



## THIRTY REASONS TO USE TERMS NOW<sup>SM</sup>

Powered by Card Compliant, LLC, the Terms Now<sup>SM</sup> system provides a technology platform for the total management of the terms and conditions and related matters for gift and loyalty cards in gift and loyalty card programs.

Why use Terms Now<sup>SM</sup>? Below are thirty reasons:

### I. The Terms Now<sup>SM</sup> Architecture – start with the right foundation.

1. **Take Control of Your Terms and Conditions.** With gift cards entering a third or fourth decade, card terms are now touched by multiple persons ranging from lawyers to card inventory managers. Online terms have become prevalent, but are easily changed and repositioned. Multiple left and right hands are used in the card ordering process with lawyers often absent after an initial approval of the card terms years earlier. Designed to provide drafting controls and to avoid inadvertent changes to card terms known to come from multiple places, the Terms Now<sup>SM</sup> system deploys three levels of control for the drafting and release of card terms: physical control, version control and archive control.
2. **Stop Wrestling with Multiple Versions of Card Terms for the Same Card.** In a modern world where card terms are disclosed to consumers by multiple parties in many places often geared to different distribution channels, the wording of card terms can drift and vary even for the same card. Espousing the use of a uniform set of card terms per card in all distribution channels, Terms Now<sup>SM</sup> deploys and manages a single, centralized long form set of terms if a long form is desired, coupled with one short form designed to meet the limited space of physical card backs along with another short form for online sales and virtual cards if a second short form is desired.

3. Regain Historical Visibility. The longevity of gift card programs inevitably results in card terms changing over time. Designed to provide historical visibility to assist card terms designers and related business decision makers, and to support audits, regulatory inquiries and consumer inquiries, the archive tool of Terms Now<sup>SM</sup> tracks and maintains the historical versions of the released card terms and provides for comparison of one version with another. This Terms Now<sup>SM</sup> tool is also available for historical visibility of privacy policies.
4. Enable the Use of Long Form Terms. For those desiring the advantages of a long form set of card terms disclosed online to consumers, Terms Now<sup>SM</sup> is designed to navigate the rules regarding legally enforceable web links, proper website placements, and use of click and/or browse wrap techniques.
5. Provide for Downloadable Card Terms. The laws of some jurisdictions require that online card terms be downloadable by consumers to a durable medium. Terms Now<sup>SM</sup> was architected to address these rules. It comes with a downloadable terms tool that provides for compliance with these rules while adding a consumer friendly device.

## **II. The Compliance Features of Terms Now<sup>SM</sup> – get the card terms right.**

6. Compliant Terms, Consumer Disclosures and Best Practices. Many laws and regulations require that certain disclosures be made in the card terms. Some direct what belongs on a card front, on a card back, and/or in accompanying materials. Other laws ban or limit the use of certain contract clauses or card features. In between the regulatory required and the regulatory forbidden are best practices regarding terms and conditions and disclosures to consumers. Designed by specialists, Terms Now<sup>SM</sup> addresses these compliance matters tailored to each client's needs. A list of laws watched by Terms Now<sup>SM</sup> is provided below.
7. Fraud Cautions and Warnings. The laws of some jurisdictions, like New York, now require card issuers and card sellers to provide specified fraud warnings to consumers in conjunction with the sale of gift cards. Terms Now<sup>SM</sup> addresses these laws while also making fraud awareness and training available to consumers as an added consumer friendly feature.
8. Packaging Laws. The laws of some jurisdictions, like Maryland, regulate the packaging of gift cards to address tampering by third party fraudsters. Terms Now<sup>SM</sup> addresses these laws while again making fraud awareness and training available to consumers as an added consumer friendly feature.
9. Foreign Language Requirements. The laws of some jurisdictions directly require that a foreign language be used or be made available with respect to card terms, such as French in Quebec. Additionally, the laws of other countries are now being construed to indirectly require a foreign language. Aside from such compliance issues, access to card terms in multiple languages may be a positive cultural experience for card

purchasers and gift card recipients. Deploying its multiple languages tool, Terms Now<sup>SM</sup> embraces the issue with use of multiple languages at a finger's touch.

10. ADA and Visually Impaired. Deploying features designed by blind engineers for the visually impaired, Terms Now<sup>SM</sup> addresses ADA regulations by having cards speak to the devices used by the visually impaired.

