

FreeMonee Gift Program – Terms & Conditions

Last Modified: December 31, 2012

PLEASE CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS (this “Agreement”). BY REGISTERING FOR THE FREEMONEE™ PROGRAM (the “Program”), YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ARE ENTERING INTO A LEGALLY BINDING AGREEMENT WITH ELAN FINANCIAL SERVICES AND THEIR RESPECTIVE AFFILIATES (collectively, “Elan”, “we” or “us”). IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT REGISTER FOR THE PROGRAM. FREEMONEE GIFTS (“Gifts”) ARE PROVIDED ONLY TO ELIGIBLE CARDHOLDERS (AS DEFINED IN THIS AGREEMENT), WHO AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND PARTICIPATE IN OR HAVE REGISTERED FOR THE PROGRAM. GIFTS ARE PROVIDED ON THE TERMS DISPLAYED IN CONJUNCTION WITH A SPECIFIC GIFT (“Gift Terms”).

A. Eligibility and Registration

1. Eligibility. To participate in the Program or to redeem a Gift delivered or displayed to you through the Program, you must have the power, authority and capacity to enter into this Agreement and be a valid holder of an Eligible Card (as defined below). In addition, you must meet any additional eligibility requirements contained in the Gift Terms. Subject to such eligibility requirements, an “Eligible Card” is a valid debit card issued in the U.S. by Elan Financial Services or a valid credit card issued in the U.S. by Elan Financial Services. The Eligible Card must be active and not in default for you to be eligible for the Gifts. A cardholder of an Eligible Card that participates in the Program, or if required has registered for the Program, and that satisfies all the preceding requirements, as well as any contained in the Gift Terms, is referred to as an “Eligible Cardholder”.

2. Participation and Registration. There is no cost to you to participate in the Program or accept a Gift. The Gifts are funded by certain merchants as an incentive for you to shop with such merchants. You must make a purchase with the applicable merchant in order to receive the Gift Credit as set forth in Section B (How the Program Works). To participate in the Program, you must agree to receive certain marketing email communications from us, or from our third party Program partner, FreeMonee Network, Inc. (“FreeMonee”). If we provide an opportunity for you to register for the Program, you must provide a valid email address or, if applicable and as available, a mobile phone number for a device capable of receiving SMS text messages. All Gift notifications are delivered via email or, if applicable and as available, text message, as indicated at the time of registration. Additionally, you must agree to the terms and conditions of this Agreement. If you have any problems with your registration, please contact Customer Service at 1-888-622-9546 for credit cards.

3. Cancelling Your Participation in the Program. Elan reserves the right to interrupt, restrict, disqualify or terminate your eligibility to participate in the Program or receive the Gifts without cause and without notice to you. You may choose to stop receiving Gift notifications and all other marketing communications from Elan by contacting 1-888-622-9546 for credit cards. You may choose to stop receiving only Gift notifications by clicking on the “unsubscribe” link at the bottom of the Gift notifications or by replying “STOP” to a Gift notification via text message.

B. How the Program Works

If you are an Eligible Cardholder, you are eligible to begin receiving Gifts through the Program. Gifts are monetary incentives, that are credited directly to an Eligible Cardholder’s account upon

meeting the requirements for usage (the “Usage Requirements”) as set forth below. Gifts are assigned to a specific Eligible Card and can be redeemed only on the assigned Eligible Card. New Gifts are typically assigned at a frequency of every 1-3 weeks, but may be assigned more or less frequently. Neither Elan nor FreeMonee can guarantee the assignment of Gifts or their frequency to any specific Eligible Card, or the type of Gift that may be assigned to a specific Eligible Card. When a new Gift is assigned to your Eligible Card, you will be notified by email to the email address you provided, or if applicable and as available, by text to your mobile phone number you provided. This email or mobile phone notification (a “Gift Notification”) will include information about which Eligible Card has received the Gift, the amount of the Gift (the “Gift Amount”), the Merchant where the FreeMonee Gift may be used (the “Merchant”), and the date(s) during which the Gift is valid. To be eligible to receive a Gift credit for eligible Gift Amounts, in the form of a statement credit (a “Gift Credit”), you must first meet all of the following three conditions that comprise the “Usage Requirements”:

- i. You must shop at the Merchant specified in your Gift Notification;
- ii. You must pay for the purchase using the Eligible Card specified by the Gift Notification; and
- iii. The purchase must take place within the valid date(s) specified by the Gift Notification.

