



July 3, 2016 - Version 1.1.0

Rewardster® Application Contract

THE SERVICES OF Rewardster® ARE PROVIDED SUBJECT TO THIS CONTRACT. THIS CONTRACT BECOMES BINDING WHEN CLIENT SIGNS THIS CONTRACT OR CLIENT STARTS USING Rewardster®'S SERVICES AFTER RECEIVING A COPY OF THIS CONTRACT. YOU, IF YOU ARE ACTING ON YOUR OWN BEHALF, OR THE COMPANY YOU REPRESENT, ARE REFERRED TO AS "CLIENT".

CLIENT'S ACCEPTANCE OF THIS CONTRACT INCLUDES ACCEPTANCE OF THE TERMS OF SERVICE AND PRIVACY POLICY, BOTH AVAILABLE AT Rewardster®.COM.

THIS CONTRACT CREATES BINDING LEGAL OBLIGATIONS. IF CLIENT DOES NOT AGREE TO BE BOUND BY THIS CONTRACT, THE TERMS OF SERVICE AND THE PRIVACY POLICY, CLIENT SHOULD NOT SIGN UP FOR Rewardster® SERVICES. IF CLIENT DOES NOT ACCEPT THIS CONTRACT CLIENT WILL NOT BE ELIGIBLE TO USE Rewardster®'S SERVICES.

Marketing Marvel, Inc (doing business as and herein referred to as "Rewardster®") offers the services described in Section 1 (the "Services") to businesses. Client wishes to use the Services for Client's business purposes, and Rewardster® agrees to provide the Services to Client, pursuant to the terms of this contract.

1. Description of Services

The Services allow Client to send various types of messages, promotional offers,



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coupons, surveys, ratings, reviews and other information (collectively, “Material”) to Client's customers through various social media platforms, which may include Facebook¹, Twitter¹, email, SMS text-messaging, mobile notifications and potentially other social media platforms. Rewardster® Services also allow Client to use the loyalty program offered by Rewardster® and Rewardster®'s Tablet (as defined in Section 2.4) to offer benefits to customers. Such as awards or incentives based on points awarded for visits, purchases, social media interaction or other incentivized behavior (the “Loyalty Program”).

2 Responsibilities of Rewardster®

2.1 Emails and Mobile Notifications (Messages). Client will be able to send emails and mobile notifications to consenting customers for consideration of Payment Fees (see section 4.2), limited to 1,000 total messages per month. Additional Messages will be billed at \$0.05 per message.

2.2 Program Sites. Rewardster® will connect its online tools (“Command Center”) to Client's existing social networking accounts for which Rewardster® offers Services and in which Client has elected to participate (collectively, “Program Sites”).

2.3 Online Tools and Analytics. Rewardster® will provide Client with access to certain features of Command Center that will provide Client the capabilities described below.

2.3.1 Tracking of Offers and Loyalty Programs. Using Command Center, Client may track customer responses to offers and promotions (“Deal Redemptions”), track customer activity related to Client’s Loyalty Program, track the purchasing habits of Loyalty Program customers and perform other analytical functions.

2.3.2 Social Media Tracking. Through Command Center Client can manage communications with customers, such as: (i) posting Material, (ii) responding to



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¹ Facebook and Twitter are registered trademarks



messages through certain social media, (iii) distributing promotions and tracking Deal Redemptions, (iv) identifying certain categories of users (e.g., “fans,” “friends”), and (v) using other tools or solutions that may be included in the Services from time to time.

2.4 Loan of Tablets and Routers. Rewardster® will loan Client one or more tablet-type devices (each, a “Tablet”) and, if requested by Client, a router or other device to connect the Tablet(s) to the Internet (“Router”), subject to the provisions of Sections 3.6 and 4.3. Rewardster® will provide Client with a supply of loyalty cards bearing Rewardster®’s logo (“Rewardster® Loyalty Card”). Customers may sign up to participate in Client’s Loyalty Program on the Tablet, and thereafter may register their purchases from or visits to Client by using the Rewardster® Loyalty Card or, if enabled by the customer on certain types of devices, via a smartphone.

3 Responsibilities of Client

3.1 Material. Client will be responsible for creating and sending Material to customers who have elected to receive such Material, some of which may be special offers, coupons or promotions (“Deal Offers”). Client will fulfill Deal Offers accepted by customers, whether or not such customers have signed up to receive Material or Deal Offers from Client.

3.2 Loyalty Programs. Client will be responsible for its Loyalty Program offered through Rewardster®, including designing the program, describing it to Rewardster® users, administering the program and fulfilling its terms.

