

## **CONTRACT FOR Online Gift Certificate SERVICES**

**Document Version: 1.0**

**Document Name: gcsa+tos\_vers1**

**Preamble:** Terms used in this document represent Database Column names filled in during the registration process. These terms are identified by the prefix "**db\_<IDENTIFIER>**" where <IDENTIFIER> is the actual column name. This document will be stored by reference in the database under the column name of **TCS\_STORED\_DOC**. You are encouraged to download and save a copy of this version of the document for future reference. Following this Contract portion is the General Terms of Service. By **ACCEPTING** this electronically, you are agreeing to be bound by this Service Contract and Terms of Service.

This Contract for Services (this "Contract") is made effective as of **db\_TCS\_DATE**, by and between **db\_CUSTNAME** of **db\_ADDR1**, **db\_CITY**, **db\_STATE**, **db\_ZIPCODE**, and CITO onDemand, LLC of 1237 Meadowbrook Drive, Lafayette, Indiana 47905-4601. In this Contract, the party who is contracting to receive services will be referred to as "**db\_ALIAS**," and the party who will be providing the services will be referred to as "CitoCerts."

**1. DESCRIPTION OF SERVICES.** Beginning on **db\_TCS\_DATE**, CitoCerts will provide to **db\_ALIAS** the following services (collectively, the "Services"):

Online Gift Certificates, Facebook Share Button, Web link code to Certificates web site.

**2. PAYMENT FOR SERVICES.** In exchange for the Services, **db\_ALIAS** will pay CitoCerts according to the following schedule:

\$39.95 (or PROMO identified price) as lump sum then 3% per Gift Certificate transaction price billed as follows: If amount due is \$15.00 or more, a monthly bill will be sent else a quarterly billing will occur with the quarter beginning 3 months after contract initiation. Payment expected within 30 days of billing generation date.

**3. TERM.** This Contract will run in perpetuity unless notification by Client or payment default requires early termination.

**4. CONFIDENTIALITY.** CitoCerts, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of CitoCerts, or divulge, disclose, or communicate in any manner, any information that is proprietary to **db\_ALIAS**. CitoCerts and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract.

Upon termination of this Contract, CitoCerts will return to **db\_ALIAS** all records, notes, documentation and other items that were used, created, or controlled by CitoCerts during the term of this Contract.

**5. WARRANTY.** CitoCerts shall provide its services and meet its obligations under this Contract in a

timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in CitoCerts community and region, and will provide a standard of care equal to, or superior to, care used by service providers similar to CitoCerts on similar projects.

**6. REMEDIES.** In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 2 business days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Contract.

**7. ENTIRE AGREEMENT.** This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

**8. SEVERABILITY.** If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

**9. AMENDMENT.** This Contract may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

**10. GOVERNING LAW.** This Contract shall be construed in accordance with the laws of the State of Indiana.

**11. NOTICE.** Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

**12. ASSIGNMENT.** Neither party may assign or transfer this Contract without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

Service Recipient:  
**db\_CUSTNAME**

By: **db\_ID1\_EMAIL**  
Electronic by Agreement Acceptance & Payment  
Business Owner/Authorized Representative

Service Provider:  
CITO onDemand, LLC

By: Dave Lohmoeller  
Electronic Default  
CEO: CITO onDemand, LLC

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### General Terms Of Use & Service

**IMPORTANT! THESE TERMS OF SERVICE (TOS) GOVERN YOUR USE OF THIS SITE, WHICH IS PROVIDED BY OUR COMPANY. BY ACCESSING THIS SITE, YOU ARE INDICATING YOUR ACKNOWLEDGMENT AND ACCEPTANCE OF THESE TERMS OF USE. THESE TERMS OF USE ARE SUBJECT TO CHANGE BY OUR COMPANY AT ANY TIME IN ITS DISCRETION. YOUR USE OF THIS SITE AFTER SUCH CHANGES ARE IMPLEMENTED CONSTITUTES YOUR ACKNOWLEDGMENT AND ACCEPTANCE OF THE CHANGES. PLEASE CONSULT THESE TERMS OF USE REGULARLY.**

#### **Access To This Site**

**YOU MUST BE EIGHTEEN (18) YEARS OR OLDER TO ACCESS THIS WEB SITE. IF YOU ARE UNDER EIGHTEEN YEARS OF AGE, YOU ARE NOT PERMITTED TO ACCESS THIS WEB SITE FOR ANY REASON. DUE TO THE AGE RESTRICTIONS FOR USE OF THIS WEB SITE, NO INFORMATION OBTAINED BY THIS WEB SITE, FALLS WITHIN THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT (COPPA) AND IS NOT MONITORED AS DOING SO.**

To access this site or some of the resources it has to offer, you may be asked to provide certain registration details or other information. It is a condition of your use of this site that all the information you provide on this site will be correct, current, and complete. If our *Company* believes the information you provide is not correct, current, or complete, we have the right to refuse you access to this site or any of its resources, and to terminate or suspend your access at any time, without notice.

