

## MERCHANT SERVICES and LICENSE AGREEMENT

IMPORTANT: READ THIS MERCHANT SERVICES AND LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE PROCEEDING. IN ORDER TO USE THE CLIENTLINE<sup>®</sup> SOFTWARE AND WEBSITE (collectively, "the ClientLine service") YOU MUST CLICK ON THE "I AGREE" ICON AT THE END OF THIS SCREEN, INDICATING THAT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN. IF YOU DO NOT WANT TO BE BOUND BY THE TERMS OF THIS AGREEMENT, PROMPTLY LOG-OFF OF THIS PROGRAM AND YOU WILL RECEIVE A REFUND OF THE PRO RATA PORTION OF ANY FEE YOU MAY HAVE PAID FOR THE PORTION OF SERVICES NOT FURNISHED TO YOU AS OF THE DATE OF TERMINATION. THIS AGREEMENT SUPERCEDES AND REPLACES ANY PRIOR AGREEMENT THAT YOU HAD WITH FDMS, AS DEFINED IN THE NEXT PARAGRAPH, CONCERNING THE USE OF THE CLIENTLINE SERVICE.

For purposes of this Agreement, the words "we", "us", "our" and "FDMS" mean and refer to First Data Merchant Services Corporation, its parents, sister companies, subsidiaries and any agent, independent contractor or assignee that FDMS may, in its sole discretion, involve in the provision of the ClientLine service. The words "You" and "Your" refers to visitors and users of the ClientLine service

1. **License Grant.** FDMS is the owner of all right, title and interest in the ClientLine service. FDMS hereby grants to You, and You accept, a nonexclusive, nontransferable license to use the ClientLine service on a single computer or computer network owned, leased, or otherwise controlled by You. Except as expressly set forth above, as an essential condition in the utilization of the ClientLine service contemplated by this Agreement, You may not copy, modify, reverse engineer, decompile, disassemble, assign, sublicense, transfer, pledge, lease, rent or otherwise share the ClientLine service.
2. **FDMS' Rights.** You acknowledge and agree that FDMS retains all title and ownership of the ClientLine service and that FDMS does not convey any title or ownership interest in the ClientLine service to You. You further acknowledge and agree that the only right granted to You by this Agreement is the limited license to use the ClientLine service according to the terms and conditions of this Agreement.
3. **Term.** This Agreement will commence immediately upon Your clicking on I AGREE at the end of this screen. Thereafter, this Agreement will continue on a month to month basis unless and until either party terminates this Agreement as provided herein. FDMS may terminate this Agreement upon Your breach of any term of this Agreement. In the event FDMS terminates the Agreement due to Your breach, You will forfeit all fees paid to FDMS and will not be due a prorated refund.
4. **New Services.** FDMS or its third party licensors or licensees, may, from time to time, introduce new online services and information as part of the ClientLine service. FDMS will notify You of the existence of these new services. Access to such new services shall be subject to the terms and conditions of this Agreement.

5. **Fees.**

(a) Please contact your account executive, relationship manager or our customer service department for information regarding any monthly fee you may be charged for the ClientLine service.

(b) Applicable fees, if any, do not include, and You shall be solely responsible for, any and all taxes of whatever nature, including without limitation, withholding taxes or other taxes imposed by foreign jurisdictions, federal, state and local taxes and surcharges applicable to the services rendered under this Agreement, excluding taxes based on the income of FDMS. FDMS shall not be liable for, and You shall pay directly and indemnify and hold FDMS and its affiliates harmless from and against any and all liability for, all such taxes and/or surcharges.

6. **Termination of Service.** FDMS may terminate the service offered by the ClientLine service hereunder at any time for any reason. In the event such termination is for any reason other than a breach of this Agreement by You, FDMS will refund to You a pro rata share of any unearned prepaid fees, if applicable.

7. **Equipment.** You are responsible for and must provide all telephone and other equipment and services necessary to access the ClientLine service.

8. **Customer Support.** FDMS shall provide certain support and services to You, including: (i) production and distribution of user documentation which describes the ClientLine service and (ii) telephone customer support services.

