

## **Standard Terms and Conditions**

### **Marketing Agreement**

The following Standard Terms and Conditions (these “**Terms & Conditions**”) form a part of the Marketing Agreement (the “**Marketing Agreement**”) entered into by Wooter and the Vendor (each as defined in the Marketing Agreement) and further govern the relationship between Wooter and the Vendor. Any terms that are capitalized herein and not defined herein have the meaning set forth in the Marketing Agreement. In the event of a conflict between the Marketing Agreement and these Terms & Conditions, the Marketing Agreement controls. The Marketing Agreement and these Terms & Conditions are collectively referred to herein as the “**Agreement**.” Wooter reserves the right to change or modify these Terms & Conditions at any time, effective when posted at the same location that these Terms & Conditions are posted.

#### **1. Term**

The Agreement shall continue in effect from the Effective Date until the thirtieth (30<sup>th</sup>) day after a party hereto provides the other with written notice of termination with or without cause, or is otherwise terminated pursuant to Section 2 below.

#### **2. Termination**

- a. Either party may terminate the Agreement on the other party's breach of any provision thereof, provided that the non-breaching party provides ten (10) days' written notice to the breaching party and the breach is not cured within such ten-day period.
- b. Wooter may terminate the Agreement at any time by providing Vendor written notice of such termination.
- c. Termination of the Agreement will not relieve the parties of obligations accrued through the date of such termination including, without limitation, Vendor's obligation to fulfill any Vouchers sold prior to the date of termination.
- d. Paragraph 2 of the Marketing Agreement and Sections 2 through 13 and, if applicable, Sections 14 through 17, of these Terms & Conditions shall survive termination of the Agreement.

#### **3. Performance; Refunds**

- a. If Vendor cannot fulfill its obligations under the Agreement, Vendor will notify Wooter immediately. Such notice will not limit the remedies available to Wooter.
- b. Each party reserves the right to terminate the Agreement without liability in the event that such party's business is interrupted due to fire, flood, weather, act of God, governmental action, substantial transportation delays, supplier or carrier problems (i.e. more than thirty (30) business days), airport or port closures, labor disturbances, riots, terrorism, sabotage, or any other cause beyond such party's reasonable control (a “**Force Majeure Event**”). Neither party will be deemed in default of its obligations hereunder for a failure to perform due to a Force Majeure Event; provided, however, that such party will use commercially reasonable efforts to resume performance as soon as reasonably practicable following any such Force Majeure Event.
- c. In the event that Vendor is unable to fulfill any Voucher due to a Force Majeure Event or otherwise, Vendor shall refund the purchaser of the Voucher the amount paid for the Voucher (the “**Customer Price**”).

- d. A waiver of or failure to perform any one or more of the terms or conditions of any Voucher or any part of the Agreement will not constitute a waiver of or an excuse for the nonperformance as to any other part of the Agreement.
- e. As Vendor's marketing partner for the Vouchers, Wooter may, from time to time, issue refunds or credits to purchasers of the Vouchers, and in the event that Wooter issues any such refunds or credits, it shall have the right to deduct the amount of such refund or credit from any amounts owed by Wooter to Vendor and/or require prompt reimbursement from Vendor for such amount.
- f. If Vendor breaches its obligations of exclusivity, Wooter shall have the option to (i) reduce the Customer Price of each Voucher in the respective sale by 10% lower than the competing offer with no change to the Service Fee; (ii) refrain from offering, or take down, such sale; and (iii) invoice Vendor for 10% of the total amount received by Wooter during the Sale Period, or deduct such amount from any amounts owed by Wooter to Vendor. Wooter's enforcement of this Section 3(f) shall not limit the remedies available to Wooter.

#### **4. Insurance**

- a. Vendor will maintain commercial general liability insurance and, if customary in Vendor's industry, medical malpractice (or similar) insurance at Vendor's sole cost and expense. If the Vouchers include or offer the consumption of alcohol, Vendor will maintain liquor liability insurance. Such insurance will be provided with an insurer that has a rating from A.M. Best of at least "A." The commercial general liability insurance will include bodily injury, property damage, products and completed operations liability, blanket contractual liability, and personal injury and advertising liability. On request, Vendor will add Wooter and its affiliates as additional insureds to all such insurance policies and will provide a certificate of insurance evidencing all of the coverage described in this section and that Wooter and its affiliates have been added as additional insureds.
- b. Such insurance carried by Vendor will be primary to any insurance carried by Wooter and its affiliates. Wooter does not represent that the coverage and limits required hereunder will be adequate to protect Vendor and such coverage and limits will not be deemed to be a limitation on Vendor's liability to Wooter and its affiliates, if any, arising under the Agreement.

#### **5. Intellectual Property**

- a. With Wooter's prior written approval (email sufficing), Wooter grants to Vendor the limited, non-exclusive right to use, during the term of the Agreement, the trademarks and trade names of Wooter for the sole purpose of identifying Wooter as a marketing partner and sales agent in connection with the sale of Vouchers. Except as approved in writing by Wooter, Vendor will not exploit any of Wooter's trademarks, trade names or other intellectual property for any reason.
- b. Vendor grants to Wooter a non-exclusive worldwide license and right to use, reproduce, license, display, create derivative works, distribute and transmit Vendor's name, logo and trademarks and any photographs, graphics, artwork, text and other content provided by Vendor (collectively, the "**Intellectual Property**") in connection with the marketing, promotion, sale or distribution of Vouchers, in any and all media or formats in which such Vouchers are marketed, promoted, sold, or distributed. In addition to the foregoing, Wooter shall have the right to use and distribute the Intellectual Property as exemplars and for general promotional purposes. Except for the purposes set forth in this Section 5(b),

Wooter will not exploit any of Vendor's trademarks, trade names or other intellectual property.

- c. Except as expressly provided herein, neither party will acquire any rights or interest in the other party's trademarks, trade names, trade dress or other intellectual property, and any goodwill generated therein will inure solely to the benefit of the owner party. Each party reserves all of its rights in and to its trademarks, trade names and trade dress, all graphic images and text contained on such party's website, and all other intellectual property owned or licensed by such party. Except as provided in Section 5(d), each party reserves the right, upon its written request, to approve the substance and form of any and all uses of its trademarks, trade names and other intellectual property.
- d. Vendor acknowledges that, for any descriptions or information about the Vendor used in connection with the marketing, promotion, sale or distribution of the Vouchers, Wooter uses only that information provided by Vendor or otherwise obtained by Wooter's review of the services and/or products that are the subject of the Vouchers (collectively, the "**Promotional Materials**").

## **6. Vendor Independence**

- a. Vendor will conduct all business in Vendor's name. Vendor shall perform its obligations under the Agreement as an independent contractor, and Vendor will retain control over and responsibility for its own operations and personnel.
- b. Neither Vendor nor any of its respective employees, agents or representatives, will, solely by virtue of the Agreement or any of the arrangements hereunder, be considered an employee, principal, partner, co-venturer, agent or representative of Wooter, nor will any of them hold themselves out as such, whether in correspondence or otherwise, or have authority to contract in the name of Wooter or affiliates thereof or to bind any of them to any contractual or other obligations, except as expressly agreed to in writing by such person or entity.

## **7. Representations, Warranties & Covenants**

Vendor represents, warrants and covenants to Wooter that:

- a. The person entering into the Agreement on behalf of Wooter has the authority and full power to do so, and all corporate actions have been taken, and all approvals obtained, that are necessary to make the Agreement binding and enforceable as against Vendor.
- b. Vendor's performance of the Agreement is not in conflict with, and will not cause an event of default under, any agreement or instrument to which Vendor is a party or by which Vendor is bound.
- c. Vendor has full authority to distribute and use the Intellectual Property, Promotional Materials and the Vouchers and has full authority and full power to grant to Wooter the right to use such Intellectual Property and Promotional Materials in the manner set forth in Section 5, above. Such Intellectual Property and Promotional Materials do not and will not violate any copyright, trademark, or other intellectual property right or right of privacy or publicity of any third party.
- d. Vendor shall comply with all applicable escheat and abandoned or unclaimed property laws and in no event shall Wooter be deemed a holder of the funds received in connection with any Voucher under such laws.
- e. The Vouchers, including the terms and conditions thereof and the provision of the goods, services and experiences offered thereunder (collectively, the "**Products**"), and the sale of the Vouchers, comply with all, and do not and will not violate any, applicable federal, state, county or local laws, rules, ordinances

or regulations, including, without limitation, all consumer protection laws (“**Applicable Law**”).

