

# **Trade ‘Em Holdings, LLC “GEM WALLET” Mobile App Apple iOS EULA, terms, and conditions**

## LICENSED APPLICATION END-USER LICENSE AGREEMENT

(Knock knock...who’s there...GEM WALLET, GEM WALLET who? GEM WALLET Legal...this is the legal information. We hope you have fun with our application and we will always keep your information safe, secure, and settle any disputes to the best of our ability. NOTE: The preceding is not legal information and should not be considered as such. The following is, so lets get to it.)

Your use of the Licensed Application is subject to the terms and conditions as laid out below and updated from time to time by Application Provider in its sole discretion without further notice (the “Agreement”). Any updates to this Agreement, along with the date on which it was last updated, will be accessible through the Licensed Application. If applicable, this Agreement may also be accessible through the app store from which you downloaded the Licensed Application.

Please review carefully as it contains important information regarding Your legal rights, remedies and obligations, including limitation and exclusion clauses, in connection with the use of this Licensed Application. By accessing, browsing, subscribing, accepting, or otherwise using this Licensed Application, You agree to be unconditionally bound by and to follow the terms and conditions of this Agreement. In the event of any update to this Agreement, Your continued use of the Licensed Application after any such updates constitutes Your acceptance of the revised Agreement.

**IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT USE THIS LICENSED APPLICATION.**

### 1. DEFINITIONS

"Affiliate" means, with respect to an entity, any person or entity that directly or indirectly owns, is owned by, or is under common ownership with that entity. For purposes of this definition, ownership means control of more than a 50% interest in an entity.

"Agreement" means this Licensed Application End-User License Agreement.

“App Store Terms and Conditions” means the terms and conditions found at [www.apple.com](http://www.apple.com) regarding the use of the App Store as provided by Apple.

“App Store Usage Rules” has the meaning set out in Section 2.

“Apple” means Apple Inc.

"Apple Handheld Devices" means Apple's iPhone, iPod touch, iPad and any other handheld devices made by or to be made by Apple.

"Application Content" has the meaning set out in Section 4.

"Application Provider" means Trade'Em Holdings, LLC, the owner and operator of the Licensed Application and the licensor of this GEM WALLET Licensed Application, having its principal offices at 2308 West 5th Street, Plainview, TX. 79072.

"Business Day" means every day except Saturdays, Sundays and statutory holidays in the United States of America, during business hours between 9AM and 5PM Central Time.

"Content Rightsholder" has the meaning set out in Section 4.

"Feedback" has the meaning set out in Section 3.

"License" has the meaning set out in Section 2.

"Licensed Application" means this application, and the service performed or provided by this application, that is delivered to You hereunder, together with any Update.

"Update" means any improvements, modifications, enhancements, fixes, updates, upgrades and future versions of the Licensed Application.

"Usage Rules" has the meaning set out in Section 2.

## 2. SCOPE OF LICENSE AND LICENSE RESTRICTIONS

2.1 Subject to the terms and conditions of this Agreement, You are granted a limited, revocable, non-exclusive, non-transferable, and non-sublicensable license to use the Licensed Application for personal and non-commercial use provided that You keep all copyright, trademark, patent and other proprietary notice intact ("License") and to install and use the Licensed Application as permitted herein.

2.2 You may not ("Usage Rules"):

- Use, or otherwise permit the use of, the Licensed Application on any mobile device that You do not own or control;
- Distribute or make the Licensed Application available over a network where it could be used by multiple devices at the same time;
- Rent, lease, assign, sell, redistribute, sublicense, transfer or otherwise grant rights in the Licensed Application to any third party;
- Violate, circumvent, reverse-engineer, decompile, disassemble or otherwise tamper with the security of the Licensed Application;
- Copy, emulate, attempt to derive the source code of, modify, or create derivative works of the Licensed Application;

- Republish, post, transmit, distribute or otherwise make available the Application Content on any Internet, Intranet or Extranet site/application;
- Incorporate, merge, combine or otherwise include the Application Content in any database, compilation or other storage means;
- Use the Licensed Application in any commercial product or services;
- Download, copy, capture, scrape or otherwise obtain the Application Content not otherwise expressly permitted through the Licensed Application; or
- Modify, change, mutilate or otherwise alter the Application Content.

2.3 If the Licensed Application is installed on Apple Handheld Devices that you own or control, Your use of the Licensed Application is also subject to the usage rules section in the App Store Terms and Conditions (“App Store Usage Rules”). Any conflicts between the Usage Rules and App Store Usage Rules shall be resolved in favour of the App Store Usage Rules.

