

APPLE REQUIRED RETAILER TERMS

Unless specifically stated herein to the contrary, Retailer shall strictly comply with the provisions identified herein these required terms (the “Required Retailer Terms”).

InComm and Apple reserve the right at any time to modify these Required Retailer Terms and to impose new or additional terms or conditions on Retailer. Such modifications and additional terms and conditions will be effective upon written notice and shall be incorporated herein immediately thereafter.

Retailer shall immediately notify InComm if it cannot or will not comply with these Required Retailer Terms. Retailer’s continued offering, distribution, or sale of the cards or codes will be deemed acceptance thereof.

1. DEFINITIONS:

- 1.1. “**Activated**” means that a Card or Code is capable of being used purchases of digital music, apps, books, and other digital content in electronic format via the iTunes’s applications; and “**Activation**” means the electronic process by which a Card or Code becomes Activated.
- 1.2. “**Affiliates**” means, with respect to a party, an person, firm, corporation, partnership, limited liability company, or other entity that now or in the future, directly controls, is controlled with or by or is under common control with a party. For the purposes of the foregoing, “control” shall mean, with respect to: (a) a corporation, the ownership directly of fifty percent (50%) or more of the voting power to elect directors thereof; and (b) any other entity, power or direct the management of such entity.
- 1.3. “**Applicable Law**” means any and all federal, provincial, and local laws, rules and regulations, including without limitation, all consumer protection laws, and laws relating to copyright, rights to data protection and privacy, and rights to publicity applicable to a party, taking into account the role of the party.
- 1.4. “**Card**” or “**Code**” means, as applicable, iTunes’ physical and digital (i.e., digital code (“**Code**”)) gift cards (herein after collectively “**Card** or **Cards**”) for sale in the stores, certain websites, and certain applications (“apps”) of Retailers. The Cards will allow a Consumer to purchase digital content via the iTunes Store by utilizing a Personal Identification Number uniquely assigned to each individual Card (each, a “**PIN**” and collectively, “**PINs**”).
- 1.5. “**Confidential Information**” shall mean all information and materials, in whatever form, whether tangible or intangible and whether written or oral, that (a) concern the business plans, financial information, customers and customer information, technology and products and similar information of Retailer, Apple or InComm, and/or (b) is either (i) marked “confidential,” “restricted,” or “proprietary information” or similar marking or (ii) known to be considered confidential and proprietary or (iii) from all relevant circumstances should reasonably be assumed to be confidential and proprietary.
- 1.6. “**Consumers**” means those retail consumers who desire to purchase digital music, apps, books, and other digital content in electronic format via the iTunes application (the “**iTunes Store**”).

- 1.7. “*Card Terms and Conditions*” or “*Code Terms and Conditions*” means the Territory-specific terms and conditions applicable to the Card.
- 1.8. “*Deactivate*” means to disable an Activated Card from being used for purchases of digital music, apps, books, and other digital content in electronic format via the iTunes’s applications or otherwise render a Card unusable; and “*Deactivation*” means the electronic process by which a Card is Deactivated
- 1.9. “*Digital Assets*” mean those design assets provided by Apple, or InComm on behalf of Apple, for use with Cards online.
- 1.10. “*Personal Data*” means any information that can be used to uniquely identify or contact an individual end user of an Apple product or service.
- 1.11. “*Retailer*” means the Apple-approved retail store selling or distributing Cards directly to Consumers and shall be included to mean and apply to its Affiliates, and its and their agents, contractors, sub-retailers, or sub-distributors, as applicable.
- 1.12. “*Territory*” means Canada, its territories, and possessions.
- 1.13. “*SKU*” means stock keeping unit.
- 1.14. A Card is deemed “*Sold*” upon the Retailer’s delivery of the Card to the Consumer in exchange for the applicable consideration received from the Consumer.

2. RETAILERS WILL:

- 2.1. comply with Applicable Law.
- 2.2. sell the Cards only in a manner that accords with Apple’s policies as communicated to InComm or jointly to InComm and Retailers from time to time.
- 2.3. provide their marketing services for the purpose of promoting the sale and delivery of the Cards to Apple on a non-exclusive basis.
- 2.4. acknowledge that Apple may in its sole discretion distribute Cards through other retailers who compete with Retailers and/or provide the same or similar marketing services to Apple in respect of the Cards.
- 2.5. use the UPC/EAN/JAN codes supplied by Apple, except as approved by Apple in writing and except for those Retailers offering the Cards prior to December 16, 2013.
- 2.6. be equipped to process timeout reversals of Card sales.
- 2.7. follow the deactivation request procedures as required by Apple from time to time. The current deactivation request procedures required by Apple are as follows:
 - 2.7.1. Retailers shall not be permitted to Deactivate any Cards:

- (i) absent a request made by a Consumer at a Retailer; or
 - (ii) otherwise without prior written approval from Apple (email shall suffice) which approval Apple may withhold in its sole discretion.
- 2.7.2. If Retailer receives such a Consumer request for Deactivation of a Card, or if Apple has approved the requested Deactivation in writing, Retailer shall submit an approval request to InComm who will forward such request to Apple for the Card Deactivation, through a process mutually agreed upon by InComm and Apple on an interface provided by Apple, which Deactivation request shall be approved by Apple, provided that:
 - (i) such Card has not been previously redeemed in whole or in part;
 - (ii) the Consumer surrenders the Deactivated Card to the Retailer, or the Retailer is in possession of the Card in the event of a non-Consumer initiated request; and
 - (iii) each such Card subject to a Deactivation request was refunded to the Consumer (as applicable).
- 2.8. provide a Card purchase receipt that lists each Card Sold and identifies at least the last four (4) digits of the serial number or other identifier, as mutually agreed by both parties, associated with each Activated Card.
- 2.9. provide InComm the following information for delivery to Apple: “weeks of supply” on-hand inventory information at distributor-warehouse, retailer-warehouse, and retailer-store level, by providing SKU level sales and consumption weekly reporting for the previous 4 weeks – adjusted for seasonality – on a weekly basis (to the extent such store level information is maintained by the retailer).
- 2.10. use the most current Digital Assets in its representation of the Cards on its website or application, and Retailer shall present all Digital Assets provided by Apple. The design on the Card shipped to the Consumer must match the design presented on the website or application from which it was purchased from the Retailer.
- 2.11. only sell Cards to Consumers in the Territory.
- 2.12. securely store Card-specific information in their systems.
- 2.13. use best industry standard fraud detection mechanisms.
- 2.14. engage in enterprise-level fraud prevention, and shall use a Card delivery mechanism to ensure that Consumer will systematically receive their Card(s) the first time.
- 2.15. be obliged to disable the future sale of Cards and, if applicable, remove the Card from any online interface in the case of suspected fraudulent activities identified by Apple and InComm, and upon Apple’s written request to InComm.
- 2.16. upon Apple’s request in writing, destroy its existing inventory of Cards in an Apple-approved manner, namely, that the Cards be secured in a non-transparent bag or container and disposed of in a secure on-site refuse container.

- 2.17. indemnify, hold harmless and, upon Apple's request, defend Apple, its Affiliates, subsidiaries, and their respective officers, directors, employees and agents, from any and all claims, costs, suits, liabilities, damages, losses, demands, settlements, fees, and expenses of every kind, including but not limited to, reasonable legal costs and disbursements, arising out of, in whole or in part, the Retailer's: (i) gross negligence, willful misconduct, or fraudulent actions; (ii) infringement of any third party proprietary right; (iii) non-compliance with any Applicable Law, rule, or regulation; (iv) breach or alleged breach of any representations, warranties, or obligations under its agreement with InComm; or (v) any act or omission of the Retailer or the Retailer's third party processor, if any.
- 1.15. within five (5) business days of InComm's and/or Apple's request, replace Digital Assets and Card Terms and Conditions with respect to such Cards sold online and confirm replacement to InComm and Apple.

3. RETAILERS WILL NOT:

- 3.1. take any action in connection with the sale of a Card that is in violation of the Card Terms and Conditions to the extent the Card Terms and Conditions are applicable to the sale of the Cards by the Retailers.
- 3.2. incur obligations to third parties on Apple's behalf.
- 3.3. include any merchant-specific text in the description of the Card listed on any purchase receipt other than the text approved by Apple.
- 3.4. add any transaction processing fee to the face value of the Cards.
- 3.5. charge any tax with respect to the Cards, including, but not limited to, GST or VAT amounts, except as required by Applicable Law.
- 3.6. ship or deliver Cards outside of the Territory.

4. ADDITIONAL REQUIRED RETAILER TERMS:

- 4.1. In the event a Retailer desires to make any material changes to any Digital Assets and/or the flow for end user purchase of Codes that have previously been supplied and/or approved by Apple, Retailer shall notify InComm and Apple of the proposed modification (e-mail sufficient) and Apple shall make best efforts to respond within five (5) days from acknowledgement of receipt to deliver a notice of modification, approval, or rejection to the Retailer and InComm (e-mail is sufficient). If the Retailer has not received an acknowledgment notice from Apple at the end of the five (5) business day period (e-mail is sufficient), the Retailer may notify Apple (with a copy to InComm) by escalating such notification by both email and telephone to Apple's senior management. Any modifications require Apple's written approval.
- 4.2. With respect to any Cards which are delivered by Apple or InComm to Retailers' designated warehouse or individual store location(s), risk of loss will transfer to Retailers upon Retailers' receipt of such Cards from Apple or InComm at Retailers' designated warehouse or individual store location(s) and shall remain with Retailers until received by the Consumer. Retailers shall

be responsible for reimbursing Apple for all such risk of loss in excess of industry standard “slippage” of Cards.

