

Terms and Conditions

LIFT Terms & Conditions

RECITALS

WHEREAS, LIFT NETWORK (LN) OR ITS SERVICE PROVIDERS, NEOS MERCHANT SOLUTIONS ("NEOS") AND INTERNATIONAL CARD ESTABLISHMENT ("ICE") IS ENGAGED IN THE BUSINESS OF PROVIDING PROMOTION SYSTEMS FOR PARTICIPATING MERCHANTS UNDER THE PROGRAM HEREIN DESCRIBED; WHEREAS THE MERCHANT (MERCHANT) DESIRES TO HAVE LN PERFORM PROMOTION SERVICES UTILIZING SMS/TEXT MESSAGING AND EMAIL MARKETING; NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, AND OF THE MUTUAL PROMISES HEREINAFTER SET FORTH, LN AND THE MERCHANT HEREBY AGREE AS FOLLOWS.

1. Services

1.1. **Services to be provided by LN** - Subject to the terms and conditions set forth in this Agreement, LN hereby agrees to perform the following services for the benefit of the Merchant. LN shall provide SMS/Text messaging; email marketing and internet advertising for the Merchant who is an active account on the LN electronic promotional system ("Promotional System"). LN shall maintain an accessible electronic record of transactions as described above for a period of 60 days. The services to be rendered by LN in accordance with this section shall be referred to herein as the ("Services"); and LN will supply to and accept from the Merchant all information and data reasonably required from time to time in connection with the Services.

1.2 Merchant Duties- Subject to all terms and conditions set forth in this Agreement, the Merchant agrees: The Merchant will comply with all of the terms and conditions set forth at www.constantcontact.com/uidocs/CCSiteOwnerAgreement.jsp in connection with any email marketing campaign and further acknowledges reading and agreeing to said terms and conditions. In connection with any SMS/Text messaging campaign Merchant agrees that each text messages you send is based on the express consent of the mobile phone owner and that we are not responsible for the wireless carrier's standard text charges that may occur on the recipient's mobile upon receiving the text message. You may not use the Service in any manner that could damage, disable, overburden, or impair the Service (or the network(s) connected to the Service) or interfere with any other party's use and enjoyment of the Service. You may not attempt to gain unauthorized access to the Service, other accounts, computer systems, or networks connected to any of the Service, through hacking, password mining, or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Service. We reserve the right to review materials sent through the Service and to edit, refuse to send, or to remove any information or materials, in whole or in part, in our sole discretion. We reserve the right to terminate your access to the Service at any time, without notice, for any reason whatsoever. Materials sent or received through the Service may be subject to limitations on usage, reproduction, and/or dissemination; you are responsible for adhering to such limitations if you transmit such materials. We reserve the right at all times to disclose any information as we deem necessary to satisfy any applicable law, regulation, legal process, or governmental request.

WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICE AND THE SITE, AND DISCLAIM ALL WARRANTIES REGARDING THE SERVICE. THE QUALITY, INCLUDING THE SPEED, OF THE SERVICE WILL VARY DUE TO THE PERFORMANCE OF CERTAIN SYSTEMS THAT AFFECT THE INTERNET AND OUR NETWORK. WE ARE NOT RESPONSIBLE FOR ANY ACTS THAT ARE BEYOND OUR CONTROL, INCLUDING WITHOUT LIMITATION THE ACTS OF THIRD PARTIES. IN THE EVENT YOU HAVE AN URGENT OR EMERGENCY MESSAGE THAT YOU ARE TRYING TO SEND, WE STRONGLY RECOMMEND THAT YOU ALSO SEND THE MESSAGE THROUGH ANOTHER SOURCE.

As a condition to using the Service, you agree to the terms of the SMS Privacy Policy as it may be updated from time to time. We understand that privacy is important to you. You do, however, agree that we may monitor, edit or disclose your personal information, including the content of your SMS messages, if required to do so in order to comply with any valid legal process or governmental request (such as a search warrant, subpoena, statute, or court order), or as otherwise provided in these Terms of Use and the SMS Privacy Policy. Violations of any of the above, including intellectual property infringement and breaches in security, will be investigated by us and, where appropriate, we may institute legal action, or cooperate with law enforcement authorities in bringing legal proceedings against users who violate these Terms of Use. The Merchant will supply to LN all information and data reasonably required from time to

time by LN to perform the Services, including content as may be agreed upon the parties from time to time and within such time or times as may be reasonably necessary to perform the Services promptly and in a proficient manner; The Merchant will maintain all transaction records and other records required by law or regulation to maintain in connection with the operation of the Promotional System;

1.3 Use of Name and Logo – Merchant authorizes the use of Merchant's name, logo, trademark, service marks or copyrights of Merchant or its affiliates in any advertising, promotional or instructional materials provided by or for LN.

