

CARDFREE MERCHANT PORTAL TERMS AND CONDITIONS

These Terms of Use (this “**Agreement**”), which constitute a legal agreement between you (“**You**” or “**you**” or “**Customer**”) and Cardfree, Inc., a Delaware corporation (“**Cardfree**”), shall govern Your use of and access to Cardfree hosted merchant portal or application and any software made available to you by or through such portal or application (collectively, the “**Portal**”). By checking any acceptance boxes, clicking any acceptance buttons, submitting any text or content or simply by making any use of any of the Portal, You (a) accept this Agreement and agree to be bound by each of its terms, and (b) represent and warrant to Cardfree that (i) You have the authority to enter into this Agreement, (ii) this Agreement is binding and enforceable against You, (iii) to the extent an individual is accepting this Agreement on behalf of an entity, such individual has the right and authority to agree to all of the terms set forth herein on behalf of such entity, and (iv) You have read and understand Cardfree's Privacy Policy, the terms of which are posted at the Cardfree's website and incorporated herein by reference (the “**Privacy Policy**”), and agree to abide by the Privacy Policy. To the extent You or the company on behalf of which You have accepted this Agreement have entered into a Mobile Platform Agreement, services agreement or any other agreement with Cardfree (collectively, the “**Separate Agreement**”), this Agreement shall be deemed to supplement, and not replace, the Separate Agreement. Cardfree may amend this Agreement from time to time, each of which amendments shall be deemed to be effective 2 days after posting the updated Agreement within the Portal. You should check the Portal or application and this Agreement regularly to ensure You remain current on the terms and agreements set forth herein. In addition, Cardfree is not responsible for any errors, mistakes, reversals or defects affecting or otherwise relating to payments made by you, your end-users or related to any third parties or third-party services included in the portal or application.

1. Portal. The Portal or application are intended to serve as a hosted tool enabling Customer to (a) access certain data, reports, or administrative tools regarding Customer's (and Customer's customers') use of one or more Cardfree services, features, programs, modules or platforms, and (b) creation of certain content, campaigns, offers and/or marketing materials. During the Term (as defined below), Customer subscribes for access to the Portal or the application. Cardfree may, from time to time, update or modify the Portal or application, release new versions of the Portal or application or create new modules, features or functionality related thereto, each of which will, to the extent Cardfree makes such versions, features or modules available to other similarly-situated subscribers or users, be included within Customer's subscription described above. Cardfree: (i) makes the Portal or application available to Customer on a revocable, non-transferable license basis solely for the purposes described herein; and (ii) will host, or engage one or more third parties to host, the Portal or application in accordance with Cardfree's customary practice.

2. Term. This Agreement shall continue in full force beginning on the first date on which Customer is provided with access to the Portal or application and ending on the date on which the Separate Agreement expires or is terminated (the “**Term**”). Notwithstanding the foregoing, (i) either party shall be entitled to terminate this Agreement immediately upon written notice to the other party in the event that the other party declares bankruptcy, and (ii) Cardfree shall be entitled to terminate this Agreement and/or suspend or terminate access to the Portal or application at any time if Customer breaches any term set forth herein or in the Separate Agreement or uses the Portal or application in any illegal, harmful or inappropriate manner, as determined by Cardfree in its sole discretion. In addition to any other rights or remedies of Cardfree, Cardfree may discontinue access to the Portal or application without any liability to Customer in the event any amount due and owing from Customer to Cardfree becomes past due. Sections 2 through 9 of this Agreement shall survive any termination of this Agreement.

3. Intellectual Property.

(a) All trademarks, patents, copyrights and other intellectual property rights owned by either party on the date hereof shall continue to be owned solely by such party, and except as set forth herein, nothing in this Agreement shall be deemed to confer any rights to any such intellectual property on the other party. For purposes of clarity, (i) Customer shall remain the sole owner over all of its trademarks and related intellectual property, and (ii) Cardfree shall remain the sole owner over all of its trademarks, the Portal and all related intellectual property. Each party hereby licenses use of its names and trademarks to the other party to the limited extent necessary for such party to carry out its responsibilities hereunder during the Term.