- f. Vendor shall provide the Products in a safe and professional manner, and in accordance with the terms and conditions of the Voucher as provided to purchasers and as set forth herein or any other terms used in connection with the marketing and sale of such Vouchers.
- g. The Vouchers and any advertising or promotion of the Products will not constitute false, deceptive or unfair advertising or disparagement under Applicable Law.
- h. Vendor shall perform its obligations under the Agreement in compliance with all Applicable Law and without undue delay and Vendor shall keep its equipment and facilities necessary or useful to the performance of its obligations hereunder in good working condition and repair.
- i. Vendor is the issuer of the Vouchers and Wooter’s role is as a marketing partner providing marketing and sales services, and not an issuer, of the Vouchers.
- j. Vendor will not make or publish any negative or disparaging statements about Wooter.
- k. Vendor will comply with any required cash redemption requirements in connection with the Vouchers to the extent required by Applicable Law. Without limiting the generality of the foregoing, any Vendor located in California shall redeem Vouchers for cash upon purchaser request when the cash value of the Voucher is under \$10.
- l. Vendor agrees to make the Products purchased under the Vouchers available to purchasers of the Vouchers on a timely basis and shall not provide preferential treatment to other customers of Vendor, including, without limitation, relating to reservation times or availability, except as otherwise clearly disclosed on the sale page.
- m. Vendor will strictly comply with the terms of the Vouchers as set forth in each Addendum and herein during the Promotional Period. Vendor will permit the purchaser of the Voucher to use the amount of the Customer Price for the purchase of goods and services of Vendor for a minimum of five (5) years from the purchase date. If Vendor is located in Illinois, California, Florida, Massachusetts or such other state or jurisdiction that prohibits expiration dates on gift cards, gift certificates or other similar instruments indefinitely, or such other period of time over five (5) years after the Promotional Period, Vendor will permit the purchaser of the Voucher to use the amount of the Customer Price for such amount of time as required by Applicable Law. If Vendor allows online redemption of Vouchers, Vendor will permit the purchaser of the Voucher to use the amount of the Customer Price for such time as required by the Applicable Law of the purchaser’s state. Nothing in this provision or Agreement, however, shall be construed to mean that said laws are applicable to the Vouchers; rather this provision is included to minimize risk, improve customer service, and meet potential customer expectations in those states that prohibit expiration dates on gift cards to which those laws would apply. Notwithstanding the foregoing, if this Agreement is for an event on a specific date, to the extent permitted by Applicable Law, once the event date passes the Voucher expires.

## **8. Indemnification; Fraudulent Redemption**

- a. Vendor agrees to indemnify, defend, and hold harmless Wooter and its affiliated companies, and their respective directors, officers, employees, contractors, stockholders, agents and representatives (the “Wooter Indemnified Parties”),

- from and against any and all losses, damages, liabilities, penalties, costs of settlement and expenses (including, without limitation, reasonable attorney's fees and expenses) arising from any claims, suits, proceedings, demands or causes of action (including, without limitation, governmental actions) arising out of, resulting from, or relating to (i) death, bodily injury or property damage occurring or alleged to have occurred as a result of the goods and/or services provided by Vendor, (ii) the use, marketing, distribution or sale of the Vouchers, (iii) any act or omission of Vendor, or the employees, contractors, agents or representatives of Vendor, in the furnishing of the Products, and (iv) any actual or alleged breach of this Agreement by Vendor, or the employees, contractors, agents or representatives of Vendor.
- b. In the event Vendor fails to indemnify a Wooter Indemnified Party as required pursuant to this Section 8, Vendor will reimburse such Wooter Indemnified Party for any and all costs and expenses, including without limitation, reasonable attorney's fees and expenses arising out of, resulting from, or relating to the Wooter Indemnified Party's enforcement of such rights.
  - c. Vendor agrees that it is Vendor's sole responsibility to track the redemption of Vouchers and agrees to hold harmless the Wooter Indemnified Parties for any and all costs associated with a fraudulent redemption of Vouchers.

## 9. Audit Right

Vendor will maintain an adequate system of internal controls over all systems and processes used and activities performed with respect to the Agreement. Wooter reserves the right at all reasonable times during normal business hours, upon at least 24 hours advance notice, to audit, examine and make copies of or extracts from the books of account, systems and records maintained by Vendor to the extent related to Vendor's performance under this Agreement. Vendor agrees to provide full and timely cooperation during an audit. In the event that Wooter identifies audit deficiencies, Vendor shall prepare and implement an action plan to correct identified deficiencies within ten (10) days.