2. **Fees**

- 2.1. **Fee Collection** - In consideration for the performance of the Services provided by LN, the Merchant agrees to pay to LN the fees and other charges set forth in Section C of the LIFT LITE Marketing System Monthly Service Agreement and made a part hereof. The fees and charges will be collected by LN/ICE through a direct debit of the Merchants bank account via the Automated Clearing House (ACH) on a monthly basis. The Merchant also authorizes LN/ICE to ACH the Merchant's bank account for any additional marketing materials requested by Merchant. The Merchant further authorizes LN/ICE to ACH the Merchant's bank account for the use by Merchant of any additional Contacts not included in Merchant's monthly service plan at the prevailing LN rate.
- 2.2. **Rejects** - The Merchant will maintain an account at an ACH receiving depository institution ("Account") approved by LN. Merchant must maintain sufficient funds in the Account to satisfy all obligations, including the fees set forth in this Agreement. Should an ACH reject occur, the Merchant agrees to pay LN/ICE a \$25.00 per payment item rejected.
- 2.3. **Additional Account** – In the event the Account is closed or otherwise unavailable to LN, Merchant and/or Guarantors consent to LN locating additional deposit Accounts or assets by using any means available. In this event the Merchant and/or Guarantors waive all rights to their privacy in favor of LN until such time as all outstanding liabilities and fees owed to LN have been paid in full.
- 2.4. **Responsibility for Taxes and Expenses** - The Merchant understands and agrees to be responsible for the payment of all Federal, State, and local taxes (and any amounts legally levied instead of taxes), exclusive of taxes based upon LN' net income, arising out of or incidental to its participation in this Agreement as well as all other expenses, fees, and charges.
- 2.5. **Security Interests** – All personal bank Accounts standing in Merchant's and/or Guarantor's name shall be subject to this Application/Agreement and ACH debit, and all ACH debits, whether made against Merchant's Account or a Guarantor's Account shall bear a commercial account code designation (CCD) for the purposes of electronic collection via the ACH system and Merchant and/or Guarantor irrevocably consent to LN using any means available to locate such deposit Accounts until such time as all amounts due have been paid. LN may enforce this security interest as applicable by: making an immediate debit/charge via the ACH system (code CCD) to any deposit Account standing in the name or names of the Merchant and/or Guarantor(s), without notice or demand of any kind; and/or interrupting the electronic transmission of funds to any Account through the ACH system; Freezing the entire Account, without notice or demand of any kind, upon LN' determination that Merchant had breached any term of this Agreement; By placing a receiver within Merchant's operations until such time as indebtedness owed to LN arising under this Agreement has been satisfied in full; Obtaining a writ of attachment or a writ of possession without bond pertaining to Merchant and/or its Guarantor's personal property upon a showing of a presumption that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that LN determines to be necessary to preserve and protect this security interest. Merchant's and/or Guarantor's granting of this security interest in no way limits Merchant's liabilities to LN under this Agreement.

3. **Term**

- 3.1. **Initial Term** - the Agreement will commence on the date of the LIFT LITE Marketing System Monthly Service Agreement and shall have an initial term of 30 days. The Agreement shall automatically renew for an additional term of 30 days unless either party has notified the other in writing, at least thirty (30) days prior to the expiration of the initial term or any such renewal term, that it does not wish to renew this Agreement.
- 3.2. **Underwriting** – In accordance with underwriting standards and practice, LN reserves the right and Merchant consents that LN may conduct inquiries as to the creditworthiness of Merchant.
- 3.3. **Termination by LN** – The Merchant understands and agrees that this Agreement and Merchants participation in the Card System may be terminated for "good cause" by LN. For purposes of this section "good cause" shall mean: A material breach of this Agreement by the Merchant; Failure to pay any fees, charges, or other amounts owed by the Merchant to LN in accordance with this Agreement; A determination by LN that all Merchant transactions have ceased and therefore the relationship between Merchant and LN has ceased. The violation of any law or regulation applicable to the Merchant that has as adverse effect upon the operation of Promotional System. A determination by LN that Merchants continued participation in the Promotional System may be considered financially detrimental to either Merchant or LN. This decision may be based in whole or in part on creditworthiness as determined from credit reports received from credit reporting agencies as well as any other information that will assist us in our decision.
- 3.4. **Termination by Merchant** - LN understands that the Agreement may be terminated by the Merchant with a 30 day written notice and Merchant.

4. **System Down Time**

- 4.1. The Merchant hereby agrees that in the event that the LN system is down and not able to verify transactions, LN will not continue to process transactions. The Merchant accepts sole responsibility in the event that any transactions are authorized by the customer without LN' knowledge. Such will be the sole responsibility of the Merchant, and the Merchant will indemnify and hold harmless LN from and against any and all damages, loss, liability, consequential damage, expense, claim or obligation arising in connection herewith.

5. **Amendments**

- 5.1. From time to time, upon twenty (20) days written notice, LN may amend any portion of this Agreement, including, without limitation, those relating to fees and charges payable by Merchant.

6. **Indemnification and Limitation of Liability**

- 6.1. **Indemnification by Merchant** The Merchant hereby agrees to indemnify and hold LN and its service providers ICE and NEOS harmless, and their affiliates and subsidiaries, agents and employees from any claim relating to a dispute between Merchant and its customers, as may be made by anyone by way of defense, dispute, off-set, counterclaim or affirmative action, or for any damages of, or losses LN and its service providers ICE and NEOS, and their affiliates and subsidiaries, agents and employees may incur as a result of Merchant's breach of this Agreement. Further, Merchant shall reimburse LN and its service providers ICE and NEOS, for all expenses including attorney's fees with regard thereto.
- 6.2. **Limitation of Liability** Notwithstanding anything in this Agreement to the contrary, in no event shall LN or its service providers ICE and NEOS, and their affiliates or directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by Agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages. Notwithstanding anything in this Agreement to the contrary, LN and its service providers ICE and NEOS cumulative liability for all losses, claim suits, controversies, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Agreement) and regardless of this form of action or legal theory shall not exceed the average of three months revenue derived from monthly fees, less all costs incurred by LN, which were received by LN from this Merchant or such lesser time if this Agreement has been in effect for less than three months.

7. **Compliance with Applicable Law and Regulations**

- 7.1. This Agreement is subject to, and the parties agree to comply with all laws of duly authorized governments and authorities relating to the use of communication lines leased from domestic, international and foreign carriers to transmit information. It is understood and agreed by the parties that the performance of the Services hereunder may be subject to examination by authorized representatives of Federal and State governmental agencies and LN is authorized to furnish any such agency reports, information and other data as may be required under applicable laws, rules and any other activities Merchant may deem appropriate in response.
- 7.2. Both the Merchant and LN understand and agree that both parties shall be responsible for their own compliance with all Federal, State, and local laws, rules and regulations that are applicable with respect to this Agreement.
- 7.3. It is understood and agreed by the parties hereto that the performance of the Services is or might be subject to regulation examination by authorized representatives of Federal and State regulatory agencies, and that LN is authorized to submit or furnish any agency such reports, information, assurances or other data as may be required by them under applicable laws and regulations, provided LN provides Merchant with reasonable advance notice of such action and an opportunity to object or take any other actions Merchant may deem appropriate in response. The Merchant and LN will notify each other upon receipt of such requests so that each party may have an opportunity to object or take other actions, whichever that party deems appropriate in response.

8. **Guarantors**

- 8.1. The individual executing this Agreement on behalf of Merchant in Section F, regardless of capacity or title as a primary inducement to LN to enter into this Agreement with Merchant, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to LN pursuant to this Agreement, as it now exists or is amended from time to time. Guarantor(s) understands further that LN may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by LN or Merchant. This guarantee will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of LN. Guarantor(s) understand that the inducement to LN to enter into this Agreement is consideration for this guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the guaranty.

9. **Entire Agreement** – This Agreement, including all matters incorporated by references herein, constitutes the entire Agreement between parties and supersedes all previous negotiations, commitments and writings.

10. **Waivers** – Failure by LN to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same provision in the future. All waivers must be signed by the waiving party.

11. **Non-Assignability** – This Agreement shall not be assigned by merchant without prior written consent of LN and any assignment without such consent shall be void.

12. **Headings** – The titles and headings preceding the text of the paragraphs of this Agreement have been inserted solely as a convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, interpretation or effect.

13. **Severability** – If any provision of this Agreement is held invalid or unenforceable by any court of financial jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, and enforceable on the parties.
14. **Choice of Law: Jurisdiction** – The parties stipulate that the exclusive venue for any action between them shall be in Los Angeles County, State of California. This Agreement shall be construed in accordance with and governed by California law as applied to contracts that are executed and performed entirely in California.
15. **Force Majeure** - LN may not be held liable for failure to perform due to any contingency beyond its reasonable control such as acts of God, acts of Government, war or other hostility, civil disorder, weather, fire, power failure, labor dispute, like causes and any other similar to different contingency