2.4 Any use or installation outside of the scope of the License is a violation of the rights of the Application Provider and its licensors. If You breach this restriction, Application Provider will terminate this License granted herein and You may be subject to prosecution and damages. Such unauthorized use may also violate applicable laws, including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in this Agreement shall be construed as conferring any license to intellectual property rights, whether by implication or otherwise.

2.5 The terms of this Agreement will govern any Update provided by Application Provider, unless such Update is accompanied by a separate license in which case the terms of that license will govern. You may be required to enter into an updated version of this Agreement to be able to download or otherwise take advantage of the Update.

2.6 As part of our security and regulatory compliance, we conduct OFAC searches for Specially Designated Nationals (SDN), to prevent funding of terrorism and money laundering activities. Any Gem account may be disabled and funds locked, based on regulatory requirements and OFAC SDN list matches.

### 3. SUGGESTIONS, COMMENTS AND FEEDBACK

3.1 You are not obligated to provide any suggestions, comments, or other feedbacks ("Feedback") to the Application Provider. By providing any such Feedback, You hereby sell, assign and transfer all rights, titles and interests in the Feedback to the Application Provider and waive all moral rights in the Feedback. You agree to execute any document to confirm and give effect to such sale, assignment, transfer and/or waiver.

3.2 You represent that the Feedback You provide to Application Provider is entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise, and that the Feedback complies with this Agreement. You further represent that the Feedback will

not cause injury to any person or entity and that it will not contain any harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable content.

3.3 Notwithstanding anything in this Section 3, Application Provider shall have no obligation: (i) to display, maintain or use the Feedback in any way; (ii) to keep Your Feedback confidential; or (iii) to notify You that Application Provider has resolved, used, licensed, sub-licensed, assigned, transferred, disclosed or otherwise used the Feedback.

3.4 If You do not agree with this Section 3, do not send us any Feedback.

#### 4. APPLICATION CONTENT

4.1 This Licensed Application contains proprietary materials, including images, marks, links, texts, illustrations, pictures, designs, music clips, video clips, graphics, photographs, logos, page headers, buttons, icons, scripts, domain names, service names, and trade names, some of which may have been provided by one or more third parties (“Third Party Content”, and all materials collectively, “Application Content”). Such Application Content is provided “as-is” and You agree that Application Provider, or the creator/owner/licensor of the Third Party Content (the “Content Rightsholder”), is not responsible for examining, reviewing, evaluating or verifying the accuracy, validity or completeness of such content. You agree not to use the Application Content in any manner that would infringe or violate the rights of any other party.

4.2 Objectionable Material: You acknowledge and agree that by using the Licensed Application, You may encounter Application Content that may be deemed offensive, indecent, violent, objectionable, or otherwise inappropriate, as judged by You or others. Nevertheless, You agree to use the Licensed Application at Your sole risk and that Application Provider or the Content Rightsholder shall have no liability to You for Application Content that may be found as such.

4.3 Content Rightsholder: You acknowledge and agree that Content Rightsholder and its Affiliates are third party beneficiaries of this Agreement, and that Your acceptance of this Agreement constitutes Your acceptance that Content Rightsholder and its subsidiaries will have the right to enforce the terms of this Agreement against You as a third party beneficiary thereof.

4.4 Survival: This Section 4 shall survive termination of this Agreement.

#### 5. CONSENT TO COLLECT AND USE DATA

5.1 You agree that Application Provider may collect and use data in connection with the provision of the Licensed Application, including, the collection and use of (i) user data (such as shopping behavior and geo-location) pertaining to Your use of the Licensed Application, and (ii) technical data and related information, including technical information about Your device, system, application software and peripherals. All such collection and use are governed by its privacy policy ( [www.thegemapp.com](http://www.thegemapp.com) ) as updated from time to time.

5.2 This Section 5 shall survive termination of this Agreement.

## 6. Promotional Items (Free Stuff)

6.1 The Licensed Application contains promotional offers (“Free Stuff”) that enable users to accumulate inventory items (“Promo”) in the Licensed Application. The Licensed Application allows You to upload photographs/videos of your promo offers from certain retailers who participate in our platform (“Supported Retailers”) in order to enable the Application Provider to validate purchases associated with such Promo, so that You can accumulate inventory. All uploaded photographs must be of unaltered inventory received by You from a Supported Retailer. The Application Provider shall validate such inventory, the associated purchases, and any applicable trades in its sole and absolute discretion, and such determinations are not subject to challenge or appeal.