3.3 Connectivity; Use of Command Center. Client will be responsible for maintaining internet connectivity for access to Command Center and for all information it enters into Command Center. Client will also be responsible for training and



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supervising Client's employees and others acting on Client's behalf in the use of the Services, for the use of the Tablet(s) and/or Router loaned to Client, and for using the Services and any loaned devices in accordance with Rewardster®'s policies and instructions. Client will be responsible for checking Command Center frequently and for the setup of information entered or provided by Client.

3.4 *Payment.* Client will pay Rewardster® for the Services monthly, as further described in Section 4, pursuant to the automatic payment authorization agreed to by Client.

3.5 *Promoting Services to Customers.* Client will encourage its customers to sign up for and use Rewardster®'s Services, use the loyalty card and/or QR Code provided by Rewardster®; and agree to have Client's Material sent to them via mobile notifications, email, Facebook, Twitter and other Program Sites. Client will also encourage its customers to use Rewardster® applications on mobile devices or social media platforms ("Rewardster® Apps") to participate in the services offered there by Client and Rewardster®.

3.6 *Tablets and Routers.* Client understands that the Tablet(s) and/or Router provided by Rewardster® are on loan to Client for the term of this contract, that Rewardster® will continue to be the owner of such loaned devices, and that Client has the obligation to return the loaned devices to Rewardster® upon termination of this contract. Specifically, without limiting the foregoing, Client agrees as follows:

3.6.1 Client agrees to provide a deposit for all hardware provided by Rewardster®. Total deposit will be based on market rates at the time of execution of this contract.

3.6.1.1 *Title; Labeling.* Client agrees that the title to and all ownership rights in the Tablet(s) and the Router are retained by Rewardster®. Client will not remove, alter,



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efface, cover or otherwise alter any markings, stickers or other indicia applied to the Tablet(s) and/or Router by or on behalf of Rewardster®.

3.6.1.2 Exclusive Use. Client will use the Tablet(s) and/or Router exclusively in conjunction with the Services, and for no other purpose. Client will use such devices in accordance with normal usage, and will not alter, or seek to alter, any such device. Client will be responsible for the security of such devices and for maintaining them in good and operable condition.

3.6.1.3 Return of Devices; Replacement Fee Client will, within 15 days after termination of this contract for any reason, return the devices Rewardster® has loaned to Client (i.e., the Tablet(s) and/or Router) in good and operable condition, subject only to ordinary wear and tear. In the event that Client does not return such devices to Rewardster® within 15 days after termination of this contract, Rewardster® may charge Client a replacement fee, as set forth below, which may be debited to Client's credit card, as described in Section 4.6. Upon receipt by Rewardster® of such replacement fee, title to the Tablet(s) and/or Router shall vest in Client, and Client's obligations set forth in Sections 3.6.1 – 3.6.3 shall terminate.

The replacement fees as of the Effective Date of this contract are:

iPad Mini Tablet - \$269.00

Heckler iPad Mini Stand - \$89.00

Kengstington Clicksafe lock - \$35.00

3.6.1.4

If Client asks Rewardster® to loan one or more additional Tablets after execution of this contract, the replacement fee may differ from the foregoing, and will be disclosed to Client prior to delivery of the additional Tablets to Client.

4 Fees



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4.1 *Subscription and Activity Fees.* Client will pay Rewardster®:

4.1.1 Rewardster®'s monthly subscription fee. Client will be notified of the then-current subscription fee in conjunction with Client's execution of this contract.

4.1.2 Promotional Offer Redemption Rate. Rewardster® does not presently charge additionally for promotional offers emails and/or text messages ("Qpons"), however reserves the right to do so at a future date with 30 days written notice to Client. Notice to be provided in the form of an email or letter, Rewardster®'s choice.

There is no additional charge for the Services, including the following, all of which are included in the monthly subscription fee:

4.1.2.1 Material sent via mobile notifications, email, Facebook, Twitter or other social media platform, with the exception of 2.1 above. Rewardster® reserves the right to charge additionally for Materials in excess of 1,000 total (combined) at a future date, with 30 days notice via email or letter, Rewardster®'s choice.

4.1.2.2 Tablet Check-ins

4.1.2.3 Redemptions of accrued points (i.e., redemptions pursuant to Client's Loyalty Program)

4.1.2.4 Rewardster® Loyalty Cards

4.2 *Payment of Fees*



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4.2.1 **Subscription Fees.** Monthly subscription fees are payable in advance, via the payment method authorized by Client. Each monthly debit for subscription fees will be made in advance, on or after the first day of the month. If the Effective Date of this contract is other than the first business day of any month, the subscription fees for the first partial month shall be prorated and charged the following month, together with the regularly scheduled monthly fees for such following month. If Rewardster® offers one or more months of service free as an introductory promotion, the subscription fee for the initial partial month shall be charged along with the subscription fee for the first month commencing after the promotional period

4.2.2 **Activity Fees.** Activity fees for any transaction fees including Deal Redemptions, as described in Section 4.1, will be payable in arrears via the payment method authorized by Client. Each such debit will be made on or after the first business day of the month following the month in which the fees were incurred.