Purchases made outside of the valid dates indicated are not eligible to receive the Gift Credit.

Gifts are not transferable. Gifts must be used on the specified Eligible Card and at the specified Merchant.

To use a Gift, an Eligible Cardholder should pay the Merchant using the Eligible Card that has been assigned the Gift. An Eligible Cardholder may spend more or less than the Gift Amount at the time of purchase. The Eligible Cardholder may also use portions of the Gift over multiple purchases. The amount of the Gift Credit received by the Eligible Cardholder is dependent on the cumulative amount spent on the designated Eligible Card at the designated Merchant during the valid dates. The Gift may be used across multiple purchases, but the Gift Credit will never exceed the total Gift Amount indicated in the Gift Notification. If an Eligible Cardholder cumulatively spends equal to or above the Gift Amount specified in the Gift Notification and meets the Usage Requirements, their account will be credited for the full amount of the Gift Credit. If the cumulative spend at the Merchant during the valid dates is below the Gift Amount specified in the Gift Notification, the Cardholder will be credited up to the cumulative amount spent during the valid dates.

After a qualifying purchase has been identified, a notification of the Gift Credit (a “Credit Notification”) may be sent to you by email to the email address you provided, or if applicable and as available, by text to your mobile phone number you provided. The Credit Notification will include the Gift Amount to be credited and the Merchant at which the Gift was used.

Gift Credits generally be issued within two (2) weeks after the qualifying purchase, but may take up to two (2) billing periods to post to your account. Please note that if an item is returned, a Gift Credit may be reversed. If you have questions about a Gift Credit or you believe that there is an error, please contact us at 1-888-622-9546 for credit cards. Once you participate in the Program, or have registered for the Program, we may also send you other notifications to help enhance your Program experience. Such notifications will not always be associated with a Gift.

C. Information We Collect and How We Use It

We use your personally identifiable information (your “PII”), such as name, email address, and Eligible Card account number, to confirm your eligibility for participation or registration in the Program and to provide you the Gifts provided through the Program, at all times subject to our Elan Privacy Policy, available at www.myaccountaccess.com/onlineCard/publicPrivacyPolicy.do.

We also use your card transaction history to help identify meaningful and relevant Gifts to send you

through the Program. We work with our third party Program partner, FreeMonee, to analyze your transaction data and generate the appropriate Gift to send to you. Elan will not provide FreeMonee access to your Eligible Card account number or to any of your other PII. Instead, Elan will create a unique identifier (“UID”) that does not contain your Eligible Card account number, which will serve to identify you to FreeMonee to facilitate your participation in the Program. We will not provide any Merchant participating in the Gift with access to this UID or to any of your PII.

D. Privacy and Security

Any information provided to Elan by you in connection with your participation in the Program shall also be governed by the Elan Privacy Policy, available at www.myaccountaccess.com/onlineCard/publicPrivacyPolicy.do. Elan reserves the right to interrupt, restrict, disqualify or terminate your eligibility to participate in the Program or receive Gifts without cause and without notice to you. You agree to immediately notify us if you suspect fraudulent or abusive activity. If you so notify us or we otherwise suspect fraudulent or abusive activity, you agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we prescribe. Your failure to cooperate or to use such measures will result in your liability for all fraudulent usage or abusive activity associated with the Equipment (as defined below) or your Eligible Card, in accordance with applicable law. Elan reserves the right, at its sole discretion, to disqualify any individual suspected of tampering with any aspect of a Gift, web page or a registration page or any other current or prior program made available by Elan. Elan also reserves the right, at its sole discretion, to disqualify any individual that it believes may tamper with a Gift, web page or a registration page or that it believes to be acting in any manner deemed by Elan in its sole discretion to be improper or disruptive or with intent to annoy, abuse, threaten, or harass any other person. ANY ATTEMPT BY YOU OR ANY OTHER INDIVIDUAL TO DELIBERATELY DAMAGE ANY WEBSITE OR UNDERMINE THE LEGITIMATE OPERATION OF A GIFT AND/OR A TRANSACTION IS A VIOLATION OF CRIMINAL AND CIVIL LAWS AND SHOULD SUCH AN ATTEMPT BE MADE, ELAN RESERVES THE RIGHT TO SEEK DAMAGES AND COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) FROM ANY SUCH PERSON TO THE FULLEST EXTENT PERMITTED BY LAW.

