

## Terms of Service

By accessing this website or by purchasing goods or services by means of this website, you (“Purchaser”) agree to be bound by the terms and conditions that follow. THESE TERMS AND CONDITIONS CONTAIN WARRANTY DISCLAIMERS AND THE PROVISIONS THAT LIMIT OUR LIABILITY TO YOU, THE PURCHASER. PLEASE READ THIS TERMS AND CONDITIONS IN THEIR ENTIRETY.

### I. Definitions

1. “Agreement” means this Terms of Service and all materials referred or linked to herein.
2. “Affiliate” means any entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with either party or any entity in which either party has any direct or indirect ownership interest, whether controlling or not, of at least 50%, at any time during the term of this Agreement.
3. “Award(s)” means those RCCs and/or PCAs, as applicable, pursuant to the order placed by Purchaser.
4. “Confidential Information” shall mean material or information proprietary to each party that a reasonable person would recognize as confidential, including the terms of this Agreement, or designated as Confidential Information by either party and not generally known by third-parties.
5. “Deliverable(s)” means any products or services produced, transmitted, or shipped to Purchaser from InComm under this Agreement.
6. “Digital Card(s)” are codes, PINs, virtual closed-loop gift cards or other similar mechanism issued by a merchant to be used in connection with a loyalty program and are redeemable at such merchant’s stores for goods and services.
7. “Gift Card(s)” means those Physical Cards, Digital Cards, Reward Cards and Virtual Cards, collectively.
8. “InComm” means InComm Incentives Ohio, Inc. and its Affiliates.
9. “Merchant” means the retailer issuing the Physical Card(s) or Digital Card(s).
10. “PCA” means Premiere Choice Award
11. “Physical Card(s)” are tangible, closed loop third party merchant gift cards, content cards, gaming download and subscription cards, and music download cards issued by a merchant to be used in connection with a Purchaser’s Program and are redeemable at such merchant’s stores for goods or services.
12. “Program” means a marketing campaign, promotion, incentive, loyalty, rewards program conducted by Purchaser from time to time whereby Purchaser offers Gift Cards or Awards to third parties.
13. “RCC” means Reward Choice Certificate
14. “Reward Card(s)” are tangible prepaid open-loop stored value cards that are to be used in connection with Purchaser’s Program.
15. “Virtual Card(s)” are digital prepaid open-loop stored value cards that are to be used in connection with Purchaser’s Program.

### II. Prepayment

Prepayment is required on all orders. Methods of payment are as follows:

1. ACH/Direct Deposit: We can receive your funds via electronic transfer, such as ACH or a wire transfer
2. Credit Card: We accept MasterCard®, Visa®, American Express®, Diners Club®, and Discover®

### III. Taxes

Purchaser shall pay to InComm all taxes (including sales, use and excise taxes) that are measured directly by the payments made by Purchaser to InComm under this Agreement and are required to be collected by InComm. If Purchaser should pay any tax to InComm and it is later held that the tax was not due, InComm will promptly refund the amount of the tax to Purchaser. If Purchaser qualifies for exemptions from any taxes on the Deliverables invoiced by InComm, InComm will grant such exemption only after receiving a properly executed exemption certificate from Purchaser.

## IV. Shipping/Delivery Terms

1. Award Orders. Orders for Awards are processed and shipped within three (3) business days, if the order and payment are received by 12 p.m. Central Time, Monday through Friday.
2. Gift Card Orders. Orders for Gift Cards are processed and shipped within five (5) business days, if the redemption request or order and payment are received by 12 p.m. Central Time, Monday through Friday.
3. Risk of Loss. Upon InComm's transmission of the order to Purchaser or its designated recipient(s), title to and risk of loss of each Award or Gift Card included in the order will pass to Customer. InComm will have no liability to Purchaser or to any third party for any loss, theft or misuse of any Awards or Gift Cards that InComm has transmitted to Purchaser (or its designated recipient(s)). Neither InComm nor any of its Affiliates has any obligation to monitor or investigate the use of any Awards or Gift Cards transmitted to Purchaser or Purchaser's designated recipient(s). Purchaser shall pay InComm for all Awards or Gift Cards ordered from InComm, notwithstanding any inability of Purchaser to collect payment from any of its customers. InComm reserves the right to reject any order or the fulfillment of any order or any part thereof, in the event InComm reasonably believes such order to (a) be fraudulent, unauthorized, incomplete or false, or subject to any other dishonest or illegal conduct, or (b) violate Applicable Law.
4. Additional Terms. Orders of 1,000 pieces or more will require additional processing time. Standard shipping for physical Awards, Physical Cards and Reward Cards is handled via Postal Service First Class mail. Priority shipping is available via express carrier or Two-Day for a nominal fee. Unless otherwise instructed, selection of the carrier and routing of all shipments shall be at InComm's discretion.