4.3 **Fee and Price Changes.** Rewardster® may change its subscription fees and/or the fees it charges for any Services by providing Client notice of such change at least 30 days before the change becomes effective. If Client does not agree to any such change in fees, Client may terminate this contract (and Client's use of the Services) by notifying Rewardster® of termination prior to the effective date of the fee change. This contract and Client's use of the Services shall thereupon be terminated as of the effective date of the fee change. Client's failure to terminate this contract prior to the effective date of the fee change shall constitute Client's acceptance of the change in fees.

4.4 **Notices of Charges.** The amount to be debited to Client's account for the Services shall be adjusted pursuant to any fee change accepted (or deemed accepted) by Client, starting on the effective date of the fee change. Client may view its amounts payable to Rewardster® on Command Center, and Rewardster® will notify Client of charges to its account.



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4.5 *Obligation of Client for Fees.* Client agrees not to terminate its authorization for debits to Client's account until all fees and charges payable under this contract have been paid in full. All fees and charges payable hereunder shall remain enforceable obligations of Client regardless of whether Client terminates its debit authorization prior to collection in full by Rewardster®, an authorized credit card debit fails or is rejected, or Client challenges or seeks to reverse any charge authorized under this contract.

4.6 *Credit Card Authorization.* By providing its credit card information to Rewardster®, Client agrees that Rewardster® is authorized to charge Client's credit card for all fees payable under this contract, as described in Section 3.6.3 and Sections 4.1-4.6. Service may be interrupted on accounts that reach 10 days past due. Accounts that are not collectable by Rewardster® may be turned over to an outside collection agency for collection.

5 Proprietary Rights

5.1 *Client's Proprietary Rights,* Rewardster® may use certain trademarks and copyrighted material of Client on the Program Sites and on Rewardster® Apps or Rewardster® websites. Client consents to all such usage by Rewardster®. Client retains all rights in and to its trademarks and copyrights.

5.2 *Rewardster®'s Proprietary Rights.* Rewardster® has developed proprietary software and systems through which it delivers the Services, including but not limited to Command Center and Rewardster®'s internal tools (collectively, the "Rewardster® Software"). Rewardster® grants Client a license to access Command Center via the internet during the term of this contract, but only for the internal use of Client and subject to the other terms and conditions of this contract. Rewardster® has developed trademarks and copyrighted material that it may use on the Tablet interface, the Rewardster® Loyalty Cards, the Program Sites,



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Command Center or otherwise use on behalf of Client or make available for use by Client. All trademarks and materials used by Rewardster® in the Services (other than those owned by Client); the Rewardster® Software; and all other software, technology and systems used by Rewardster® are owned by Rewardster®.

6 Representations, Warranties and Covenants of Rewardster®

Rewardster® represents and warrants to Client that Rewardster® will provide the Services in compliance with (i) all applicable laws and regulations, (ii) Rewardster®'s published policies relating to the Services; and (iii) the [Terms of Service](#) and [Privacy Policy](#).

7 Representations, Warranties and Covenants of Client

Client represents, warrants and covenants to Rewardster® as follows:

7.1 *Noninfringement.* Client has all rights to all materials delivered by Client for use (or approved by Client for use) in conjunction with the Services, including for use on Program Sites, Rewardster® Apps, Command Center or Rewardster® websites, and to all materials used in the Material, Deal Offers and Client's Loyalty Program, without infringing the rights of Rewardster® or any third party.

7.2 *Compliance with Law and Policy.* Client will use the Services only for Client's business purposes, will comply with all applicable laws and regulations, and with the terms of its published policies and programs, with respect to any of its operations that relate to the Services. Client will also comply with the [Terms of Service](#) and [Privacy Policy](#) and with policies of Rewardster®.

7.3 *No Unauthorized Alteration of Program Sites.* Client will not, during the term of this contract, make any changes to its Facebook page, Twitter account or any other



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Program Site that relates in any way to the Services, including without limitation the registration form, the [Terms of Service](#) and [Privacy Policy](#) provided by Rewardster®, without the prior written consent of Rewardster®.

7.4 *7.4. Material and Deal Offers.* Client will be wholly responsible for the creation and dissemination of Material and for the fulfillment of all accepted Deal Offers. All such Material and Deal Offers, and fulfillment of all Deal Offers, shall be in compliance with (i) all applicable laws and regulations, (ii) the terms of this contract, and (iii) the terms of such Deal Offers.

7.5 *Loyalty Programs.* Client will be wholly responsible for the design and description of its Loyalty Program and for fulfillment in accordance with the terms of such Loyalty Program. Any such Loyalty Program and related fulfillment shall be in compliance with (i) all applicable laws and regulations, (ii) the terms of this contract, and (iii) the terms of such Loyalty Program.

7.6 *No Infringing or Inappropriate Content.* Client will not disseminate, whether on its premises, on any Program Site, via any Material or Deal Offer, in any Chat Facility (as defined in Section 12.8) or otherwise, any content that Client does not have the right to use, or any content that is unlawful, vulgar, profane, disparaging or, in the sole judgment of Rewardster®, otherwise objectionable ("Inappropriate Content").

7.7 *No Interference.* Client will not upload, post, e-mail or otherwise transmit any material that contains a virus or other mechanism designed to interrupt, destroy or limit the functionality of the Rewardster® Software, any of the Services, or any software or system of a third party. Client will not interfere with the provision or use of the Services by Rewardster®, by any client of Rewardster® or by any end user, nor will Client interfere with any other technology or services offered by Rewardster®. Except as authorized by Rewardster®, Client will not seek to download, obtain the code for or in



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any other way seek to access the Rewardster® Software or any other software or technology of Rewardster®.

7.8 *No Unauthorized Use of Third Party Information or Customer Information.* Client will not download or make any copy (whether in hard copy or electronic) of any customer information collected by Rewardster® or through Rewardster®'s technology or the Services, and will use information relating to its customers only as permitted in Section 12.6. Client will use all customer information accessible to Client through the Services only during the term of this contract, and only for Client's internal business purposes, in accordance with Rewardster®'s **Privacy Policy** and in accordance with applicable laws and regulations. Client will not provide any customer information obtained through the Services to any third party. Client will not obtain or seek to obtain access to any nonpublic information of Rewardster®, any other Rewardster® customer or other third party, or customer information maintained on behalf of another Rewardster® client.

7.9 *Use of Tablet(s) and Router.* Client will use the Tablet(s) and/or Router loaned by Rewardster® in accordance with the terms of Sections 3.6 and 4.3.

8 Disclaimers; Limitations of Liability; Release and Waiver

8.1 *Third Party Services.* Client understands and agrees (i) that Rewardster® offers Services through the internet and through third parties, including but not limited to internet service providers, SMS gateways, Facebook, Twitter and possibly other social networking or other third party sites or services (collectively, "Third Party Services"), and (ii) that the Tablet(s) and/or Router loaned to Client by Rewardster® are manufactured by a third party ("Third Party Devices"). Client agrees that Rewardster® is not responsible for the performance of the internet, any Third Party Services or any Third Party Devices, for the reliability, security, availability, compliance with law or any



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other aspect of the internet, Third Party Services or Third Party Devices. CLIENT HEREBY RELEASES Rewardster® FROM ANY DAMAGES CLIENT OR ITS CUSTOMERS MAY INCUR AS A RESULT OF USE OF THE INTERNET; Command Center, Rewardster®'S WEBSITE, TOOLS, TECHNOLOGY OR SERVICES; OR THIRD PARTY SERVICES OR THIRD PARTY DEVICES. CLIENT AGREES NOT TO ASSERT ANY CLAIMS AGAINST SPOT ON, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES (COLLECTIVELY, "ASSOCIATED PERSONS") ARISING IN ANY WAY FROM USE OF THE INTERNET, THIRD PARTY SERVICES OR THIRD PARTY DEVICES. In connection with the foregoing release, Client hereby waives California Civil Code Section 1542, and any similar provision in any other jurisdiction. California Civil Code Section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

8.2 *No Assurance of Availability of Services.* Client understands and agrees that the Services and Third Party Devices may be unavailable from time to time for maintenance or other reasons, and that Rewardster® is not responsible for any error, omission or interruption in Services or in the performance of Third Party Devices; defect or delay in operation or transmission; communications failure; deletion, theft, destruction or unauthorized access to or alteration of any content that Client sends or attempts to send through use of the Services or Third Party Devices; or any technical malfunction or other difficulty Client may experience in the use of the Services or Third Party Devices.

8.3 *Disclaimer of Representations and Warranties.* The representations, warranties and covenants set forth in Section 6 are the only representations, warranties or covenants made by Rewardster®. Rewardster® HEREBY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. THE



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SERVICES AND THIRD PARTY DEVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. THE FOREGOING DISCLAIMER INCLUDES, WITHOUT LIMITATION, A DISCLAIMER OF ANY REPRESENTATION, WARRANTY OR COVENANT THAT THE SERVICES, THIRD PARTY DEVICES, Command Center OR Rewardster®’S WEBSITE WILL BE UNINTERRUPTED, RELIABLE, SECURE OR ERROR FREE; THAT Command Center OR SUCH SERVICES, THIRD PARTY DEVICES OR WEBSITE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR THAT Command Center, THE SERVICES OR THIRD PARTY DEVICES WILL MEET CLIENT’S EXPECTATIONS.

8.4 *Limitation of Liability.* Under no circumstances will Rewardster® or any Associated Person (as defined in Section 8.1) be liable for damages of any kind, under any legal theory arising out of or in connection with Client’s use of, or inability to use, the Services, Command Center or Third Party Devices, or from Rewardster®’s suspension of or termination of the Services, or from Client’s participation in the Services, including any direct, indirect, incidental, special or consequential damages (including but not limited to damages for loss of profits, use, data or other intangibles), even if Rewardster® or any Associated Person has been advised of or is aware of the possibility of such damages. Some jurisdictions do not allow the limitation or exclusion of incidental, consequential or other types of damages, so some of the foregoing limitations may not apply to Client. Without limiting the terms of Section 8.3 and this Section 8.4 in any way, Rewardster®’s liability for damages shall be limited to the return of the monthly subscription fees paid by Client for the month(s) in which the events giving rise to such damages occurred.

8.5 *Basis of the Bargain.* Client agrees that without the limitations of liability, exclusions of damages, releases and waivers contained in this contract it would not be feasible for Rewardster® to offer the Services or the Third Party Devices at the rates offered by Rewardster®, that such limitations of liability, exclusions of damages, releases and waivers are fundamental elements of the basis of the bargain between



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Client and Rewardster® pursuant to which the Services and Third Party Devices are offered, and that the Services and Third Party Devices would not be made available to Client if Client did not agree to such limitations, exclusions, releases and waivers.

9 Indemnification

Client hereby agrees to indemnify Rewardster® and its Associated Persons, and to hold them harmless from and against, any and all losses, damages, costs or expenses, including reasonable attorneys' fees, arising out of any claim by a third party resulting from the operation of Client's business (including but not limited to goods and services sold or provided by Client) or from an actual or alleged breach of or failure to comply with any of Client's obligations, representations, warranties or covenants set forth in this contract, including but not limited to those in Section 7.

10 Rejection or Suspension of Client's Participation; Consequences of Termination or Suspension

10.1 *Rejection by Rewardster®.* Rewardster® may refuse to enter into a contract to provide Services to Client for any reason, in Rewardster®'s sole discretion, without providing any explanation for such refusal.

10.2 *Suspension of Services.* If Rewardster® accepts this contract and thereby accepts Client as a client, in addition to its termination rights in Section 11, Rewardster® may suspend Client's access to the Services if Client violates any of the terms of this contract or any policy or procedure applicable to the use of the Services that may be published by Rewardster® from time to time.

10.3 *Consequences of Suspension or Termination.* Upon suspension of Client's right to use the Services or termination of this contract, Rewardster® will remove Client's access privileges to communications services offered by Rewardster® and Client's



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access to Command Center, including but not limited to the tools that allow Client to track its Loyalty Program and outstanding Deal Offers, and will remove and/or delete all material relating to Client that was uploaded by Rewardster® to the Program Sites. Client shall be responsible for the prompt return of, or purchase of, the Tablet(s) and/or Router loaned to Client by Rewardster®, pursuant to Section 3.6.3.

10.4 *Right to Review Material and Deal Offers.* Rewardster® reserves the right to review all Material and Deal Offers, including but not limited to those posted through Facebook, Twitter or other Program Sites, but Rewardster® has no obligation to review any Material or Deal Offers. If Rewardster® believes, in its sole judgment, that any Material or Deal Offer contains any Inappropriate Content (as defined in Section 7.6) or that any Deal Offer will not be fulfilled by Client in accordance with the terms of such Deal Offer, Rewardster® may refuse to post the Material or Deal Offer or may prevent its posting or delivery. However, Client shall remain wholly responsible for its Material and Deal Offers. Whether or not Rewardster® reviews any Material or Deal Offers or does or does not refuse to post any Material or Deal Offers it may have reviewed, Rewardster® assumes no responsibility for any Material or Deal Offer, and Client shall remain wholly responsible for the contents of its Material and Deal Offers and for fulfillment of accepted Deal Offers.

