

# AGREEMENT

This AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This is a legal agreement for advertising & consignment sales services between:

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| ZmartDeal Marketing and Sales Inc.<br>(hereinafter referred as "ZmartDeal"), | 140 10 Ave. SW, Suite #2004<br>Calgary, AB T2R 0A3 |
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And

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| (hereinafter referred to as the "Advertiser"). |  |
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**1. Purchase of Advertising** (write "yes" to all that applies under Purchased Option)

| SKU   | Advertising Option               | Price (without GST)   | Purchased Option |
|-------|----------------------------------|-----------------------|------------------|
| ADV02 | Standard Listing – 3 Mths.       | \$ 149.85             |                  |
| ADV03 | Standard Listing – 6 Mths.       | \$ 269.70             |                  |
| ADV04 | Standard Listing – 12 Mths.      | \$ 449.40             |                  |
| ADV05 | Feat. Merchant Listing – 3 Mths. | \$ 179.85             |                  |
| ADV06 | Feat. Merchant Listing – 6 Mths  | \$ 323.70             |                  |
| ADV07 | Feat. Merchant Listing – 12 Mths | \$ 539.40             |                  |
| ADV08 | Banner Creation                  | \$ 40                 |                  |
| GC01  | Gift Certificates – 100 Pcs.     | \$65 (taxes included) |                  |

**2. Consignment of gift cards/certificates that the Advertiser will ship to ZmartDeal**

|  |      |
|--|------|
| Face value (denomination) of supplied gift cards/certificates      | \$   |
| Minimum discount from face value offered to consumers (ex: 10%)    | %    |
| Maximum discount you will allow us to offer to consumers (ex: 40%) | %    |
| Number of gift cards/certificates I will ship now*                 | Pcs. |

\*Minimum 50 pcs. for the first 3 months and then based on needs and requests from ZmartDeal

**3. Company Info the Advertiser will send at [advertising@zmartdeal.com](mailto:advertising@zmartdeal.com) as specified below:**

- 1 picture in .jpeg format sized 134 pixels wide by 100 pixels tall
- Company description of maximum 300 words including address, telephone, address of participating locations, gift card/certificate restrictions, web site address
- **ONLY for Featured Merchant Packages** send 1 additional picture with same format & size

By accepting this agreement you agree to be bound by the terms and conditions of this agreement. Please read, fill in all requested info, sign the agreement and send it together with the gift cards/certificates to us at:

ZmartDeal Marketing and Sales Inc.  
140 10 Ave. SW, Suite # 2004, Calgary, AB T2R 0A3

# Terms and Conditions

**1. Term Definition** – For the purpose of this Agreement, Gift Cards are defined as electronic stored value cards, gift certificates, passes, vouchers or any other tangible merchandise sold to consumers. The Advertiser is the issuer of the gift cards and is responsible for complying with any applicable federal, provincial and governmental laws and regulations.

**2. License to Advertise and Sell** – Advertiser grants ZmartDeal a fully paid, non-exclusive license for the contract term to advertise, sell, use, distribute, reproduce, develop derivative ad copy and display in any medium the Advertiser's trade name, logo, trademarks, as well as gift cards, gift certificates, images, photographs, graphics, illustrations, and other materials and content provided by the Advertiser ("Content"). Advertiser represents and warrants that it owns and has unrestricted right and authority to use in any media (and to provide to ZmartDeal) all Content or has the legal right to grant the license to the Content set forth above. The Advertiser agrees that he is solely responsible for the enforcement and protection of his intellectual property, including that contained in his advertising. If ZmartDeal creates advertising copy for the Advertiser, the Advertiser shall retain all rights to intellectual property provided to ZmartDeal and be responsible for its content; ZmartDeal retains all rights in and/or ownership of the created advertising copy, which cannot be used without the express written consent of ZmartDeal.

**3. Right to Refuse Service** – ZmartDeal reserves the right to refuse or cancel the advertising in its sole discretion and without limitation if it considers that the Advertiser has breached any term of the contract, the ad copy and/or Content provided is harmful or indecent, may be legally actionable or violates the intellectual property of third parties.