## V. Confidential Information

Each party shall protect the Confidential Information using a standard of care at least equal to which it applies to safeguard its own confidential internal information, and in no event less than a commercially reasonable standard of care. Each party shall use the Confidential Information solely for purposes of their respective performance under this Agreement and will disclose Confidential Information only to employees, directors and officers of its and its Affiliates' and each of their respective subcontractors, agents, representatives, attorneys, accountants, auditors, consultants and professional advisors (collectively, "Representatives") who need to know the Confidential Information to fulfill their respective obligations under this Agreement; provided that all such Representatives shall be bound by confidentiality obligations substantially similar to and no less restrictive than those undertaken by the Receiving Party herein. Each party shall notify the other party as soon as possible of any unauthorized disclosure, misuse or misappropriation of Confidential Information of which it becomes aware and will cooperate in remedying such situation promptly.

## VI. Indemnity

1. Mutual. Each party (an "Indemnifying Party") shall defend, indemnify and hold harmless the other party, its parent(s), subsidiaries and/or Affiliates, and its and their respective officers, employees, members, shareholders, and agents (collectively, an "Indemnified Party"), from and against any and all third party claims (including without limitation, any third party action, loss, damage, or liability arising under any federal, state or other statutes, regulations, ordinances, or common law) and expenses including, without limitation, reasonable attorneys' fees and costs (collectively "Third Party Claim(s)"), arising from or in connection with (a) any breach by the Indemnifying Party (or any person or entity acting on behalf of the Indemnifying Party) of this Agreement or a SOW, (b) the acts or omissions of the Indemnifying Party or any person or entity acting on behalf of the Indemnifying Party, and/or (c) an Indemnified Party's fraud, gross negligence or willful misconduct.

2. Conditions of Indemnification. The duty of an Indemnifying party to indemnify and defend an Indemnified Party shall be conditioned upon the Indemnified Party (a) notifying the Indemnifying Party of any actual or threatened Third Party Claim promptly, and (b) cooperating with the Indemnifying Party to defend such actual or threatened Third Party Claim. The defense of any Third Party shall be conducted by competent counsel employed by the Indemnifying Party and approved by the Indemnified Party (which approval will not be unreasonably withheld, conditioned or delayed). The Indemnified Party shall be entitled, at its own cost and expense (which



shall not constitute damages), to participate in such defense and to be represented by counsel of its own choosing. Neither an Indemnified Party nor an Indemnifying Party may settle or compromise any Third Party Claim without the consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed in light of all factors of reasonable importance to such party.

## VII. Representations and Warranties

Mutual. Each party represents and warrants that (i) it is duly organized and validly existing and has the legal power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) the person entering into this Agreement on behalf of such party is fully authorized to do so, and upon its execution by such person, this Agreement is valid and legally binding; (iii) services, products, materials, data, information and equipment used by the party in connection with this Agreement do not, and will not during the entire term of this Agreement, violate or operate in any manner that would violate any Applicable Law; (iv) it will perform its obligations under this Agreement in compliance with Applicable Law; (v) it shall be solely responsible for any and all its acts, errors, or omissions and the acts, errors, and omissions of its third party contractors (or any other person or entity acting on its behalf) utilized to satisfy its obligations associated with this Agreement; and (vi) it shall be solely responsible for any fraud occurring or originating on its technology network or systems.