11 Term and Termination

11.1 *Initial and Renewal Terms.* This contract commences on the Effective Date, as described in Section 14.2. The initial term of this contract ends on (i) the last day of the calendar month following the month in which the Effective Date occurs or (ii) if Rewardster® offers a free introductory promotional period, the last day of the first full calendar month in which Client is charged a subscription fee. THIS CONTRACT SHALL AUTOMATICALLY RENEW FOR CONSECUTIVE MONTHLY RENEWAL TERMS UNLESS EITHER PARTY GIVES THE OTHER WRITTEN NOTICE OF TERMINATION AS DESCRIBED BELOW. IF A NOTICE OF TERMINATION IS



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DELIVERED ON OR PRIOR TO THE FIFTEENTH DAY OF ANY MONTH, THIS CONTRACT WILL TERMINATE ON THE LAST DAY OF SUCH MONTH; IF A NOTICE OF TERMINATION IS DELIVERED AFTER THE FIFTEENTH DAY OF ANY MONTH, THIS CONTRACT WILL TERMINATE ON THE LAST DAY OF THE FOLLOWING CALENDAR MONTH.

11.2 *Early Termination by Client.* This contract can be terminated by Client by delivery of written notice to Rewardster® (i) pursuant to Section 4.3 or (ii) if Rewardster® materially breaches this contract and does not correct such breach within thirty (30) business days after receipt of written notice of the breach from Client.

11.3 *Early Termination by Rewardster®.* This contract may be terminated by Rewardster® at any time in Rewardster®'s sole discretion, without providing any explanation for such termination and without any liability or obligation to Client.

11.4 *Effect of Termination.* In the event of early termination of this contract by either party for any reason, Rewardster® will take the actions described in Section 10.3 and Client shall be responsible for return of the Tablet(s) and/or Router, as described in Section 3.6.3.

11.5 *Survival.* Client's payment obligations under the following sections of this contract shall survive termination of this contract for any reason: Sections 3.6.3, 4 through 9, this Section 11.5 and Section 12. In addition, Client shall continue to honor all Deal Offers made and Loyalty Program benefits accumulated during the term of this contract.

12 General Provisions



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12.1 *Notices.* All notices, demands, requests or other communications that may be or are required to be given, served or sent by any party to any other party pursuant to this contract shall be in writing and shall be sent by courier service or mailed by registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile or email, addressed to the other party as set forth in Section 15.

12.1.1 *Changes.* Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent, or additional persons or addresses for notice.

12.1.2 *Delivery.* Each notice, demand, request or communication sent in the manner described above shall be deemed received at the time shown on the delivery receipt if delivered by courier service; three days after being mailed if sent by registered or certified mail, return receipt requested; at the time shown on the sender's confirmation of sending notice (if sent by facsimile); or at the time sent by email; provided that any notice of breach or termination, or any demand for indemnification, that is sent via facsimile or email must also be sent promptly by courier service or registered or certified mail, as described in Section 12.1.

12.2 *Effectiveness of Email Communications.* Any notice or contract called for by this contract to be in writing, other than notices of breach or termination, or demands for indemnification, shall be effective if sent by email from an address at the sending party's domain to an individual designated by the other party for receipt of such notices, at the email address provided by the other party, and need not be sent by any other method.

12.3 *Severability.* If any term, provision, covenant or restriction of this contract is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this contract shall remain in full force and effect to the maximum extent



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permitted by law and shall in no way be affected, impaired or invalidated.

12.4 *Relationship between the Parties.* The parties agree that each of them is an independent contractor with respect to the other. Neither party is an express or implied agent of the other, has authority to assume or create any obligation, express or implied, on behalf of the other party, or has authority to represent the other party as agent, employee, or in any other capacity; and neither party will make any representation to the contrary.

12.5 *Use of Customer Data by Rewardster®.* Rewardster® reserves the right to gather and store data regarding Client's customers who sign up for Rewardster®'s Services, interact with Client's Loyalty Program through the Tablet, Rewardster® Apps, Client's Facebook page or other Program Sites, or respond to Client's Material or Deal Offers ("Client's Customers"). Such data may include the Client's Customer's use of Client's Loyalty Program and responses to Deal Offers, including (i) the personal information submitted by Client's Customers (e.g., telephone number, email address, zip code, birthdate or other registration information ("Customer Personal Information")); optional information such as name, gender and other information) and (ii) such customers' responses to Material and Deal Offers (whether from Client or another client of Rewardster®), enrollment in Loyalty Programs (of Client and/or other Rewardster® clients) and accrued points, purchases from Client and other Rewardster® clients, and other habits of such customers. Client acknowledges that all such customer data is owned exclusively by Rewardster®. Rewardster® may use such information to generate reports and analyses based on such data, including pattern recognition and benchmarking against data from other clients of Rewardster® and their customers and other information available from third parties. Information about Client's Customers gathered by Rewardster® may also be used by Rewardster® for contacting, including marketing to, Client's Customers or allowing others to do so. If Rewardster® uses information about individuals that is gleaned solely from one or more other client's participation in Rewardster®'s services and from publicly available



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sources (including commercially available mailing lists), such individuals shall not be considered Client's Customers for purposes of the preceding sentence, whether or not they are also customers of Client.