## 10. Confidentiality

Each party (the "**Disclosing Party**") may disclose its Confidential Information to the other (the "**Receiving Party**"). Any such disclosure will be governed by the following provisions (collectively, the "**Confidentiality Provisions**");

- a. "**Confidential Information**" means any information of the Disclosing Party that is disclosed by the Disclosing Party to the Receiving Party or that is otherwise learned by the Receiving Party in the course of its business dealings with the Disclosing Party, and that has been identified as being proprietary and/or confidential or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as proprietary and/or confidential. Confidential Information includes, but is not limited to, technical information, know-how, the terms of this Agreement, information with respect to customers and members including, but not limited to, personally identifiable information, email addresses and any other contact information ("**Customer Data**"), data regarding sales, promotional performance, consumer behavior and brand market standing, and all information concerning the existence and progress of the parties' dealings. Confidential Information does not include information that, other than Customer

Data, (i) is or becomes publicly available without breach of these Confidentiality Provisions; (ii) can be shown by documentation to have been known to the Receiving Party prior to its receipt from the Disclosing Party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act; or (iv) can be shown by documentation to have been developed by the Receiving Party without reference to any Confidential Information.

- b. Each party agrees not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out its obligations under the Agreement. Each party will ensure that its employees, contractors, and agents will comply with the Confidentiality Provisions and shall be responsible for any breach of this Agreement by any of its employees, contractor or agents. Each party agrees that it will take all reasonable measures to protect the secrecy of and avoid unauthorized disclosure or use of Confidential Information of the other party. Such measures will include, but not be limited to, those measures that the Receiving Party uses to protect its own Confidential Information, which will be no less than reasonable care. Each party agrees to notify the other in writing of any unauthorized disclosure, misuse or misappropriation of Confidential Information of the Disclosing Party.
- c. If the Receiving Party becomes legally obligated to disclose Confidential Information to any governmental entity with jurisdiction over it, the Receiving Party will give the Disclosing Party prompt written notice sufficient and provide reasonable cooperation to the Disclosing Party to allow the Disclosing Party to seek a protective order or other appropriate remedy. The Receiving Party will disclose only such information as is required by the governmental entity and will use its reasonable best efforts to obtain confidential treatment for any Confidential Information that is so disclosed.
- d. All Confidential Information will remain the exclusive property of the Disclosing Party, and the Receiving Party will have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein. The Receiving Party promptly will return or destroy all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) upon the termination of the Agreement or at the Disclosing Party's written request.

#### **11. Taxes**

Vendor shall be responsible for collecting and remitting applicable sales tax (if any) to the proper taxing authority in connection with the sale of Vouchers.

#### **12. DISCLAIMER OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WOOTER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, INCOME OR PROFITS, LOSS OR DIMINUTION IN VALUE OF ASSETS OR SECURITIES, OR DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF USE OR DATA) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY BREACH HEREOF (REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT, TORT (INCLUDING SIMPLE NEGLIGENCE), STRICT PRODUCT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY), EVEN IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE.

### 13. Miscellaneous

- a. **Successors; Assignments.** This Agreement will be binding on and inure to the benefit of the parties and their respective successors in interest and assigns. Vendor may not assign any of its rights or obligations under this Agreement without the prior written consent of Wooter.
- b. **Notices.** All legal or other notices to be provided under the Agreement will be given in writing and sent by U.S. mail (delivery confirmation requested) or express courier to the applicable party at the address specified below or such other address as such party may provide by written notice:

If to Wooter:     Wooter, LLC  
                         530 Greaves Avenue  
                         Staten Island, NY 10308  
                         Attn: CEO

With a copy to: Garson, Segal, Steinmetz, Fladgate LLP  
                         164 West 25<sup>th</sup> Street, 11R  
                         New York, NY 10001  
                         Email: recordroom@gs2law.com  
                         Attn: Counsel to Wooter

If to Vendor, to the appropriate Vendor representative specified in the Marketing Agreement, at the address provided for such representative. Vendor will notify Wooter of any change in any of the Vendor representatives (or their contact information) as soon as reasonably practicable, but in no event more than ten (10) business days, after such change. All notices will be effective on receipt or where confirmation is required, on confirmation.