**4. Advertising Content** – Advertiser agrees to provide ZmartDeal with the Content required for the preparation of the advertising copy and shall review and approve all advertisements in due time prior to release. Advertiser represents and warrants that all Content for the advertisements supplied to ZmartDeal will be true and correct, does not infringe any third party's copyright, trademark or other intellectual property rights, is not misleading, harmful or false advertising and does not violate any provincial, federal or governmental laws and regulations.

**5. Consigned Gift Cards/Certificates** – Advertiser agrees to provide ZmartDeal with Gift Cards to be sold on consignment within ten days from the Contract Date or whenever ZmartDeal requests additional Gift Cards. Failure to provide and maintain a sufficient number of Gift Cards for selling entitles ZmartDeal to cancel this Agreement.

**6. Services Payment and Default** – The Advertiser agrees to pay the one-time sign-up fee and the corresponding price of the selected advertising package (Standard Listing, Featured Merchant Listing) and subscription (3 months, 6 months or 12 months), and the price of any additional services purchased, in advance (when placing the order). From the Gift Card sales proceeds, ZmartDeal shall deduct the sales fee (13%) and within fifteen business days from the end of each month, it shall provide the Advertiser a cheque for the money remaining from the sale of the Gift Cards plus a statement summarizing Gift Cards sales and fee deductions. All fees are subject to change. Failure to pay the advertising services fees entitles ZmartDeal to cancel this agreement immediately.

The Advertiser's default of the obligations contained in this Agreement, including the obligations to pay for the services purchased from ZmartDeal, to provide ZmartDeal with sufficient Gift Cards to sell at all times, and to honor gift cards presented by ZmartDeal customers, is deemed as a contract breach and ZmartDeal is entitled to terminate the contract, immediately remove the Advertiser's listing and cease to provide Advertising services. In the event that this Agreement is terminated due to a default by the Advertiser, the Advertiser shall remain liable for all set-up fees, monthly advertising fees and sales fees incurred to date.

**7. ZmartDeal Obligations** - ZmartDeal will provide the following services to the Advertiser:

(a) Advertising Services: ZmartDeal shall set-up the Advertiser's account, post and host his advertisement, Gift Card listing included, on [www.zmartdeal.com](http://www.zmartdeal.com) according to the conditions and term of the advertising package and term subscription purchased by the Advertiser.

(b) Gift Card Sale on Consignment Services: ZmartDeal will handle all aspects related to sale of the Advertiser's Gift Cards within the subscription term, including online sales processing, customer service and order fulfillment.

**8. Linking to ZmartDeal.com** – The Advertiser may link to Zmartdeal's internet web home page, [www.zmartdeal.com](http://www.zmartdeal.com), provided the Advertiser agrees to the following link conditions: (a) the link may be established only to the home page and not any other pages; (b) if he links to zmartdeal.com site, ZmartDeal grants the Advertiser a limited, non-exclusive, non-transferable, royalty-free license to use the ZmartDeal trademark solely for the purpose of linking from the Advertisers' site to ZmartDeal's site, no other uses of Zmartdeal trademarks or service marks being allowed for any reason without ZmartDeal's prior written consent; (c) may not imply an affiliation between the Advertisers' company and Zmartdeal, or any kind of endorsement from Zmartdeal, without the prior written consent of ZmartDeal; (d) may not misrepresent the Advertiser's relationship with ZmartDeal or present misleading or false impressions about ZmartDeal's services; (e) ZmartDeal has no responsibility or liability whatsoever for the content of the Advertiser's web site. ZmartDeal may in its sole discretion terminate your license to use its trademark and your right to link to its site, [www.zmartdeal.com](http://www.zmartdeal.com), with or without a cause. If ZmartDeal exercises its right, you will immediately cease using the ZmartDeal trademark and remove all links to ZmartDeal's site, [www.zmartdeal.com](http://www.zmartdeal.com). The Advertiser shall make a written request to ZmartDeal to get permission for linking. ZmartDeal reserves the right to refuse any request for linking.

**9. Gift Cards Requirements** – Advertiser shall provide Zmartdeal with Gift Cards and related packaging. All Gift Cards shall have the holder's name left blank and NO expiry date (or at least one year validity where applicable). ZmartDeal reserves the right to refuse acceptance of any Gift Cards not complying with these requirements.

**10. Risk of Loss** - Advertiser is responsible for any and all handling, shipping, delivery, insurance and replacement costs of Gift Cards until the Gift Cards are accepted by ZmartDeal at #2004 - 140 10<sup>th</sup> Ave. SW, Calgary, AB T2R 0A3.