(b) Customer shall not directly or indirectly reverse engineer, attempt to derive the source code, copy or reproduce all or any portion of the Portal, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization. Customer shall use the Portal solely for its intended purposes and shall not use the Portal for the benefit of any third party except as specifically contemplated under this Agreement. Customer will not use the Portal: (a) in violation of any applicable law; (b) in a manner that will infringe the intellectual property rights of others; (c) in a manner that contains any viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any

system, data or personal information; or (d) in violation of the any acceptable use policy or other policy posted at Cardfree's website or otherwise made available to Customer from time to time. Customer shall be solely responsible for maintaining all passwords and access codes to the Portal or application, and refraining from sharing or otherwise permitting third parties to use any such passwords and/or access codes.

4. **Disclaimer.** Except as explicitly set forth herein, Cardfree does not, nor do any of Cardfree's employees, affiliates, agents, suppliers, licensors nor the like, make any warranties of any kind, either expressed or implied, including, without limitation, (a) warranties of merchantability or fitness for a particular purpose, (b) regarding Portal or application uptime, downtime or effectiveness, or (c) as to the results that may be obtained by Customer by entering into this Agreement and/or making any use of the Platform.

5. **Certain Responsibilities.** Customer is responsible for: (i) maintaining all of its user devices and providing its permitted users with equipment and Internet services sufficient to access and utilize the Portal or application; and (ii) ensuring that all content, campaigns and/or offers and/or anything created by Customer using the Portal or application are accurate and in full compliance with applicable laws, rules and/or regulations.

6. **Limitation on Liability.** CARDFREE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR DATA, ARISING OUT OF THIS AGREEMENT OR CUSTOMER'S USE OF THE PORTAL OR APPLICATION, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, THE AGGREGATE LIABILITY OF CARDFREE TO CUSTOMER FOR ANY CLAIM RELATING TO THIS AGREEMENT OR THE PORTAL SHALL NOT EXCEED THE FEES PAID TO CARDFREE BY CUSTOMER DURING THE 1-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM AROSE. CUSTOMER ACKNOWLEDGES THAT THE PORTAL OR APPLICATION MAY BE DOWN FROM TIME TO TIME FOR ROUTINE MAINTENANCE AND/OR OTHER REASONS. IN NO EVENT SHALL CARDFREE BE LIABLE FOR ANY PORTAL DOWNTIME, ERRORS WITHIN OR CAUSED BY THE PORTAL OR OTHER FAILURES IN PERFORMANCE OF THE PORTAL. IN ADDITION, CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ALL DATA, CAMPAIGNS, OFFERS OR OTHER INITIATIVES CREATED BY CUSTOMER WITHIN OR USING THE PORTAL, AND AS SUCH, CUSTOMER AGREES AND ACKNOWLEDGES THAT CARDFREE SHALL NOT BE LIABLE FOR ANY ERRORS, MISTAKES, INEFFECTIVENESS, ILLEGAL ACTIONS OR OTHER ISSUES THAT MAY ARISE IN CONNECTION WITH ANY SUCH SERVICES, CAMPAIGN, OFFER OR OTHER INITIATIVE.

7. **Force Majeure.** Cardfree shall not be liable to Customer for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies or power.

8. **Governing Law.** The rights and obligations of the parties under this Agreement shall be governed by the laws of the State of California, without reference to conflict of law principles. Any dispute or claim arising out of or in connection with this Agreement and/or the Portal shall be finally settled by the appropriate court located solely in San Francisco, California.

9. **Miscellaneous.** Each party shall pay its own costs and expenses in connection with this Agreement and its activities hereunder. Cardfree shall be entitled to subcontract various of its responsibilities hereunder to third parties. The relationship between the parties under this Agreement is that of independent contractors and neither shall be, nor represent itself to be, the joint venture, franchiser, franchisee, partner, agent or representative of the other party for any purpose whatsoever. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but shall not be assignable by either party other than to an entity acquiring substantially all of its assets, equity or business and assuming the obligations hereunder. If any provision of this Agreement is held to be unenforceable or invalid for any reason, or if any governmental agency rules that any portion of this Agreement is illegal or contrary to public policy, the remaining provisions, to the extent feasible, will continue in full force and effect with such unenforceable or invalid provision to be changed and interpreted to best accomplish its original intent and objectives.