## VIII. Publicity

Neither party will use the name(s), trademark(s) or trade name(s) of the other party or other party's Affiliates or partners without that party's prior written consent. To help fulfill its obligations under this Agreement, InComm engages with various merchants to act as a third-party producer and marketer of that merchant's gift cards ("Merchant Partner"). Any use of InComm's Merchant Partner names and information, including logos, for advertising purposes derived from, arising from or related to this Agreement must be pre-approved by InComm, in accordance with its Merchant Partner agreements. Purchaser's use of InComm's Merchant Partner names and information, including logos, for advertising purposes in violation of this Article 12 shall be a material breach of the Agreement, entitling InComm to exercise any and all remedies available to it under the Agreement at law or in equity.

## IX. IRIS Ordering Website Branding and Content

Purchaser will order the Awards and recipients will redeem the Awards by using InComm's proprietary web-based *Integrated Reward Incentive System* ("IRIS") platform. Purchaser authorizes InComm to accept and process orders from anyone using the information necessary to access Purchaser's account for orders including the username and password provided by Purchaser to InComm in connection with Purchaser's registration with InComm (collectively "Information"). Purchaser agrees to be fully liable for any Award order using the Purchaser's Information and any redemption of such Awards. InComm will have no obligation, liability or responsibility for verifying the identity of anyone using Purchaser's Information, nor will InComm have any obligation, liability or responsibility to Purchaser for any losses incurred by Purchaser as a result of the unauthorized use of Purchaser's Information. Purchaser has the responsibility for safeguarding its Information and shall not reveal its Information to anyone not intended to place orders on its behalf. If Purchaser suspects that an unauthorized user may have had access to its Information, Purchaser must immediately notify InComm.

## X. Merchant Choices and Approvals

1. Choices. The availability of any and all Gift Cards is subject to change upon InComm's sole and absolute discretion. The terms and conditions applicable to any and all Gift Cards is subject to change without notice by InComm, the Merchant, or the issuing bank, as applicable. All redemptions and/or distributions of Gift Cards hereunder are subject to the terms and conditions and policies and procedures as set forth from time to time by the Merchant or the issuing bank. All Gift Cards for which an Award may be redeemed are provided or otherwise made available by the relevant Merchant or issuing bank, and the provision thereof is subject to the prior approval and terms and conditions as set forth by such Merchant or issuing bank. For purposes of this Agreement, "Merchant" means the retailer issuing a Digital Card or Physical Card.

2. Approvals. Purchaser acknowledges that InComm is obligated under its contracts with its Merchant partners to obtain prior approval from the Merchant whenever Merchant names, marks, and/or logos ("Merchant Marks") are featured in Purchaser promotional pieces or websites. Purchaser agrees not to, and will ensure it will not, display or use any of the Merchant Marks and



shall not permit the same to be displayed or used by any authorized party acting on its behalf or other third parties without the Merchant's and/or InComm's prior approval as facilitated by InComm. All such Merchant Marks must be used in strict compliance with the owner's requirements. Purchaser may not and shall ensure that any party acting on its behalf does not, remove, alter or obscure any Merchant Marks. InComm shall seek such prior approval from the Merchant on behalf of Purchaser.

## XI. Prohibition on Resale

In addition to Purchaser's representations, warranties, and covenants set forth elsewhere in the Agreement, Purchaser further represents, warrants and covenants that: (i) all information provided to InComm by Purchaser in connection with the purchase of the Awards is true and accurate in all respects; (ii) it shall not re-sell, nor permit the re-sale of, any of the Awards or Gift Cards; and (iii) it shall only distribute or request InComm to distribute on Purchaser's behalf, the Awards purchased hereunder for loyalty, award or promotional purposes and shall only distribute or request InComm to distribute on Purchaser's behalf the Awards to members and/or employees of Purchaser's reward and incentive program(s) in the United States, and (iv) to the extent that Purchaser handles consumer data, Purchaser will comply with all applicable consumer privacy laws, data security laws and obligations, and any rules or regulations related to the safeguarding of consumer information. For the sake of clarity, Purchaser is prohibited from redeeming the Awards for its own use or consumption.