6.2 If You upload an inventory items reflecting a purchase associated with a Promo, and the Application Provider confirms and validates that a Promo is eligible to be issued in association with such Item, then the Application Provider shall credit Your account on the Licensed Application with the applicable Rebate. At your request in the Application (a “Payout Request”), the Application Provider will redeem the Rebate balance indicated in your Licensed Application account (the “Rebate Balance”) by sending you an equivalent amount in cash via Card Connect (the “Redemption Amount”). In order to make a Payout Request and receive the Rebate Balance as cash, you must have a valid e-mail address, phone number, and account in the Licensed Application. The Rebate Balance accrues no interest and is not transferable – You have no rights in the Rebate Balance other than those explicitly set out herein.

## 7. TERMINATION AND MODIFICATION

7.1 The License is effective until terminated by You or Application Provider. Your rights under this License will terminate automatically without notice from the Application Provider if You fail to comply with any term(s) of this Agreement. Upon termination of the License, You shall cease all use of the Licensed Application, and destroy all copies, full or partial, of the Licensed Application and any information permissibly downloaded or otherwise properly obtained from the Licensed Application.

7.2 Application Provider may in its sole discretion and at any time discontinue or modify the provision of the Licensed Application, or any part thereof, with or without notice. You agree that any termination of Your access to the Licensed Application under any provision of this Agreement may be effected without prior notice.

7.3 Upon termination of this Agreement, all provisions indicated herein as surviving termination of this Agreement shall remain in full force and effect.

7.4 Upon an App user choosing to terminate their user account, while that user account is holding any card values, the user surrenders all gift card value balances to become property of Trade 'Em Holdings, LLC.

## 8. EXCLUSION OF WARRANTIES; LIMITATION OF LIABILITIES; INDEMNITIES

8.1 In this Section 8, the term "Application Provider" includes its, its Affiliates’ and its licensees’ employees, officers, directors, agents, and contractors.

8.2 No Warranties: TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE LICENSED APPLICATION (INCLUDING APPLICATION CONTENT) IS PROVIDED “AS IS”. YOUR USE OF THE LICENSED APPLICATION IS AT YOUR SOLE RISK WITH NO WARRANTIES (INCLUDING IMPLIED, EXPRESS OR STATUTORY) WHATSOEVER. FOR CLARITY, APPLICATION PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ITS ACCURACY, VALIDITY OR COMPLETENESS OF THE APPLICATION CONTENT, OR WHETHER THE PERMITTED USE OF THE APPLICATION CONTENT INFRINGES THE RIGHTS OF ANY THIRD PARTY, INCLUDING INTELLECTUAL PROPERTY RIGHTS.

8.3 Limitation of Liability: TO THE MAXIMUM EXTENT PERMITTED BY LAW, APPLICATION PROVIDER SHALL HAVE NO LIABILITY TO YOU FOR PERSONAL INJURY, PRODUCT CLAIM (INCLUDING PRODUCT LIABILITY CLAIMS, ANY CLAIM THAT THE LICENSED APPLICATION FAILS TO CONFORM TO ANY APPLICABLE LEGAL OR REGULATORY REQUIREMENT, AND CLAIMS ARISING UNDER CONSUMER PROTECTION OR SIMILAR LEGISLATION) OR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, IN CONNECTION WITH OR ARISING FROM YOUR USE OF (OR INABILITY TO USE) THE LICENSED APPLICATION, HOW EVER SUCH DAMAGES WERE CAUSED, EVEN IF APPLICATION PROVIDER HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE THEORY OF LIABILITY (TORT (INCLUDING NEGLIGENCE AND MISCONDUCT), CONTRACT, STRICT LIABILITY OR OTHERWISE). ANY LIABILITY OF THE APPLICATION PROVIDER NOT LIMITED BY THIS SECTION 8.3, BUT TO THE EXTENT NOT PROHIBITED BY LAW, APPLICATION PROVIDER’S TOTAL LIABILITY TO YOU FOR ALL DAMAGES SHALL BE LIMITED TO FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF IT FAILS ITS ESSENTIAL PURPOSE.

8.4 Indemnity: You agree to indemnify, defend and hold harmless Application Provider and its Affiliates, directors, officers, employees, contractors, representatives, licensors and licensees, from any damages, losses, costs and expenses (including legal fees), incurred in connection with or arising from Your use of the Licensed Application and/or breach of or misrepresentation under this Agreement. Application Provider reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by You hereunder, and You shall cooperate fully as reasonably required by Application Provider.