E. Availability/Interruption

You acknowledge and agree that we are not responsible for performance degradation, service interruption, or delays due to conditions on the Internet or due to any error or malfunction of the services provided by FreeMonee. You, and not Elan, are responsible for, without limitation, obtaining and maintaining all telecommunications, broadband, Equipment and services needed to participate in the Program and access and use any websites provided for this purpose, including without limitation the registration pages, if applicable. You acknowledge that Elan, agencies, participating Merchants, ISPs and FreeMonee shall not be liable to you if any Gift, web page or registration page is unavailable, interrupted or suspended for any reason. If any Gift, web page or registration page is unavailable, or is interrupted or suspended, you agree that your sole and exclusive remedy shall be to terminate this Agreement. “Equipment” means the hardware and active internet connection through which you access, or attempt to access, any Gift notification and/or registration page. “System” means the hardware and software owned or operated by Elan, an Internet Service Provider (“ISP”) or any third-party service provider engaged by Elan facilitate or administer the Gifts, web pages or the registration pages. You acknowledge and agree that the use and functionality of the Program may be delayed or prevented by factors affecting your Internet service provider, email service provider, and if applicable and as available, your mobile telephone

service provider or other relevant third parties (“Third Party Service Providers”). You also acknowledge and agree that you will continue to be subject to any agreements you have with Third Party Service Providers and that those agreements may provide for fees, limitations and restrictions which may affect your participation in the Program and you are solely responsible for any such fees, limitations and restrictions. You agree to resolve any problems with a Third Party Service Provider directly with them without involving us. Elan reserves the right to suspend, cancel or terminate any Gift if any fraud, technical failures or any other factor impairs the integrity or proper functioning of the Gift Terms or of a web page or registration page, as determined by Elan at any time and in its sole discretion. Elan also reserves the right to close the Program registration at any time for any reason at its sole discretion. Elan is not responsible for any computer virus or damage caused to Equipment by accessing the website.

F. Changes to this Agreement

We may change or modify this Agreement from time to time by posting such change or modification on www.myaccountaccess.com/freemoneefaqs. Upon modification, we will update the date indicated after “Last Modified” at the beginning of this Agreement. If you do not agree with the current or modified Agreement, however, you must not participate, or continue participating, in the Program. You may withdraw your participation in the Program any time by following the procedures set forth above in Section A.3. Your participation in the Program following the effective date of such change constitutes your agreement to be bound by this Agreement as modified and its applicability to you.

G. Limitations on Liability

By registering for the Program, you acknowledge that technical processing and transmission of information to and from any web page or registration page, including the information you may enter, may involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices. Elan, its agencies, participating Merchants, FreeMonee, and ISPs are not responsible for: (1) any incorrect or inaccurate information, whether caused by you, printing, typographical or other errors or by any of the equipment or programming associated with or utilized in a Gift; (2) any transmission delays, interruptions, omissions, deletions, defects, delays or failures of any kind, including, but not limited to, system malfunctions, performance degradation, service interruptions, or disconnections or disruption in phone lines, network hardware or software or Internet connectivity; (3) unauthorized human intervention in any part of the purchase process or a Gift; or (4) computer, mechanical, technical, printing, typographical, technical or nontechnical, or human or other errors or omissions which may occur in connection with the administration of a Gift, a web page registration page or the processing of the registration.