#### **Restrictions On Use**

You may use this site for purposes expressly permitted by this site. You may not use this site for any other purpose, including any commercial purpose, without our *Company's* express prior written consent. For example, you may not (and may not authorize any other party to) (i) co-brand this site, or (ii) frame this site, or (iii) hyper-link to this site, without the express prior written permission of an

authorized representative of our *Company*. For purposes of these Terms of Use, "co-branding" means to display a name, logo, trademark, or other means of attribution or identification of any party in such a manner as is reasonably likely to give a user the impression that such other party has the right to display, publish, or distribute this site or content accessible within this site. You agree to cooperate with our *Company* in causing any unauthorized co-branding, framing or hyper-linking immediately to cease.

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## **Limitation On Liability**

**COMPANY, ITS SUBSIDIARIES, AFFILIATES, LICENSORS, SERVICE PROVIDERS, CONTENT PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, AND DIRECTORS WILL NOT BE LIABLE FOR ANY INCIDENTAL, DIRECT, INDIRECT, PUNITIVE, ACTUAL, CONSEQUENTIAL, SPECIAL,**

**EXEMPLARY, OR OTHER DAMAGES, INCLUDING LOSS OF REVENUE OR INCOME, PAIN AND SUFFERING, EMOTIONAL DISTRESS, OR SIMILAR DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE COLLECTIVE LIABILITY OF COMPANY AND ITS SUBSIDIARIES, AFFILIATES, LICENSORS, SERVICE PROVIDERS, CONTENT PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, AND DIRECTORS, TO ANY PARTY (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED THE GREATER OF \$100 OR THE AMOUNT YOU HAVE PAID TO COMPANY FOR THE APPLICABLE CONTENT, PRODUCT OR SERVICE OUT OF WHICH LIABILITY AROSE.**

### **Indemnity**

You will indemnify and hold *Company*, its subsidiaries, affiliates, licensors, content providers, service providers, employees, agents, officers, directors, and contractors (hereinafter known as the "Indemnified Parties") harmless from any breach of these Terms of Use by you, including any use of Content other than as expressly authorized in these Terms of Use. You agree that the Indemnified Parties will have no liability in connection with any such breach or unauthorized use, and you agree to indemnify any and all resulting loss, damages, judgments, awards, costs, expenses, and attorney's fees of the Indemnified Parties in connection therewith. You will also indemnify and hold the Indemnified Parties harmless from and against any claims brought by third parties arising out of your use of the information accessed from this site.

### **Trademarks**

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### **Information You Provide**

You may not post, send, submit, publish, or transmit in connection with this site any material that:

- you do not have the right to post, including proprietary material of any third party;
- advocates illegal activity or discusses an intent to commit an illegal act;
- is vulgar, obscene, pornographic, or indecent;
- does not pertain directly to this site;
- threatens or abuses others, libels, defames, invades privacy, stalks, is obscene, pornographic, racist, abusive, harassing, threatening or offensive;
- seeks to exploit or harm children by exposing them to inappropriate content, asking for personally identifiable details or otherwise;
- infringes any intellectual property or other right of any entity or person, including violating anyone's copyrights or trademarks or their rights of publicity;
- violates any law or may be considered to violate any law;
- impersonates or misrepresents your connection to any other entity or person or otherwise manipulates headers or identifiers to disguise the origin of the content;
- advertises any commercial endeavor (e.g., offering for sale products or services) or otherwise

engages in any commercial activity (e.g., conducting raffles or contests, displaying sponsorship banners, and/or soliciting goods or services) except as may be specifically authorized on this site;

- solicits funds, advertisers or sponsors;
- includes programs which contain viruses, worms and/or Trojan horses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications;
- disrupts the normal flow of dialogue, causes a screen to scroll faster than other users are able to type, or otherwise act in a way which affects the ability of other people to engage in real time activities via this site;
- includes MP3 format files;
- amounts to a 'pyramid' or similar scheme;
- disobeys any policy or regulations established from time to time regarding use of this site or any networks connected to this site; or
- contains hyper-links to other sites that contain content that falls within the descriptions set forth above.