### **III. Special Contract Clauses – complete the terms of a cardholder agreement as desired.**

11. Leverage Use of Long Form Terms. Terms Now<sup>SM</sup> enables the use of long form terms in gift card programs to address the addition of clauses to a cardholder agreement that cannot fit on the space provided on the back of a physical card. The additional space afforded by the long form is useful to add contract language to fully explain the limitations on use of cards in some programs. The long form can also be leveraged to add clauses that help to manage liability. In that regard, and to the extent permitted in a jurisdiction and desired for a particular card program, such specialty clauses may include a novation clause, a limitations on liability provision, a forum selection clause, an arbitration agreement, and/or a waiver of class action provision. Terms Now<sup>SM</sup> is designed to navigate the rules regarding the use of specialty clauses including rules requiring conspicuous disclosures and conspicuous web links.
12. A Change of Terms Provision. More and more retailers are attempting to use a change in terms provision in their agreements with consumers under which the retailer can change the terms of a product or service after it is delivered. Given the unilateral nature of such clauses, such provisions are barred in some jurisdictions and are subject to limitations in others. Terms Now<sup>SM</sup> is designed to navigate the rules regarding the use of such clauses in gift card programs. It also features a cardholder notice tool that helps with the application of such clauses in card programs where the cardholders are anonymous.
13. Cardholder Notices. Most gift card programs have cards with anonymous cardholders resulting in a practical void when it comes to cardholder notices if notices are desired. Terms Now<sup>SM</sup> addresses this matter by including a cardholder notice clause in the long form terms coupled with a specific and stable place on the Terms Now<sup>SM</sup> platform for providing web based notices to cardholders.
14. Program Termination. Gift Card programs can end. Terms Now<sup>SM</sup> is designed to address the matter of program termination in the long form card terms. It also provides a stable customer service platform to inform cardholders and allow them to address outstanding gift cards in a terminated program. While a gift card program may end and even be dismantled, Terms Now<sup>SM</sup> will live on and continue to support cardholders after termination, allowing for card issuers to exit properly.
15. Dealing With Those Other Terms. Terms Now<sup>SM</sup> focuses upon terms and conditions governing the use of the gift cards. Gift cards in many programs are also subject to peripheral sets of terms and conditions, such as the “terms of service” that govern the

use of online sales sites where the gift cards are sold and purchased, or the “terms of service” on websites where the gift cards can be used online to purchase goods and services. Terms Now<sup>SM</sup> is designed to disclose these other terms to card purchasers and card users for their convenience. Terms Now<sup>SM</sup> also is designed to comply with laws requiring that some of those other terms be specifically referenced on the gift card or in the direct gift card terms.

#### **IV. Other Available Operations Features – add compliance tools as desired.**

16. Privacy. Button up the privacy policy and privacy notices required for the card program. In that regard, Terms Now<sup>SM</sup> is designed to include and disclose privacy policies and notices consistent with applicable domestic and international privacy laws. Terms Now<sup>SM</sup> also features a privacy hygiene tool under which personally identifiable information about cardholders is cleaned up and deleted, with consent of cardholders, after the passage of time needed for the performance of the tasks for which the personally identifiable information was collected.
17. AML. Button up the anti-money laundering policy for a card program. In that regard, Terms Now<sup>SM</sup> is designed to include and disclose an AML policy for the gift card program consistent with applicable domestic and international AML laws. Terms Now<sup>SM</sup> also features a tool designed to calculate and disclose the maximum value that can be loaded on a gift card in the program in light of both the jurisdiction where the card issuer is located and the jurisdiction where the card was purchased. Aside from addressing compliance with AML laws, the tool is designed to advise consumers of the value limits placed on card purchases and card reloads, the limits upon combined cards if applicable, and limits applicable to redeeming cards into wallets. The tool is also configurable to accommodate fraud limits set for the cards in the program.
18. Cash-Back or Cash-Out. Certain domestic and international laws require the payment of cash-back or cash-out to consumers in certain circumstances specified in the laws, such as the laws of certain U.S. States that require cash out when the balance of a card is at or below a designated amount, or international laws that provide a cooling off period during which a consumer may back out of a transaction and make a regret redemption of cash. Terms Now<sup>SM</sup> features a centralized Virtual Cash-Out Customer Service Desk under which consumers can request cash-back or cash-out and receive the required payment if and as required by applicable law.
19. Valid Thru Dates. Some programs use valid thru dates under which a physical or digital card will cease to be usable by a cardholder, but the cardholder will not lose total access to the underlying balance value. The cardholder may claim the unused value from the card issuer. Valid thru dates are used to protect against fraud and to help manage the forecasting of long-range breakage under GAAP standards. They are regulated. In that regard, Terms Now<sup>SM</sup> is designed to manage disclosure of valid thru dates consistent with applicable laws governing the feature. Terms Now<sup>SM</sup> also is designed to provide a controlled customer service system under which the consumer can access the value of a card after a valid thru date.