12.6 *Use of Customer Data by Client.* Client may not store data, including but not limited to name, email address or other Customer Personal Information (as defined in Section 12.5), regarding Client's Customers obtained through the use of the Services. Client may use data relating to Client's Customers obtained through the use of the Services solely to market Client's goods and services to Client's Customers through the Services. Client will not provide any information obtained through the use of the Services, including any information that would personally identify, or facilitate personal contact with, any Client Customer (e.g., name, email, telephone number, zip code, birthdate, gender or other identifying information) to any third party other than (i) to an acquirer in the event of a sale or merger of Client's business, provided that the acquirer agrees to maintain and use such data regarding Client's Customers in accordance with the [Privacy Policy](#), (ii) as necessary to fulfill an order for such customer, (iii) to service providers to Client who need to know such information and are obligated to keep it confidential, or (iv) if required by law or subpoena, in response to an inquiry from law enforcement authorities or if Client believes the release of such information is necessary to address or prevent illegal or harmful activity.

12.7 *User IDs and Passwords.* Client's use of Rewardster®'s Services, including Command Center, will be controlled by user IDs and passwords, in accordance with Rewardster®'s access policies in effect from time to time. Client understands and agrees that Rewardster® will provide access to Client's information, in accordance with access levels and controls offered by Rewardster®, to anyone using an active user ID and password combination selected by Client and associated with the appropriate level of access, and that Rewardster® will rely on all messages and may post all Material (including Deal Offers) sent using active user IDs and passwords assigned to Client with the appropriate level of access. Client will be responsible for selecting secure



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passwords and for safeguarding all user IDs and passwords. Client will notify Rewardster® in writing of any user IDs and/or passwords that may have been compromised or that Client wishes to terminate or change for any reason.

12.8 *Use of Chat Facilities.* Rewardster® may provide, as part of the Services, discussion blogs, bulletin board services, chat rooms and/or other means of communication for use by Rewardster®, Client, other customers of Rewardster® and possibly by third parties such as operators of Program Sites (collectively, “Chat Facilities”), but Rewardster® is under no obligation to provide any Chat Facilities. If Rewardster® does provide Chat Facilities, Client acknowledges that such facilities are not for private communications, that all other persons with access to such Chat Facilities may read any of Client’s communications posted there, that Rewardster® does not control or endorse the messages posted by users and that Rewardster® disclaims any responsibility or liability for any messages posted on the Chat Facilities or any action taken as a result of such messages. Client agrees that its use of, and any reliance on, the Chat Facilities or any messages posted on them is at Client’s own risk. Any message posted to the Chat Facilities by Client will be treated by Rewardster® as non-confidential. Client hereby consents to Rewardster®’s posting of all such messages, with or without attribution to Client, to any and/or all Chat Facilities and for any other lawful purposes, such as advertising, promoting or enhancing the Services. Such consent shall be irrevocable and shall apply to all forms of media and transmission, whether now existing or created in the future. All submissions by Client to Chat Facilities will be subject to Client’s representations, warranties and covenants of non-infringement and no Inappropriate Content, as set forth in Section 7.6. Rewardster® may refuse to post any message or may remove any message of Client or any third party at any time, at Rewardster®’s sole determination, without any obligation or explanation.

12.9 *Marketing.* Rewardster® reserves the right to use Client’s name in promotional, marketing and presentation materials for the purpose of marketing Rewardster®’s



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Services and promoting Rewardster®, and in communications with investors and prospective investors and with third parties with which Rewardster® does, or seeks to do, business. Client agrees that the Tablet(s), Rewardster® Apps, Rewardster® websites, and all Program Sites may bear a logo, tagline and/or other message attesting to Rewardster®'s role in offering the Services (e.g., "Powered by Rewardster®") may disclaim any responsibility of Rewardster® for Merchant's products, services or communications, and may contain other information regarding the respective responsibilities of Client and Rewardster®.

12.10 *No Waiver; Amendment.* The failure of either party to exercise in any respect any right or remedy provided for herein shall not be deemed a continuing waiver or a waiver, partial or complete, of any future breach or any other right or remedy hereunder. This contract may be amended only in a writing that is accepted by the party to be bound thereby.