Although under no obligation to do so, our *Company* reserves the right to monitor use of this site to determine compliance with these Terms of Use, as well the right to remove or refuse any information for any reason. Notwithstanding these rights, you remain solely responsible for the content of your submissions. You acknowledge and agree that neither *Company* nor any third party that provides Content to *Company* will assume or have any liability for any action or inaction by *Company* or such third party with respect to any submission.

## **Security**

Any passwords used for this site are for individual use only. You will be responsible for the security of your password (if any). *Company* will be entitled to monitor your password and, at its discretion, require you to change it. If you use a password that *Company* considers insecure, *Company* will be entitled to require the password to be changed and/or terminate your account.

You are prohibited from using any services or facilities provided in connection with this site to compromise security or tamper with system resources and/or accounts. The use or distribution of tools designed for compromising security (e.g., password guessing programs, cracking tools or network probing tools) is strictly prohibited. If you become involved in any violation of system security, *Company* reserves the right to release your details to system administrators at other sites in order to assist them in resolving security incidents. *Company* reserves the right to investigate suspected violations of these Terms of Use.

*Company* reserves the right to fully cooperate with any law enforcement authorities or court order requesting or directing *Company* to disclose the identity of anyone posting any e-mail messages, or publishing or otherwise making available any materials that are believed to violate these Terms of Use.

**BY ACCEPTING THIS AGREEMENT YOU WAIVE AND HOLD HARMLESS COMPANY FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY COMPANY DURING OR AS A**

**RESULT OF ITS INVESTIGATIONS AND/OR FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER [COMPANY] OR LAW ENFORCEMENT AUTHORITIES.**

**CONFLICTS & ARBITRATION**

This Agreement will be governed and interpreted pursuant to the laws of Indiana, United States of America, notwithstanding any principles of conflicts of law. You specifically consent to personal jurisdiction in Indiana in connection with any dispute between you and Company arising out of this Agreement or pertaining to the subject matter hereof. The parties agree that any claim or dispute between them, or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, including the validity of this arbitration clause, that cannot be settled within six months after the time the dispute has been raised by one party regarding the interpretation of any provision of this agreement, and nothing else, shall be settled by binding arbitration. Any such arbitration proceeding, including the interpretation of this agreement, shall be conducted in Lafayette, Indiana under the laws of the State of Indiana and in accordance with the rules of the American Arbitration Association or its successor. Any judgment upon an award rendered by the arbiters, including remedies of repossession, replevin, or other remedies where property would be subject to reclamation or disposition, may be entered in the Federal and State Courts of the State of Indiana and in any other Indiana Court having jurisdiction. The arbiters shall not have the power to amend this agreement in any respect. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective and the remainder of the agreement shall remain effective. This agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. Sections 1-16. Each party shall bear and be responsible for their own costs and attorney fees.

The parties to this Agreement each agree that the exclusive venue for any dispute between the parties arising out of this Agreement or pertaining to the subject matter of this Agreement will be in **Lafayette, Indiana**. If any part of this Agreement is unlawful, void or unenforceable, that part will be deemed severable and will not affect the validity and enforceability of any remaining provisions. This Agreement constitutes the entire agreement among the parties relating to this subject matter. Notwithstanding the foregoing, any additional terms and conditions on this site will govern the items to which they pertain.

You agree that you will not join any other party in any dispute you have with Company and that you must bring any action under this agreement as a sole individual.

The terms constituting this offering are set forth in writing on this System. Whether or not you choose to print this Agreement, containing the terms and conditions as described herein, you agree that this contract constitutes a writing.

This Agreement is being written in English, which is to be the official language of the contract's text and interpretation. If you do not agree with the above terms and conditions, you have the option to not use the Company Web site and/or System.

**FORCE MAJEURE**



Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

## **ACKNOWLEDGMENT**

**YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU ALSO ACKNOWLEDGE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN COMPANY AND YOU, AND THAT IT SUPERSEDES ANY PROPOSAL, PRIOR AGREEMENT, OR OTHER COMMUNICATIONS, WHETHER ORAL OR WRITTEN, BETWEEN YOU AND COMPANY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THIS AGREEMENT CANNOT BE MODIFIED OR AMENDED EXCEPT BY A FURTHER WRITTEN INSTRUMENT EXECUTED BY YOU AND COMPANY.**

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