20. Balance Inquiry Systems. Some laws or regulations require disclosure to consumers of a balance inquiry system by which a consumer can inquire about the amount of the balance of the card. Some card issuers desire not to publicly disclose such systems, because they are used regularly by fraudsters in one or more fraud schemes. In that regard, Terms Now<sup>SM</sup> is designed to manage disclosure of balance inquiry systems consistent with applicable laws governing the feature. Additionally, Terms Now<sup>SM</sup> is designed to provide a secure customer service system under which a consumer can access the balance inquiry system but only after application of an administered cardholder authentication system.
21. Unclaimed Property Statutes and Escheat. Gift cards in some programs may be subject to escheat under unclaimed property laws that require a card issuer to provide escheat due diligence notices to cardholders and then to file reports to U.S. States under which gift card funds are escheated to the States. An escheat filing with a State may result in a cardholder losing the ability to use the gift cards. Terms Now<sup>SM</sup> is designed to provide a customer service system under which cardholders can address receipt of escheat notices or the loss of use of a gift card as a result of escheat.

**V. Consumer Friendly Attributes** – provide the best consumer experience.

22. Readily Accessible, Real Time Consumer Disclosures. Terms Now<sup>SM</sup> provides a convenient and stable platform from which to stage transparent disclosure of terms, conditions, fraud warnings and other information to consumers. It enables disclosure of card terms to card buyers prior to card purchases. It is readily accessible on all forms of consumer computer equipment including all major types of mobile phones. And, as the term “now” in its name indicates, Terms Now<sup>SM</sup> is available 24/7 and the card terms are current in real time.
23. The Anchor Technique. The Terms Now<sup>SM</sup> system deploys a stable, integrated card terms system under which card terms and card disclosures are anchored to the gift card back which is the item in the possession of the consumer. From there, the consumer has access to everything he or she needs to know. The card back is designed to disclose all core or required terms, and it is then linked directly to the Terms Now<sup>SM</sup> site which is only one click away. In that regard, the link uses the easy recognizable derivative of the URL, mycardterms.com. In turn, the Terms Now<sup>SM</sup> site is devoted almost entirely to card terms and related matters so that card terms are front and center and never accused of being buried. Per the anchor technique, each cardholder agrees to the terms disclosed on the card back and on the Terms Now<sup>SM</sup> platform when the cardholder purchases, accepts or uses a card, thereby anchoring the terms to consumer consent.

Card terms are not disclosed ad hoc at distribution channels. Instead, all card terms used in all distribution channels are integrated and tied together by a web linked system all anchored by the card back itself. In all cases, access to Terms Now<sup>SM</sup> remains a single click away from all short forms used in the distribution channels. If a card is lost,

access to the Terms Now<sup>SM</sup> remains readily available to consumers by direct browser inquiry of mycardterms.com or via the client's website.

As for specialty contract clauses and web links that require conspicuous disclosure per applicable laws, all such clauses and web links are conspicuously referenced repeatedly to the consumer from start to finish in the linked system including on the card back itself. For example, the existence of a change of terms provision, if used, is conspicuously disclosed and anchored on the card back itself, followed by conspicuous disclosure on the home page of Terms Now<sup>SM</sup> in the preamble to the long form terms on Terms Now<sup>SM</sup> and in the change of terms clause itself in the long form terms on Terms Now<sup>SM</sup>. When a consumer accesses the Terms Now<sup>SM</sup> site, then he or she is never more than one click away from clauses such as arbitration agreements or waiver of class action provisions.