- 4.3. To the extent a Card is offered to a Consumer as part of a promotion pursuant to which the Consumer receives a Card for which the Consumer has not paid any monetary amount in exchange for receipt of such Card, Retailers must provide the Consumer with a purchase receipt that conforms to the requirements provided by Apple and Applicable Laws.
- 4.4. If Retailer is offering the Cards on a website or application, Retailer must display to Consumers in a clear and conspicuous manner on the website or application on which the Cards are offered, prior to purchase, and on the instrument on which a digital Card is delivered, the Card Terms and Conditions (and any updates thereto provided by Apple).
- 4.5. Retailer acknowledges that if Retailer breaches any of the Retailer Requirements set forth herein, Apple reserves the right to bring direct action against the Retailer.
- 4.6. Subject to the terms and conditions herein, for so long as Retailer is selling the Cards pursuant to an Agreement between Apple and InComm, Apple grants to Retailer a non-exclusive, non-transferable, royalty-free sublicense to use and reproduce the name, logos, service marks and trademarks set forth below (“*Apple Marks*”) for the sole purpose of promoting and participating in the Cards program. Retailer’s use of the Apple Marks must comply with Apple’s applicable policies and procedures for use of the Apple Marks as such policies are disclosed to Retailer by Apple or InComm from time to time in writing. The Apple Marks are the exclusive property of Apple and Retailer agrees not to claim any right, title or interest in or to the Apple Marks or at any time challenge or attack Apple’s rights in or to such Apple Marks during the Term. Apple will retain all rights, title and interest in and to all of the Apple information, content, data, designs, materials and all copyrights, trademarks, rights and other proprietary rights thereto, provided to Retailer by Apple or InComm. Any goodwill resulting from Retailer’s use of the Apple Marks shall inure solely to the benefit of Apple and shall not create any right, title or interest for Retailer in the Apple Marks. Any use of promotional materials and advertising hereunder that include or use the Apple Marks or that relate to Apple must be approved in writing in advance by Apple, and Apple shall have exclusive creative control over the use of Apple Marks in any promotional or advertising materials. Without the prior written consent of Apple, Retailer will make no other use of any Apple Mark based upon the rights granted pursuant to this Agreement. No other rights to any Apple property or other rights are granted hereunder.
- 4.7. Retailer will maintain any and all Confidential Information received from or on behalf of Apple or InComm, in confidence, until the date on which such Confidential Information becomes publicly known and made generally available through no action or inaction of Retailer. Retailer agrees not to disclose or otherwise make available such Confidential Information of Apple or InComm to any third party without the prior written consent of Apple or InComm. Retailer agrees that Confidential Information shall be disclosed only to its employees and other personnel under its control and supervision and to its third party accountants and lawyers and in each case solely on a need-to-know basis in furtherance of its agreement with InComm, and solely to those individuals who are bound by a written non-disclosure agreement having terms no less restrictive than the non-disclosure terms of this section, unless required to be disclosed by law, court or governmental order. Confidential Information shall not be deemed to include any information which (a) is publicly known at the time of the disclosure, (b) becomes publicly known other than by breach of the terms of this section, (c) becomes known to the receiving party, without restriction, from a source free of any obligation of confidentiality and without breach of this section, or (d) is independently developed by the receiving party without reference to any

Confidential Information of the disclosing party. This Section 4.7 supplements and does not supersede any existing non-disclosure or confidentiality agreements between Approved Retailer and InComm or Apple.

- 1.16. Retailer represents and warrants that Retailer, including its personnel and any authorized subcontractors, will not access nor otherwise process any Personal Data. If at any time Retailer determines that it has accessed Personal Data, or may require access to Personal Data in connection with this Agreement, Retailer shall: (i) notify Apple immediately in writing; (ii) maintain strict confidentiality and security measures to protect the Personal Data; (iii) not disclose the Personal Data to any other party; (iv) notify Apple immediately if there is any potential or actual breach of security involving the Personal Data; and (v) execute additional privacy and data security contractual terms with Apple and any of its affiliates as required in Apple's reasonable judgment to comply with obligations under the US-EU Safe Harbor Privacy Arrangement, privacy or data security laws, or any other legal requirements.

5. LICENSED APPLE MARKS:

