

# Terms of Use Agreement

Last revised September 17, 2018.

Welcome to Swappal, a service offered by Swappal, Inc. ('Swappal' 'we,' or 'us') which allows you to buy or sell closed loop prepaid cards, coupons, codes, or similar physical and electronic payment devices ("Gift Cards"). This page explains the terms by which you may use Swappal's websites (including [www.Swappal.com](http://www.Swappal.com)), kiosks, web widgets, feeds, applications for third-party web sites and services, mobile app, and any other mobile, web, or other services or applications owned, controlled, or offered by Swappal or in conjunction with Swappal partners (collectively the "Service"). By accessing or using the Service, you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement including the incorporated [Privacy Policy](#) (the "Agreement" or "Terms of Use"), whether or not you are a registered user of our Service. -

THESE TERMS OF USE CONTAIN AN ARBITRATION CLAUSE AND CLASS-ACTION WAIVER, WHICH DETERMINE HOW DISPUTES WITH Swappal MAY BE RESOLVED. BY USING THE SERVICE YOU ACCEPT THESE TERMS OF USE AND AGREE TO BE BOUND BY THE ARBITRATION PROVISION AND CLASS-ACTION WAIVER BELOW.

We reserve the right to amend this Agreement at any time by notifying you as provided in this Agreement, provided that no notice shall be required or given for non-substantive changes to the Agreement. If we substantively amend this Agreement we will give you notice by email or other notice informing you of such changes to the Terms of Use, and you may reject the changes by terminating your account. Your continued use of the Service after any such change constitutes your acceptance of the new Terms of Use. If you do not agree to any of these terms or any future Terms of Use, do not use or access (or continue to access) the Service and terminate your account. This Agreement applies to each visitor, user, and anyone who accesses the Service ("User(s)").

## 1. Use of Our Service

Swappal provides a platform for you to buy and sell Gift Cards using our Service in the United States. There are no fees to create a Member Account or buy Gift Cards through the Service. Sellers may be charged fees for listing their Gift Cards in our Marketplace, or if the Gift Cards they sell lose their balance, as described further in Section 2.

### A. Eligibility

This Service is intended solely for Users who are eighteen (18) years of age or older, and any registration, use or access to the Service by anyone under 18 is strictly prohibited and in violation of this Agreement. If we become aware that you are using the Service even though you are under 18, we will deactivate your account.

By accessing or using the Services to complete a gift card purchase or sale, you affirm that you are at least eighteen (18) years of age and in the United States. You represent that you are fully able and competent to enter into and comply with the terms and conditions in the Terms of Use. The Service is not directed to children under 18 so if you are under 18 years of age, you are not permitted to access or use the Service. The Service is not available to any Users previously removed from the Service by Swappal.

### B. Member Accounts

You do not have to register to visit [www.Swappal.com](http://www.Swappal.com) or browse using the Service. To access certain features of the Service, such as buying or selling Gift Cards, you are required to register with Swappal and create a "Member Account". Swappal may modify the Service and features and functions available within a Member Account at any time in our sole discretion.

You may never use another User's Member's Account. When creating your Member Account or using the Service, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your Member Account, and you are solely responsible for keeping your Member Account password secure. You must notify Swappal immediately of any breach of security or unauthorized use of your Member Account. Swappal will not be liable for any losses caused by any unauthorized use of your Member Account. Violation of these Terms of Use will result in the termination of a User's Member Account, and Swappal may terminate a Member Account at any time in its sole discretion.

You may control your Member Account profile and how you interact with the Service by changing the settings, where available. By providing Swappal your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Service and special offers. If you do not want to receive such email messages, you may opt out or change your preferences in your Member Account settings page. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers. If you provide Swappal with a mobile telephone number, we may offer you the option to enroll for text message alerts and offers. You can change your text message preference at any time using your Member Account settings page. If you agree to receive text messages, you authorize Swappal to use an automated dialer to send the messages.

### C. Service Rules

As a User of the Service, You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping"; (ii) using any automated system, including without limitation "robots or bots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to the Swappal servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser (except that Swappal grants the operators of public search engines revocable permission to use spiders to copy materials from [Swappal.com](https://www.swappal.com) for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (iii) transmitting Swappal, its partners, systems, or User(s) any spam, chain letters, offensive material, or other unsolicited email, communication or other data; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Service; (vii) collecting or harvesting any personally identifiable information, including account names, from the Service; (viii) using the Service for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity or sharing your Member Account or the Member Account of another User; (x) interfering with the function of the Service or using the Service in a manner that would result in fraud, chargebacks, penalties or complaints related to such behavior; (xi) accessing any content on the Service through any technology or means other than those provided or authorized by the Service; (xii) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein; or (xiii) making a false claim for a refund under the Purchase Guarantee or other similar policy provided by Swappal.

## D. Suspension and Termination.

Swappal may temporarily or permanently suspend, terminate, or otherwise refuse to permit your access to the Service or a Member Account without notice and liability for any reason, including if, in Swappal's sole determination, you violate any provision of this Agreement, or for no reason. Upon termination for any reason or no reason, you continue to be bound by this Agreement.

## E. Service Changes

All aspects of the Service are subject to change or elimination at Swappal's sole discretion. Swappal reserves the right to interrupt the Service with or without prior notice for any reason or no reason. You agree that Swappal will not be liable to you for any interruption of the Service, delay or failure to perform.

You are solely responsible for your interactions with other Swappal Users, if any. We reserve the right, but have no obligation, to monitor disputes between you and other Users. Swappal shall have no liability for your interactions with other Users, or for any User's action or inaction.

# 2. Buying and Selling Gift Cards

The Service enables Users with Member Accounts to buy and sell Gift Cards. You agree to pay all applicable taxes and charges imposed by any government entity in connection with your use of the Service. You agree that Swappal is not liable for lost, damaged, or stolen mail, and that it is your responsibility to ensure that any physical gift cards you are required send to Swappal arrive safely at Swappal's processing centers, or the designated recipient (as applicable for Marketplace transactions). Swappal is not responsible if you enter incorrect or inaccurate shipping, payment, or billing information.

## A. Buying Gift Cards

You acknowledge and agree that you must pay for any Gift Cards you buy with a valid credit card (that you are authorized to use) or by other methods as the Service may allow. The Gift Cards you purchase using the Service are subject to the terms and conditions of the third-party merchant with whom it is redeemable (each a "Retailer"). Swappal is not responsible for the acts or omissions of any Retailer(s), or any fees, expiration dates, or terms and conditions associated with a Retailer's Gift Card sold through the Service.

## B. Purchase Guarantee

If you buy any Gift Cards, Swappal makes certain limited warranties (the "Purchase Guarantee") regarding your Gift Card transactions, as described on the Purchase Guarantee page and hereby incorporated by reference. You acknowledge and agree that the Purchase Guarantee is subject to this Agreement and any additional terms and conditions that may be described on the Service. If you return a Gift Card, you represent and warrant in connection with any Gift Card you return through or on the Service, the following: i) the Gift Card is in the same condition as when you received it from Swappal; ii) the Gift Card has not been used since the original purchase date; iii) the Gift Card is and shall be valid, to the best of your knowledge; iv) the Gift Card is redeemable for the amount of credit that you state through the Service; v) you have not in any way retained a way to redeem the Gift Card after returning the card to Swappal; vi) the Gift Card and any interest therein is fully transferable to Swappal in the manner contemplated by this Agreement, without violating any contractual or other right; vii) you are the sole, lawful owner of the Gift Card and all interests thereto; viii) the Gift Card is not subject to any liens, obligations, or encumbrances of a third party; and ix) you shall comply with all other requirements to complete the Gift Card transaction, including, without limitation shipping instructions, required by the Service.

ALL CLAIMS UNDER THE PURCHASE GUARANTEE MUST BE SUBMITTED BY EMAILING [CLAIMS@Swappal.COM](mailto:CLAIMS@Swappal.COM) WITHIN ONE (1) YEAR OF THE DATE YOU ORIGINALLY PURCHASED THE GIFT CARD THAT IS SUBJECT TO THE CLAIM. YOU SHALL NOT, DIRECTLY OR INDIRECTLY, BE ELIGIBLE TO UTILIZE THE PURCHASE GUARANTEE FOR TRANSACTIONS EXCEEDING AN AGGREGATE AMOUNT OF ONE THOUSAND DOLLARS (\$1000.00) DURING YOUR LIFETIME AS A Swappal MEMBER. PURCHASE GUARANTEE PROGRAM DOES NOT APPLY TO ELECTRONIC GIFT CARDS OR MOBILE GIFT CARDS DUE TO THE NATURE OF THOSE PROGRAMS. Swappal RESERVES THE RIGHT TO LIMIT OR DISCONTINUE THE PURCHASE GUARANTEE IN OUR SOLE DISCRETION, INCLUDING WITHOUT LIMITATION IF WE BELIEVE THAT YOU HAVE ENGAGED IN FRAUD OR OTHER UNLAWFUL ACTIVITIES, OR IF THE GIFT CARD ISSUER OR RETAILER DECLARES BANKRUPTCY, ELIMINATES ITS GIFT CARD PROGRAM, OR STOPS HONORING GIFT CARDS FOR ANY REASON.

## C. Selling Gift Cards

Users of the Service can sell Gift Cards directly to Swappal. On [www.Swappal.com](http://www.Swappal.com), Users can choose to alternatively list their Gift Card(s) through our online marketplace, where the Gift Card(s) will be offered until purchased by another User or removed by the seller (the "Swappal Marketplace"). Gift Cards listed in the Swappal Marketplace allow the seller to set the price of the Gift Card (within parameters solely established by Swappal), but there is no guarantee a buyer will be found. Sellers on the Swappal Marketplace may adjust their price or remove their Gift Card from sale prior to acceptance of their offer. Once a buyer confirms the purchase of a Gift Card listed in the Swappal Marketplace, that Gift Card cannot be removed, the price cannot be changed, and the seller is obligated to proceed with the transaction as directed by Swappal, which may include shipping a physical Gift Card the seller listed for sale to the buyer. Swappal will notify sellers by email when their offer in the Swappal Marketplace is accepted. Sellers have seven days to ship the Gift Card to the buyer (or such time as directed by Swappal), and will not receive payment from Swappal until the buyer verifies receipt or the transaction will be voided. Swappal may terminate a listing in the Swappal Marketplace at any time.

When you sell a Gift Card to Swappal via the Service, ownership of the Gift Card and any interest therein to Swappal is immediately and automatically transferred to Swappal. When you offer a Gift Card on the Swappal Marketplace, You agree that you will not redeem any portion of the Gift Card at any point prior to the sale to the buyer or thereafter.

SELLER REPRESENTATIONS AND WARRANTIES. AS A Swappal USER YOU HEREBY REPRESENT AND WARRANT IN CONNECTION WITH ANY GIFT CARD YOU SELL THROUGH OR ON THE SERVICE, THE FOLLOWING:

- I) THE GIFT CARD IS VALID;
- II) THE GIFT CARD IS REDEEMABLE FOR THE AMOUNT OF CREDIT THAT YOU STATE THROUGH THE SERVICE AND THE SAME BALANCE WILL REMAIN ON THE CARD UNTIL IT CAN BE REDEEMED BY A SUBSEQUENT PURCHASER;
- III) YOU HAVE NOT IN ANY WAY RETAINED A WAY TO REDEEM THE GIFT CARD AFTER SELLING OR LISTING THE CARD;
- IV) THE GIFT CARD AND ANY INTEREST THEREIN IS FULLY TRANSFERABLE TO Swappal OR THE BUYER IN THE MANNER CONTEMPLATED BY THIS AGREEMENT, WITHOUT VIOLATING ANY CONTRACTUAL, LEGAL, OR OTHER RIGHT;
- V) YOU ARE THE SOLE, LAWFUL OWNER OF THE GIFT CARD AND ALL INTERESTS THERETO; VI) THE GIFT CARD IS NOT SUBJECT TO ANY LIENS, OBLIGATIONS, OR ENCUMBRANCES OF A THIRD PARTY;

VII) THE GIFT CARD IS NOT STOLEN, PROCURED BY FRAUD, OR OTHERWISE SUBJECT TO A LEGAL DISPUTE;

AND VIII) YOU WILL COMPLY WITH ALL OTHER REQUIREMENTS OF THE SERVICE TO COMPLETE THE GIFT CARD TRANSACTION, INCLUDING (WITHOUT LIMITATION) SHIPPING INSTRUCTIONS.

AUTHORIZATION AND CHARGES. FOR EACH TRANSACTION THROUGH THE SERVICE Swappal MAY AUTHORIZE THE CREDIT CARD YOU PROVIDE TO ENSURE ITS VALIDITY. FOR ANY PAYMENT INSTRUMENT YOU PROVIDE THROUGH THE SERVICE, YOU AUTHORIZE Swappal TO CHARGE A ONE DOLLAR (\$1) AUTHORIZATION CHARGE WHICH WILL BE REVERSED OR REFUNDED UPON VERIFICATION OF THE PAYMENT INSTRUMENT. PLEASE NOTE: CERTAIN BANKING INSTITUTIONS DON'T PROCESS REVERSAL OR REFUND REQUESTS IMMEDIATELY. IF YOU HAVE QUESTIONS ABOUT AN AUTHORIZATION, REVERSAL, OR REFUND, Swappal RECOMMENDS YOU CONTACT YOUR BANKING INSTITUTION DIRECTLY.

BY SELLING A GIFT CARD TO Swappal OR ON THE Swappal MARKETPLACE YOU AUTHORIZE Swappal TO CHARGE THE PAYMENT CARD YOU PROVIDE ON FILE, WITHHOLD ANY PAYMENTS OWING TO YOU, OR ASSESS A REPLACEMENT CHARGE AND FEE. YOU FURTHER AGREE THAT YOU WILL BE CHARGED A REPLACEMENT FEE IF THE GIFT CARD PROVES TO BE INVALID, VOID, LESS THAN THE AMOUNT LISTED OR VERIFIED, STOLEN, FRAUDULENT, OR OTHERWISE UNACCEPTABLE AS DETERMINED IN Swappal'S REASONABLE DISCRETION (AN "INVALID GIFT CARD"). THE REPLACEMENT FEE FOR AN INVALID GIFT CARD WILL BE EQUAL TO THE BALANCE THAT YOU REPORTED AT THE TIME OF THE SALE OR MARKETPLACE LISTING PLUS AN ADDITIONAL \$10 SERVICE FEE. Swappal IS NOT RESPONSIBLE FOR ANY ERRORS THAT YOU HAVE MADE IN ENTERING GIFT CARD INFORMATION.

## D. Liability and Recourse

Each User is responsible for all chargebacks, losses, fees, fines and any other liability to Swappal, Retailers, other Users, or third parties arising out of a breach of these Terms of Use, the User's use of the Service, sale of an Invalid Gift Card or other acts or omissions. Swappal may take the

following actions in response to a violation of these Terms of Use or any similar action Swappal, in its sole discretion, deems prohibited:

- (i) Swappal may suspend or terminate a User's access or Member Account, and may suspend or terminate any transaction;
- (ii) Swappal may delay, withhold, suspend or cancel payments to you, including but not limited to payments made by Gift Card, check, or ACH;
- (iii) Swappal may bar or restrict your future use of the Service or registration for a Member Account;
- (iv) Swappal may contact banking and credit institutions, Retailers, law enforcement or fraud/loss experts, or other third parties affected by or related to a User, or who may be able to provide relevant information on a User, the Service or an issue related thereto; and
- (v) Swappal may take legal action against you.

## E. Support

If you believe in good faith there was an error with your Member Account, a transaction using the Service, a chargeback or replacement fee charged to your payment card, or have another issue to report please contact [support@Swappal.com](mailto:support@Swappal.com). If applicable, please include your transaction number and a detailed description of the issue you are reporting. We do our best to respond to customer inquiries in a timely manner, but during holidays and certain high-volume periods our response may take more time. Swappal appreciates your patience while we investigate and respond to support requests and messages sent to our support team.

## 3. User Content

Some features of the Service may allow Users to post feedback, comments, questions, and other information ("User Content"). You are solely responsible for User Content that you upload, publish, display, link to or otherwise make available (hereinafter, "post") on the Service, and you agree Swappal acts as a passive conduit for the online distribution and publication of your User Content. You understand that whether or not such User Content is published, Swappal does not guarantee any confidentiality with respect to any User Content.

You agree not to post User Content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you, to any other person, or to any animal or third party; (ii) may create a risk of any loss or damage to any person or property; (iii) seeks to harm or exploit children or others by exposing them to inappropriate content, asking for personally identifiable details or otherwise; (iv) may constitute or contribute to a crime or tort; (v) contains any information or content that we deem to be unlawful, harmful, abusive, racially or culturally offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, or otherwise objectionable; (vi) contains any information or content that is illegal (including, without limitation, the disclosure of insider information under securities law or of another party's trade secrets); (vii) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships; or (viii) contains any information or content that you know is not correct and current. You agree that any User Content that you post does not and will not violate third-party rights of any kind, including without limitation any Intellectual Property Rights (as defined below), rights of publicity and privacy. Swappal reserves the right, but is not obligated, to reject and/or remove any User Content that Swappal believes, in its sole discretion, violates these provisions.

