and agrees that:

- 2.2.1. Customer and its Authorized Users are solely responsible for ensuring that any and all information required by Terryberry to perform the Third Party Gift Services, including, without limitation, Third Party Gift Card Issuer user IDs, passwords, and other information (collectively “**Third Party Gift Card Information**”), is accurate and up-to-date.

- 2.2.2. Customer has all necessary rights, consents and permissions to provide the Third Party Gift Card Information to Terryberry for the purpose of providing the Third Party Gift Services, and Customer’s provision of the Third Party Gift Card Information and the Third Party Gift Card transactions will not contravene any agreement or obligation to any third party, nor any applicable law or regulation.

- 2.2.3. Customer and/or its Authorized Users are solely responsible for entering into and complying with any agreement or arrangement with a Third Party Gift Card Issuer for the use of Third Party Gift Cards, including any applicable fees in connection therewith. For clarity, and without limiting the foregoing, Terryberry will not, has no responsibility to Customer, its Authorized Users, or any other person for, the following:

- a. The settlement, receipt, delivery or processing of any funds or amounts with respect to a Third Party Gift Card transaction;
- b. Providing Customer or its Authorized Users with any information or reporting in respect of any Third Party Gift Card transactions, other than messaging from a Third Party Gift Card Issuer that is returned to the SaaS Product as part of the Third Party Gift Services;
- c. The accuracy or timeliness of any information returned to the SaaS Products, including, without limitation, any message indicating “approved” or “declined” or that indicates a balance amount;
- d. The determination or application of any applicable taxes in connection with a Third Party Gift Card transaction; or
- e. Providing technical support in respect of Third Party Gift Cards and transactions.

- 2.2.4. In the event Customer wishes to add, modify or remove the types of Third Party Gift Cards that Customer’s Authorized Users may elect to utilize, Customer shall follow all instruction that Terryberry provides and make available all applicable information that Terryberry informs Customer that Terryberry requires in respect of such addition, modification or removal.

- 2.2.5. Customer is solely responsible for identifying, monitoring and otherwise managing fraud related to Third Party Gift Card transactions and Terryberry disclaims any responsibility whatsoever with respect to fraud in respect of Third Party Gift Cards.

- 2.3. **Access and Use.** Access to the Third Party Gift Services are provided to Customer and its Authorized Users on an “as is” and “as available” basis. Terryberry does not provide any warranty with respect to and specifically disclaim any warranties and conditions with respect to the operation of the Third Party Gift Services or any particular application or use thereof, whether express, implied, statutory, or otherwise, including without limitation, the implied warranties and conditions of merchantability, fitness for a particular purpose, workmanlike service, and non-infringement and any warranties that may arise from a course of dealing, course of performance or trade practice. Terryberry does not warrant that the Third Party Gift Services will be uninterrupted or error-free. For greater certainty, Terryberry is entitled at any time, and without prior notice, to interrupt access to the Third Party Gift Services for any reason, including without limitation for security considerations or maintenance work.

2.4. Use of Third Party Gift Cards.

- 2.4.1. Customer and its Authorized Users’ use of the Third Party Gift Cards are solely between Customer, its Authorized Users, and the applicable Third Party Gift Card Issuer. Upon activation, the Third Party Gift Card will be governed by certain

terms and conditions established by the respective Third Party Gift Card Issuer. Depending on Applicable Law, Third Party Gift Card Issuers may set expiration dates for such Gift Cards, in addition to other restrictions and requirements that each individual Third Party Gift Card Issuer will have at their sole discretion, subject to Applicable Law. Customer and its Authorized Users should review all applicable Third Party Gift Card Issuer terms and conditions and related laws. If Customer or its Authorized Users have questions regarding the applicable Third Party Gift Card Issuer terms, Customer may contact the Third Party Gift Card Issuer directly.

2.4.2. Third Party Gift Card Issuers are fully responsible for all aspects of their Third Party Gift Card programs. Third Party Gift Card Issuers are also responsible for all liabilities, damages and costs suffered by Customer or its Authorized Users in connection with an election or purchase and the use of the Third Party Gift Card. Terryberry has no liability for (i) the sale of products or services using any Third Party Gift Card; and (ii) the failure of any company (whether it be the Third Party Gift Card Issuer or the merchant) to honor a Third Party Gift Card.

2.5. Liability.

2.5.1. No Indirect Damages. In addition to and notwithstanding anything else to the contrary in the Agreement, Terryberry will not be liable to Customer for any claims, losses, costs, exemplary, punitive, special, incidental, direct, indirect or consequential damages, lost profits, lost revenues, lost business opportunities, loss of goodwill or expenses caused by failure, termination, suspension, delay or disruption of the Third Party Gift Services, the Internet, or any communications network, facility or equipment related thereto.

2.5.2. Limitation on Liability. Without limiting the foregoing, Terryberry's total liability to Customer and/or its Authorized Users in respect of the Third Party Gift Services shall in no event exceed the limitation of liability set forth in the Agreement.

2.5.3. No Liability for Loss or Theft of Gift Cards.

a. In addition to the disclaimers, limits on liability and indemnification obligations applicable to Customer and its Authorized Users' set forth in the Agreement, Customer waives and releases Terryberry, its officers, directors, employees, agents, and assigns from any liabilities, damages and costs arising from or related to (i) Customer or its Authorized Users' loss or the theft of any Gift Cards; and (ii) any act or omission of a Third Party Gift Card Issuer in connection with a Third Party Gift Card it provides.

b. All risk of loss and title for Gift Cards will pass to Customer or its Authorized Users, as applicable, when upon completion of purchase of such Gift Cards. Terryberry is not responsible for any damage or loss resulting from stolen or lost Gift Cards or any use of the Gift Cards without Customer or its Authorized Users' permission. Terryberry is not responsible for replacing a damaged or lost Gift Card.

2.6. Indemnification. Customer agree to indemnify Terryberry and its respective affiliates, officers, directors, employees, agents, successors and permitted assigns from and against any and all claims, damages, losses, liabilities, costs, interest, expenses (including taxes), fines, penalties, assessments, fees (including reasonable legal fees, professional fees and related costs) which are directly or indirectly, or in any way or in any manner whatsoever, the result of, caused by, or arise from Customer's use of the Third Party Gift Services, including against all claims made against Terryberry by a holder of a Third Party Gift Card or a Third Party Gift Card Issuer that arise or are alleged to arise from any Third Party Gift Card transactions in which Customer or its Authorized Users are involved.

2.7. Compliance with Laws. The Third Party Gift Services are made available to Customer and its Authorized Users solely for lawful purposes and uses. Customer will comply with, and will ensure that Customer's Authorized Users comply with, all Applicable Laws.

3. DEFINITIONS

3.1. "Third Party Gift Card" means a stored-value gift or loyalty card which is issued by a Third Party Gift Card Issuer. For clarity, stored-value gift or loyalty cards that are provided to Customer by Terryberry are not Third Party Gift Cards.

3.2. "Third Party Gift Card Issuer" means a person or entity, other than Terryberry or its affiliates, that issues stored-value gift or loyalty cards.

3.3. "Third Party Gift Services" means Terryberry's SaaS Product that captures and transmits Third Party Gift Card transaction requests, including purchase, activation, and load requests, and returns a message issued by a Third Party Gift Card Issuer to the SaaS Product, including, without limitation, an "approved" message, and any other services in respect of Third Party Gift Cards that Terryberry makes available to Customer.