EACH OF ELAN AND FREEMONEE SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR ANY EQUIPMENT, SERVICE INTERRUPTIONS, COMPUTER HARDWARE AND SOFTWARE, OFFERS, TRANSACTIONS, AND GOODS AND SERVICES ADVERTISED IN CONJUNCTION WITH ANY OFFER. YOU AGREE THAT YOUR PARTICIPATION IN THE PROGRAM, ANY GIFT, ACCESS TO AND REGISTRATION ON A REGISTRATION PAGE, AND USE OF ANY PRODUCTS, SERVICES, OR OFFERS OBTAINED IN CONNECTION WITH AN OFFER ARE AT YOUR SOLE RISK. ALL OFFERS AND EACH WEB PAGE AND REGISTRATION PAGE ARE PROVIDED ON AN “AS IS” AND AN “AS AVAILABLE” BASIS. EACH OF ELAN AND FREEMONEE SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING ANY GOODS AND SERVICES ADVERTISED IN CONJUNCTION WITH ANY GIFT, AND

DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

You agree to this Agreement, and on your behalf and on behalf of your respective heirs, executors, administrators, legal representatives, successors and assigns (the “Releasing Parties”), release, defend and hold harmless Elan and agencies, participating merchants, and FreeMonee and ISPs, as well as the employees, officers, directors and agents of each (the “Released Parties”), from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, lost profits, indirect or direct damages, consequential damages, incidental damages, punitive, special or exemplary damages, judgments, extent, executions, claims and demands whatsoever, in law, admiralty or equity, whether known or unknown, foreseen or unforeseen, against the Released Parties which any one or more of the Releasing Parties ever had, now have or hereafter can, shall or may have which in any way arise out of or result from the your participation in any Gift, redemption of a Gift from a Merchant and any goods and services purchased from a Merchant. You assume all liability for any injury, including, but not limited to, death or damage caused or claimed to be caused by use of any product or service purchased or received in by a Gift. You agree to indemnify and hold Elan, FreeMonee and each other Released Party harmless from all third party claims, damages, expenses (including without limitation, reasonable attorneys’ fees) in connection with or arising out of your participation in the Program, receipt or use of any Gift, use of our web site and your breach of any terms of this Agreement or any Gift Terms. This paragraph G shall survive termination of this Agreement.

H. No Amendment of Existing Terms and Conditions for Eligible Cards

THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE GIFT TERMS DO NOT AMEND, SUPPLEMENT, CHANGE OR REPLACE ANY OTHER NOTICE OR INFORMATION THAT YOU MAY RECEIVE IN CONNECTION WITH YOUR ELIGIBLE CARD ACCOUNT, INCLUDING, BUT NOT LIMITED TO, ANY INFORMATION PROVIDED TO YOU ON YOUR PERIODIC STATEMENT OR THE AGREEMENT GOVERNING YOUR CARD ACCOUNT (“CARDHOLDER AGREEMENT”). IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT YOUR ELIGIBLE CARD ACCOUNT, INCLUDING ITS STATUS, YOU SHOULD CALL THE NUMBER PROVIDED ON THE BACK OF YOUR ELIGIBLE CARD OR USE THE ONLINE CUSTOMER SUPPORT AVAILABLE AT ELAN’S WEBSITE.

I. Governing Law

This Agreement shall be governed by and interpreted under all applicable Federal and State laws.

J. Assignment

We may assign or delegate all or part of Elan’s rights or duties under this Agreement without such assignment or delegation being considered a change to this Agreement, and without notice to you. You may not assign this Agreement, or delegate any of your duties hereunder, without Elan’s prior written consent, and any assignment or delegation by you in breach of the terms hereof shall be null and void.

K. Copyright and Trademarks

Elan expressly reserves all rights in its trademarks, service marks, logos and all other intellectual property. FreeMonee expressly reserves all rights in its trademarks, service marks, logos and all other intellectual property.

L. Entire Agreement

This Agreement together with the Gift Terms represent the entire understanding between you and Elan with respect to a Gift, and may only be amended as described in this Agreement. No waiver by us of any breach of any term or condition of this Agreement will constitute a waiver of, or consent to, any subsequent breach of the same or any other term or condition of this Agreement. If any part of this Agreement is found to be void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. The failure to enforce any term of this Agreement on one occasion shall not prevent enforcement on any other occasion or the enforcement of any other term. Headings and captions shall not be considered included for purposes of interpretation or application hereof, but are for convenience only.