8.5 This Section 8 shall survive termination of this Agreement.

## 9. LEGAL COMPLIANCE

9.1 You may not use or otherwise export or re-export the Licensed Application except as authorized by United States law and the laws of the jurisdiction in which the Licensed Application was obtained. In particular, but without limitation, the Licensed Application may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Licensed Application, You represent

and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Licensed Application for any purposes prohibited by United States law, including the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

## 10. GOVERNING LAW

10.1 This Agreement and Your use of the Licensed Application shall be governed and construed in accordance with the laws of the state of Texas and the federal laws of the United States applicable therein, excluding the application of any rule or principle of conflict of law that might otherwise refer construction, interpretation, or the resolution of any dispute to the laws of another jurisdiction. Where any dispute arises from this Agreement, including a breach of this Agreement, both parties agree not to bring any legal action against the other party in any jurisdiction except in the state of Texas, in particular the courts located in Amarillo, Texas. With respect to matters that are exclusively the jurisdiction of the Federal Courts, both parties agree to adjudicate the matter in Amarillo, Texas.

10.2 This Section 10 shall survive termination of this Agreement.

## 11. GENERAL

11.1 This Agreement constitutes the entire agreement between You and Application Provider and governs Your use of the Licensed Application, thereby superseding and replacing any prior agreements You may have with Application Provider. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. Any waiver of any provision of the Agreement will be effective only if in writing and signed by Application Provider.

11.2 Your use of the Licensed Application is not intended and shall not be deemed to create any agency, joint venture or other legal relationship of any kind between You and Application Provider.

11.3 Headings are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The term “including” or “include(s)” shall mean “including (or includes), but not limited to”.

11.4 You may not assign this Agreement to any party without Application Provider’s express written permission. Application Provider may assign this Agreement as necessary to provide You the Licensed Application.

11.5 This Section 11 shall survive termination of this Agreement.

## 12. NOTICES

12.1 All notices required under this Agreement shall be given as follows: (a) in the case of notices to Application Provider, by e-mail to the following address to the attention of General Counsel: [hello@thegemapp.com](mailto:hello@thegemapp.com) such notice shall be deemed effective the later of two (2) Business Days after sending such e-mail, or receipt of such e-mail by the General Counsel; and

(b) in the case of notices to You, by e-mail to the e-mail address that You provided to Application Provider prior to initiating the download of the Licensed Application, such notice deemed effective the earlier of one (1) day after sending such e-mail, or receipt of such e-mail by You.

### 13. Operating system provider

13.1 The provisions below apply to the owner and operator of the operating system (“OS Provider”) on which this Licensed Application is installed and executed and are in addition to the terms and conditions set out above. In the event that the Licensed Application is installed on Apple Handheld Devices, the OS Provider shall be Apple. In the event that the Licensed Application is installed on Android devices, the OS Provider shall be Google Inc. In the event that the Licensed Application is installed on BlackBerry devices, the OS Provider shall be Blackberry Limited. In the event that the Licensed Application is installed on Windows devices, the OS Provider shall be Microsoft Corporation.

13.2 You acknowledge and agree that OS Provider has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application. Please note that pursuant to Section 8.2, the Licensed Application is provided “as-is”.

13.3 You acknowledge and agree that, to the maximum extent permitted by applicable law, OS Provider has no warranty obligation with respect to the Licensed Application. Subject to Section 8.2, any warranty obligations shall be the responsibility of the Application Provider. In the event that Application Provider fails to conform to any applicable warranty obligations, You shall notify OS Provider and OS Provider will refund the purchase price, if any, for the Licensed Application.

13.4 You acknowledge and agree that OS Provider is not responsible for addressing any claims relating to the Licensed Application or your possession and/or use of the Licensed Application, including: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Please note the limitation of liability in Section 8.3.

13.5 You acknowledge and agree that OS Provider is not responsible for any third-party infringement claims that the Licensed Application or your possession and use of the Licensed Application infringe a third party's intellectual property rights. Please note the limitation of liability in Section 8.3.

13.6 You acknowledge and agree that OS Provider and its Affiliates are third party beneficiaries of this Agreement, and that Your acceptance of this Agreement constitutes Your acceptance that OS Provider and its Affiliates will have the right to enforce the terms of this Agreement against You as a third party beneficiary thereof. Please note additional third party beneficiaries of this Agreement in Section 4.3.

13.7 This Section 13 shall survive termination of this Agreement.

Last Updated: June 22<sup>nd</sup>, 2020