## XII. Customer Service for Award Recipients

InComm's customer service representatives will be available by telephone and email to assist with questions from Award recipients regarding Award redemptions. This service does *not* include assistance for Purchaser participant events such as, but not limited to, email campaigns. The customer service hours, applicable telephone numbers and email contact information are as follows:

1. InComm's customer service representatives will be available by telephone and email Monday through Friday between the hours of 9:00 am and 6:00 pm EST to assist with questions from Award recipients regarding Award redemptions.
2. 866-601-5921 or [questions\\_MN@engage.incommcentives.com](mailto:questions_MN@engage.incommcentives.com)

## XIII. Physical Card Replacement Process

InComm is not accountable for lost mail but can assist Award recipients with Physical Cards not received using InComm's Replacement Physical Card Request process as follows: After thirty (30) days from shipping date, but prior to one hundred twenty (120) days from ship date, a recipient can request a replacement Physical Card. The recipient must contact InComm customer service to initiate the request and receive a form ("Replacement Request Form"). The Replacement Request Form requires an alternative shipping address plus signatures from the recipient and a Client representative. A replacement Physical Card will be issued provided (i) InComm has received a completed Replacement Request Form, and (ii) the initial gift card/certificate has not been fully or partially redeemed. For the avoidance of doubt, InComm does not replace lost or stolen Physical Cards (only Physical Cards not initially received by recipient). For the sake of clarity, in case of loss of any Physical Cards ordered directly through the website (not those provided through the Award redemption process), those Physical Cards cannot be replaced by InComm and will need to be reordered by the Purchaser.

## XIV. General Provisions

1. Gift Card/Gift Certificate Usage. Except as may be otherwise stated under a separate written agreement with InComm, Purchaser agrees that purchases of gift cards or gift certificates by Purchaser are made solely for distribution to third parties in connection with reward, loyalty or promotion programs and shall not be re-sold. Purchaser acknowledges that Purchaser has not purchased and will not purchase any gift cards or gift certificates for Purchaser's own redemption. Once a gift card or gift certificate is transferred to a third-party recipient by Purchaser, the gift card or gift certificate is the property of the third-party recipient.

2. Reports. Certain online reports, as applicable to the product or service purchased by Purchaser, will be available to Purchaser on IRIS™ and can be accessed at Purchaser's convenience. For the sake of clarity, in compliance with InComm's privacy policy, redemption reports for PCAs will not be available to Purchaser.



3. Severability. If any provision contained in this Agreement is held invalid, illegal, or unenforceable, then this Agreement will be construed as if such provision had never been contained herein. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

4. Applicable Law. For the purposes of this Agreement, "Applicable Law" means any and all applicable state or federal laws, rules or regulations in effect during the Term of this Agreement, as may be enacted or amended from time to time.

5. Exclusion of Certain Damages/Limitation of Liability. IN NO EVENT WILL INCOMM BE LIABLE OR RESPONSIBLE TO PURCHASER FOR ANY TYPE OF INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS OR LOSS OF GOODWILL; REPLACEMENT GOODS; LOSS OF TECHNOLOGY, RIGHTS OR SERVICES; LOSS OF DATA; OR INTERRUPTION OR LOSS OF USE OF SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, WHETHER ARISING UNDER ANY THEORY OF CONTRACT, REGARDLESS OF THE CLAIM OR CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE. EXCEPT AS RESPECTING BODILY INJURY, PERSONAL INJURY AND DAMAGE TO TANGIBLE PERSONAL PROPERTY CAUSED BY INCOMM IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, PURCHASER AGREES THAT INCOMM'S LIABILITY HEREUNDER FROM DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE FEES AND CHARGES (EXCLUDING THE FACE VALUE OF GIFT CARDS, POSTAGE AND SHIPPING FEES) PAID BY PURCHASER TO INCOMM DURING THE PRECEDING TWELVE (12) MONTH PERIOD UNDER THE APPLICABLE SOW TO WHICH THE LIABILITY RELATES.

6. Subcontractors. Purchaser and InComm agree that any reference to InComm in this Agreement (including any exhibits hereto) may include InComm's Affiliates or subcontractors. Deliverables provided to Purchaser hereunder may be provided by InComm, its Affiliates, or its subcontractors at InComm's discretion. All terms and conditions of the Agreement (including any applicable exhibits, schedules, and SOWs hereto) will apply as equally to InComm's Affiliates and subcontractors as to InComm.

7. Non-Assignment. Customer may not assign or subcontract its duties or responsibilities under this Agreement or any Schedule or exhibit hereto without the prior written approval of InComm.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of New York.