For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

Swappal takes no responsibility and assumes no liability for any User Content that you or any other User or third party posts or sends over the Service. You understand and agree that any loss or damage of any kind that occurs as a result of the use of any User Content. You understand and acknowledge that you may be exposed to User Content that is inaccurate, offensive, indecent, objectionable, or inappropriate for children, and you agree that Swappal shall not be liable for any damages you allege to incur as a result of such User Content.

## 4. User Content License Grant

You retain all your ownership rights in your User Content. By posting any User Content on the Service, you expressly grant to Swappal a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, modify, distribute, publicly perform, publicly display, make derivative works of and otherwise fully exploit all such User Content and your name, voice, and/or likeness as contained in your User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Service. You also hereby grant each User of the Service a non-exclusive license to access your User Content through the Service, and to use, reproduce, distribute, display and perform such User Content as permitted through the functionality of the Service and under this Agreement.

The above licenses granted by you in your User Content terminate within a commercially reasonable time after you remove or delete your User Content from the Service. You understand and agree, however, that Swappal may retain, but not display, distribute, or perform, server copies of User Content that have been removed or deleted. The above licenses granted by you in User Content for which the Service does not provide you a means to delete or remove are perpetual and irrevocable.

## 5. End User License Grant

Subject to the terms and conditions of this Agreement, Swappal hereby grants you a non-exclusive, limited, non-transferable, non-sublicensable, freely revocable license to access and use the Service for your personal, non-commercial use only. Swappal reserves all rights not expressly granted herein. This license terminates immediately upon any suspension or other termination by Swappal under Section 1.D., which Swappal may do at any time for any reason or no reason.

## 6. Our Proprietary Rights

The Service and all materials therein, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, and other content (excluding your User Content, the "Swappal Content"), and all Intellectual Property Rights related thereto, are the exclusive property of Swappal and its licensors. Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the Service. Use of the Swappal Content or materials on the Service for any purpose not expressly permitted by this Agreement is strictly prohibited.

You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products ("Feedback"). By submitting any Feedback, you agree that your disclosure is gratuitous, unsolicited and without restriction and you grant Swappal a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to fully use and exploit the Feedback without any additional compensation or obligation to you, including to disclose the Feedback to anyone. You further acknowledge that, by acceptance of your submission, Swappal does not waive any rights to use similar or related ideas.

## 7. Privacy

We care about the privacy of our Users. [Click here](#) to view our Privacy Policy, which is incorporated into this Agreement. By using the Service, you acknowledge that you have read and agree to be bound by our Privacy Policy.

## 8. Security

The security safeguards that we use to protect your data vary based on the sensitivity of the information that we collect, process and store and the current state of technology. We have implemented commercially reasonable technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

## 9. DMCA Notice

Since we respect artist and content owner rights, it is Swappal's policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 ("DMCA").

If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Service, please notify Swappal's copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide the following information in writing:

- A. An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
- B. Identification of the copyrighted work that you claim has been infringed;
- C. Identification of the material that is claimed to be infringing and where it is located on the Service;
- D. Information reasonably sufficient to permit Swappal to contact you, such as your address, telephone number, and, e-mail address;
- E. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
- F. A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to the following DMCA Agent:

Attn: DMCA Notice Swappal,

7251 West Lake Mead Boulevard, Suite 300,

Las Vegas, Nevada, 89128, United States of America

+1 888 202 1847

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES.

Please note that this procedure is exclusively for notifying Swappal and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with Swappal's rights and obligations under the DMCA, including 17 U.S.C. 512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, Swappal has adopted a policy of terminating, in appropriate circumstances and at Swappal's sole discretion, members who are deemed to be repeat infringers. Swappal may also at its sole discretion limit access to the Service and/or terminate the accounts of any Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

## 10. Third-Party Materials

The Service may contain links to third-party websites, advertisers, services, special offers, or other events or activities that are not owned or controlled by Swappal ("Third Party Materials"). Swappal does not endorse or assume any responsibility for any Third Party Materials, including with respect to any goods or services purchased using any Gift Cards. If you access a third party website from the Service, you do so at your own risk, and you understand that this Agreement and Swappal's Privacy Policy do not apply to your use of such sites. You expressly relieve Swappal from any and all liability arising from your use of any third-party website, service, advertisement or content.