24. Tips on Use. Terms Now<sup>SM</sup> provides a stable place for the convenient and consistent disclosure of frequently asked questions and tips on use about the card program. In addition to its Cardholder Notice tab, Terms Now<sup>SM</sup> features a tab for tips on use and frequently asked questions. The tab is designed to thoroughly address most consumer questions about gift cards and is configurable to each client and card program. The tab was intentionally built on the tips on use recommended or required by OCC guidance for bank issued gift cards, thereby bringing the best practices for bank cards to the merchant card sector.
25. Consumer Friendly Features. The Terms Now<sup>SM</sup> system features many consumer friendly attributes including: ready access to card terms on all forms of consumer devices; downloadable card terms to durable media; a method for providing notices to cardholders including for anonymous cards; multiple language capability at a finger's touch; virtual cash-out assistance where required by law; ADA features designed by blind engineers for visibly impaired cardholders; pro-consumer privacy features coupled with a unique approach to practice privacy hygiene with respect to personally identifiable information; a balance inquiry system for secure balance inquiries; customer service platforms specially designed to assist with valid thru dates and escheat if applicable; thorough tips on use and frequently asked questions designed to meet OCC standards; fraud awareness and training materials for consumers; and a customer service platform to address terminated card programs.

## **VI. Conveniences for Clients Choosing Terms Now<sup>SM</sup>**

26. Client Tailored and Client Focused. Terms Now<sup>SM</sup> provides a white-labeled type product hosted by Card Compliant with each Terms Now<sup>SM</sup> site being dedicated and branded to a specific client and a client's card program. The Terms Now<sup>SM</sup> system is configurable to each client's specific product and each client's related business and risk decisions. And each client is supported by a customer success manager.
27. Stability. Hosted by Card Compliant and deploying the anchored technique described above, Terms Now<sup>SM</sup> provides a stable and consistent environment from which to

address card terms and disclosures – unimpeded by turnover of client personnel; by changes of inventory vendors, transaction processors, or card distributors; or even upon termination of the gift card program.

28. Benefits of Outsourcing. Outsource all the copious tasks and costly work, including the web work, required to properly manage card terms and disclosures in modern card programs as outlined above. Enjoy quick access to industry expertise on industry practices regarding card terms, conditions, warnings, labeling and packaging, including specialists on compliance.
29. Organize Multiple Programs and Brands. The Terms Now<sup>SM</sup> system is designed to accommodate and address multiple programs or multiple brands of each client. It also works well for all forms of physical cards, digital cards, or wallets.
30. Track Program Tasks. As an optional feature if selected, Terms Now<sup>SM</sup> comes with a gift card program tracking system under which client tasks regarding the maintenance of card terms are tracked each year, along with performance of one hundred program formalities selected by experts as common subjects of regulatory audits.

## **VII. Bonus Reason to Use Terms Now<sup>SM</sup>**

31. Our Trust but Verify Program. The Terms Now<sup>SM</sup> system comes with its Trust but Verify Program under which the terms and conditions for a gift card program are audited by compliance specialists at least once a year at all points of card distribution to confirm and verify conformance with approved card terms and card links. The program includes at least one online purchase of a gift card per year to test the card terms during a consumer's online card purchase journey. The audit also includes lawyer eyes on the wording of terms of the physical card and digital card if applicable. Additionally, to watch for inadvertent changes to card terms on online platforms, the program includes real time surveillance by a bot of websites to check for changes in terms with daily reports of changes made.

### **Table A: Laws and Regulations Watched by Terms Now<sup>SM</sup>**

Among other laws and standards, the compliance features of Terms Now<sup>SM</sup> have real time eyes on the following laws and regulations: Federal Card Act (Shumer Amendment); Federal Card Act Regulations; Federal Bank Secrecy Act; Federal Patriot Act; Federal FinCEN Regulation; Federal OFAC Law; Federal MSB Regulation; Federal Dodd-Frank and Durbin Amendment Act (Durbin Amendment); Federal Dodd-Frank and Durbin Act Regulations; Federal Supreme Court Escheat Priority Rules; CFPB Regulations and Guidance; OCC guidance re card terms; FTC Rulings on Fees and Expiration Dates; U.S. State Consumer Protection Laws; U.S. State Unclaimed Property Laws; U.S. State Privacy Laws; U.S. Territorial Laws; and International Equivalents as Applicable.