- c. **Governing Law; Venue.** This Agreement and the rights and obligations of the parties will be governed by and construed according to the laws of the state of New York, without regard to the choice of law provisions that would require or permit the application of the laws of another jurisdiction, and Vendor irrevocably submits to the exclusive jurisdiction of the federal and state courts located in New York City, New York County. Any dispute resolution proceedings initiated by Vendor will be conducted only on an individual basis and not in a class or representative action or as a named or unnamed member in a class, consolidated, representative or private attorney general action. Vendor irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to this agreement, including any exhibits, schedules, and appendices attached to this agreement, or the transactions contemplated hereby. Notwithstanding the foregoing, the laws of the state where the Vendor interaction with the Consumer occurs (i.e. the place of redemption of the Voucher or, if redemption occurs on-line, the Customer's state) shall apply, without regard to the choice of law provisions that would require or permit the application of the laws of another jurisdiction, to the terms and redemption of the Vouchers, Wooter's relationship with any purchaser of the Vouchers, and the Vendor's relationship with any purchaser of the Vouchers and its obligations with respect thereto.
- d. **Severability.** The provisions of this Agreement are severable, and in the event that any provision thereof is determined to be illegal, invalid or unenforceable,

such illegality, invalidity or unenforceability will not in any way affect the validity or enforceability of the remaining provisions, and this Agreement shall be reformed, construed and enforced in any such jurisdiction as if such illegal, invalid or unenforceable provisions had never been contained herein.

- e. **Amendment; Waiver.** Other than as set forth above, no amendment, waiver, or discharge of any provision of this Agreement will be effective unless made in writing, signed by Wooter and Vendor.
- f. **Entire Agreement; Conflict.** This Agreement, including all documents incorporated herein by reference, constitutes the entire agreement between Vendor and Wooter with respect to the subject matter hereof and supersedes all prior agreements. Wooter hereby objects to and shall not be bound by any additional, different or conflicting terms contained in an order or any other document pertaining to the subject matter hereof.
- g. **Counterparts; PDF; Fax.** This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument. In addition to any other lawful means of execution or delivery, this Agreement may be executed by (i) exchanging portable document format (PDF) images by email, or (ii) facsimile signatures and delivered by the exchange of signature pages by means of facsimile transmission.

If Vendor is a charitable organization ("**Charity**"), the following additional terms apply ("**Charity Terms**"). To the extent there is a conflict between the Agreement, the above Term & Conditions and the Charity Terms, the Charity Terms control.

#### **14. Additional Representations, Warranties & Covenants**

In addition to the representations, warranties and covenants above, the Charity represents, warrants and covenants to Wooter that:

- a. The Charity shall comply with all Applicable Law regulating charitable sales promotions and charitable appeals.
- b. The Charity is registered with its respective state ("**State**") and will make all filings required by Applicable Law to such State's attorney general ("**Attorney General**").

#### **15. Additional Payment Terms**

- a. If required by Applicable Law, any required payment or transfer from Wooter to the Charity related to the Vouchers (the "**Payment**") will be made no later than ninety (90) days after the completion of a sale of Vouchers.
- b. If required by Applicable Law, in connection with the Payment (and, unless Applicable Law provides otherwise, in no case later than thirty (30) business days after a request from the Charity or the State), Wooter will provide a final accounting (a "**Final Accounting**") to such requesting party. Such Final Accounting will contain sufficient information, including, but not limited to, the number of Vouchers sold and the dollar amount received for each Voucher, to enable the Charity to determine that the representations made to the public on its behalf have been adhered to accurately and completely and to prepare a periodic report for filing with the Attorney General, if such filing is required by Applicable Law. If the Charity determines that the Final Accounting contains insufficient information, it will alert Wooter and Wooter will provide additional information reasonably necessary to file such periodic report.

#### **16. Additional Termination Right**



To the extent required by Applicable Law, in addition to the termination rights contained in Section 2, if the Agreement must be filed by the Charity with the Attorney General, then the Agreement is terminable by the Charity for any reason upon notice to Wooter within fifteen (15) days from the date of such filing. The Charity will use commercially reasonable efforts to ensure that the Sale Period does not fall within this fifteen-day termination period.

#### **17. Record Retention**

If required by Applicable Law, Wooter will maintain on file a copy of (i) the Final Accounting for three (3) years following the close of the sale of Vouchers and (ii) the Agreement for three (3) years following its termination.

Version 1 – 7/22/2015