## 11. Indemnity

You agree to defend, indemnify and hold harmless Swappal and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (iv) your violation of any law, rule or regulation of the United States or any other country; (v) any claim or damages that arise as a result of any data or content that is submitted via your account; or (vi) any other party's access and use of the Service with your unique username, password or other appropriate security code. Swappal shall endeavor to provide notice to you of any such claim, suit or demand.

Swappal reserves the right to conduct the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting Swappal's defense of such matters.

## 12.No Warranty

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, Swappal, ITS SUBSIDIARIES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

## 13.Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL Swappal, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR: (A) ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, (B) FOR ANY AMOUNT IN THE AGGREGATE IN EXCESS OF THE VALUE OF YOUR TOTAL GIFT CARD TRANSACTIONS VIA THE SERVICE IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO YOUR CLAIM OR, IF NONE, FIVE HUNDRED (\$500) U.S. DOLLARS, OR (C) ANY MATTER BEYOND Swappal'S REASONABLE CONTROL.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, Swappal ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION OR DATA STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR

DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; (VII) THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY; (VIII) LOST OR STOLEN, OR OTHERWISE UN-REDEEMABLE GIFT CARDS; AND/OR A RETAILER'S REFUSAL OR FAILURE TO HONOR A GIFT CARD PURCHASED THROUGH THE SERVICE.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF Swappal HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

The Service is controlled and operated from its facilities in the United States. Swappal makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

## 14. Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Swappal without restriction.

## 15. General

A. **Governing Law.** You agree that: (i) the Service shall be deemed solely based in Oregon; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over Swappal, either specific or general, in jurisdictions other than Oregon. This Agreement shall be governed by the internal substantive laws of the State of Oregon, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any claim or dispute between you and Swappal that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Marion County, Oregon, unless submitted to arbitration as set forth in the following paragraph.

**B. Arbitration.** For any claim (excluding claims for injunctive or other equitable relief) under this Agreement where the total amount of the award sought is less than ten thousand U.S. dollars (\$10,000), the parties agree to resolve the dispute through binding non-appearance-based arbitration. The party bringing a claim shall initiate the arbitration through Judicial Arbitration and Mediation Services ("JAMS") according to the arbitration procedures established by JAMS. JAMS and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, as selected by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**C. Waiver of Jury Trial.** For claims or disputes where the award sought is equal to or in excess of ten thousand U.S. dollars (\$10,000), the parties expressly waive all rights to trial by jury, and further agree to submit to a trial heard by one judge sitting in a court of competent jurisdiction in Marion County, Oregon.

**D. No Class Action.** Swappal and the User each agree that any dispute under the Terms of Use or related to the Service in any manner will be brought in the parties' respective capacities as individuals, and not as a plaintiff or member of a class or purported class, representative proceeding, or association. Swappal and the User each agree that any dispute under the Terms of use or related to the Service in any manner will be heard on an individual basis, and not as a plaintiff or member of a class or purported class, representative proceeding, or association.

**E. Notification Procedures.** Swappal may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes (e.g., in the case of any substantive changes to this Agreement), to you via email notice, written or hard copy notice, or through conspicuous posting of such notice on our website, as determined by Swappal in our sole discretion. Swappal reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement. Swappal is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us. We recommend that you add [notifications@Swappal.com](mailto:notifications@Swappal.com) to your email address book to help ensure you receive email notifications from us. Notices to Swappal should be sent in writing to:

Swappal, Inc.

7251 West Lake Mead Boulevard, Suite 300,

Las Vegas, Nevada, 89128, United States of America

+1 888 202 1847

F. Entire Agreement/Severability. This Agreement, together with any amendments and any documents referenced herein, shall constitute the entire agreement between you and Swappal concerning the Service. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. No agency, partnership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind Swappal in any respect whatsoever.

G. No Waiver. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Swappal's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. All waivers and modifications to this Agreement must be in a writing signed by both parties that expressly by its terms modifies or waives a provision of this Agreement.



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