12.11 *Force Majeure.* Except for each party's payment obligations, neither party shall be liable under, or in default of, this contract for failure to perform its obligations under this contract if such failure arises out of causes beyond such party's reasonable control and without its fault or negligence. Such causes or conditions shall include, but shall not be limited to, acts of God, terrorism, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, electrical power failures, telecommunications or internet outages, riots, or wars.

12.12 *Entire Contract; Assignment.* This contract constitutes the entire contract and supersedes all prior contracts and understandings, both written and oral, among the parties, with respect to the subject matter hereof. This contract is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.



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13 Disputes with Rewardster®

13.1 **Contact Rewardster® First.** If a dispute arises between Client and Rewardster®, Rewardster®'s goal is to learn about and address Client's concerns and, if Rewardster® is unable to do so to Client's satisfaction, to provide Client with a neutral and cost effective means of resolving the dispute quickly. Disputes between Client and Rewardster® may be reported to Rewardster®'s customer service at Support@Rewardster.com, or by calling Rewardster®'s customer service representative at 877-814-4102 between 9 a.m.- 5 p.m. Pacific time weekdays (other than holidays).

13.2 **Arbitration.** If any dispute is not resolved by negotiation as described in Section 13.1, such dispute (excluding claims for injunctive or other equitable relief) shall be resolved through binding arbitration. Either Client or Rewardster® may initiate such arbitration by notifying the other party and the alternative dispute resolution provider ("ADR Provider") that Client or Rewardster® wishes to initiate a binding arbitration proceeding. Such arbitration shall be handled by the American Arbitration Association or another established ADR Provider mutually agreed upon by the parties. The arbitrator shall apply Illinois law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized at law. There shall be no authority for any claims to be arbitrated on a class or representative basis. Arbitration can decide only the individual claims of Client and/or Rewardster®. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. The party initiating arbitration can elect non-appearance-based or appearance-based arbitration. For non-appearance-based arbitration: a) the arbitration shall be conducted by telephone, online and/or be based solely on written submissions, the specific manner shall be chosen by the party initiating the arbitration; and b) the arbitration shall not involve any personal appearance by the parties or



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witnesses unless otherwise mutually agreed by the parties. For appearance-based arbitration, the arbitration shall be held at a location in Chicago, Illinois determined by the ADR Provider, or at such other location as may be mutually agreed upon by Client and Rewardster®. Any judgment on an arbitration award rendered by the arbitrator (whether non-appearance-based or appearance-based) may be entered in any court of competent jurisdiction.

13.3 *Law and Forum for Disputes.* This contract shall be governed in all respects, including validity, interpretation and effect, by the internal laws of the State of Illinois, without regard to any conflicts of laws rules. Exclusive jurisdiction over any dispute arising out of this contract or any action to enforce rights under this contract, including any claim for injunctive or other equitable relief or to enforce a binding arbitration award, shall be in the state or federal courts located in Chicago, Illinois. Client hereby irrevocably submits to the personal jurisdiction of the courts located within Chicago, Illinois for the purpose of litigating all such claims or disputes, including for enforcing an arbitration award, agrees to venue in such courts and will not allege forum non-conveniens or otherwise seek to bring or move any such action in or to any other location.

13.4 *Improperly Filed Litigation.* All claims Client brings against Rewardster® must be resolved in accordance with Section 13 of this contract. All claims filed or brought by Client contrary to Section 13 shall be considered improperly filed and a breach of this contract. Should Client file a claim contrary to Section 13, Rewardster® may recover attorneys' fees and costs up to \$1,000, provided that Rewardster® has notified Client in writing of the improperly filed claim, and Client has failed to promptly withdraw the claim.

14 Acceptance and Effectiveness of this Contract



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14.1 *By Client.* By signing up for Rewardster®'s Services or by using Rewardster®'s Services after receiving a copy of this Rewardster® Application Contract, Client accepts and agrees to be bound by the terms of this contract. The individual accepting this contract (by signing up for Rewardster®'s Services or by using those services after receipt of this contract) hereby represents and warrants that he or she has full power and authority to bind Client by such acceptance.

14.2 *By Rewardster®.* Notwithstanding the acceptance of this contract by Client, this contract shall become and binding on Rewardster® and effective only after Rewardster® has notified Client that Rewardster® has accepted Client as a client ("Effective Date").

15 Address for Notice

Subject to Section 12.1, all notices to Rewardster® shall be sent as follows

15.1 *If to Rewardster®.* Notices to Rewardster® shall be sent to:

Marketing Marvel, Inc.
25422 Trabuco Road
#105-439
Lake Forest, CA 92630
877-777-7903
Support@Rewardster.com

15.2 *If to Client.* Notices to Client shall be sent to the physical address, email address or facsimile number (i) provided by Client when Client signs up for Rewardster®'s Services or (ii) otherwise provided to Rewardster® by Client.



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