**11. Gift Cards Sales and Redemption** - ZmartDeal agrees to sell Gift Cards as per the prices, quantities and release dates provided in this Agreement. Advertiser agrees to accept and honor all Gift Cards sold by ZmartDeal "same as cash, without restrictions, unless explicitly stated on the Gift Cards" and provide consumers with a refund for any unused balance in the form of cash, voucher, or stored value credit as preferred and as required by law. The Advertiser is fully responsible for appropriate authentication of all Gift Cards and holds ZmartDeal harmless for any fraudulent actions or activities perpetrated by a third party.

**12. Term** – The Term of the present Agreement begins on the date when the Agreement is accepted by ZmartDeal ("Contract Date") and continues until terminated pursuant to Sections 5, 6 and 14.

**13. ZmartDeal Copyrights and Trademarks** - All content available on zmartdeal.com is copyrighted, with all rights reserved and is the property of ZmartDeal. "ZmartDeal" and all other names and logos posted on this website are registered and unregistered trademarks, service marks, trade names and logos owned by ZmartDeal and its content providers. For the exclusive purpose of linking to ZmartDeal home page the Advertiser may use the Zmartdeal trademark only with the prior written permission of ZmartDeal, otherwise the use of ZmartDeal trademarks is strictly prohibited.

**14. Cancellation** – Either party may cancel this Agreement at any time. To make the cancellation effective the party seeking to cancel must provide a 30 days prior notice ("Cancellation Notice"). Upon receipt of the Cancellation Notice ZmartDeal shall cease to sell Gift Cards and within 30 days shall provide the Advertiser with a final billing statement together with any outstanding payments and unsold Gift Cards.

**15. General Disclaimers** – To the maximum extent permitted by the law, ZmartDeal disclaims any obligations and warranties, expressed or implied, that are not expressly set forth in this Agreement, including without limitation: (a) ZmartDeal does not warrant the number of responses to the Advertisers' advertisement, the number of web site visitors who will view the Advertiser's advertisements, any gift card sales or other business benefit; (b) ZmartDeal does not warrant that the internet service will be uninterrupted or error free. The Advertisers agrees that ZmartDeal will have fulfilled its obligation under this Agreement if: (a) it posts and hosts the Advertisers' advertisements, Gift Card listing included, on zmartdeal.com, so that they are accessible to Internet users for viewing (advertisements) and buying (Gift Cards); (b) if Gift Cards are sold online, ZmartDeal shall provide Gift Card sale on consignment services including online sales processing, customer service and order fulfillment.

**16. Authority** – The person agreeing to or authorizing this Agreement on behalf of the Advertiser hereby certifies that he/she is the Advertiser or he/she is lawfully authorized to enter into this Agreement on behalf of the Advertiser.

**17. Indemnity** – The Advertiser agrees to indemnify and hold ZmartDeal, its officers, directors, employees and representatives, harmless from and against any and all loss, damages, liabilities, claims, actions, costs and expenses, claimed or filed by a third party arising from ZmartDeal's use of any Content in a way consistent with the terms and conditions of this Agreement, and any violation or breach of a representation or warranty provided by Advertiser in the hereby Agreement.

**18. Force Majeure** – Advertiser agrees that ZmartDeal shall not be in breach of his obligations and hold liable under this Agreement if it is unable to perform any or all of its obligations under this Agreement due to causes beyond its control. Such causes include but are not limited to, fire or casualty, snow storms, hurricanes or other acts of God, labor disputes, governmental regulations or controls, inability to obtain services or materials, technical and internet problems or failures, or any other cause beyond the control of ZmartDeal.

**19. Others** – Advertiser may not assign or transfer any of the rights expressed in this Agreement without the prior express written permission of ZmartDeal. The Advertiser agrees that this Agreement shall be governed by, interpreted and enforced in accordance with the laws of Alberta, Canada and any disputes arising from or in relation to this Agreement will be resolved before the Courts of Calgary, Alberta. Once accepted by ZmartDeal, this Agreement represents the final expression of the Agreement between Zmartdeal and Advertiser, and this Agreement may not be contradicted by evidence of any alleged oral agreement.

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Name and Signature of Advertiser

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ZmartDeal Marketing and Sales Inc.