9. **System Availability.** You acknowledge and agree that, although You will generally have access to production files containing Your processing information from the ClientLine service twenty-four hours per day, seven days per week (except in the event of a force majeure event), access to customer accounts and certain other services may not be available on a continuous basis and the ClientLine service will be subject to periodic downtime to permit hardware and/or software maintenance to take place.

10. **Account Inactivity.** FDMS may terminate this Agreement and Your access to the ClientLine service if You fail to use Your the ClientLine service account or if Your account remains inactive for a period of time as determined by FDMS. If Your access to the ClientLine service is terminated due to account inactivity, You may re-register for access ClientLine through the same process in which initial access was granted.

11. **Data Storage.** FDMS may, from time to time, delete, purge or otherwise dispose of Your account data which is over 180 days old. In addition, only a limited amount of data or information may be available online. Therefore, You are advised to print and download Your account data, for record keeping purposes, on a periodic basis. You specifically agree that FDMS shall not be responsible for the deletion or disposal of your data or information from the ClientLine service.

12. **Copyrighted Material.** the ClientLine service (including the website), contains copyrighted material, trademarks and other proprietary information, including, but not limited to, text, software, photos, video, and graphics. You may not modify, publish,

transmit, participate in the transfer or sale, create derivative works, or in any way exploit any of the content, in whole or in part, whether copyrighted, trademarked or proprietary, or otherwise. You may download copyrighted material solely for Your own use as contemplated under this Agreement. Except as expressly provided by copyright law, any copying, redistribution, or publication must be with the express permission of FDMS and the owner(s) or such authorized person(s), if other than FDMS. In any copying, the redistribution or publication of copyrighted material and any changes to or deletion of author attribution or copyright notice is expressly prohibited.

13. **Your Responsibilities.** You shall use the ClientLine service and any components thereof for lawful purposes only. You shall not post or transmit through the ClientLine service any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasion of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law, or which, without FDMS's express prior approval, contains advertising or any solicitation with respect to products or services. Any conduct by You that restricts or inhibits anyone other than You from using the ClientLine service, as determined by FDMS, will not be permitted and is cause for immediate termination of this Agreement.

14. **Security of Information.** FDMS will take all commercially reasonable steps to maintain the security of the ClientLine service. FDMS will provide the details related to such security to You upon request. However, You recognize and agree that there is no guarantee of absolute security of information that is communicated over the Internet, and that the foregoing security measures may change over the term of this Agreement. You acknowledge that all information transmitted and received through the Internet or other electronic means is subject to unauthorized interception, diversion, corruption, loss access or disclosure. You are encouraged to read our Privacy Statement for further terms and information.

15. **Compliance with Laws.** You shall comply fully with the requirements of all applicable federal, state and local laws and regulations. Furthermore, You are solely responsible for monitoring legal development applicable to the operation of Your business, interpreting applicable laws and regulations, determining the requirements for compliance with all applicable laws and regulations, and maintaining an on-going compliance program. Please read our Privacy Statement for further terms and information.

16. **Disclaimers.**

FDMS, its parents or subsidiaries and their respective employees, officers, directors, affiliates, agents, licensors, licensees or the Bank do not make and hereby expressly disclaim any representation or warranty (i) that access to the ClientLine service will be uninterrupted or error free, (ii) that security breaches will not occur with respect to any information communicated through the ClientLine service the Internet, or any common carrier communications facility, (iii) as to the results that may or may not be obtained by You in connection with Your use of the ClientLine service. **FDMS, ITS PARENTS AND SUBSIDIARIES AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AFFILIATES, THIRD PARTY SERVICE PROVIDERS, AGENTS, LICENSORS, LICENSEES AND THE BANK DO NOT MAKE ANY**

**WARRANTY, GUARANTEE OR REPRESENTATION (EITHER EXPRESS OR IMPLIED) REGARDING THE MERCHANTABILITY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF THE CLIENTLINE SERVICE OR ANY SERVICES PROVIDED UNDER THIS AGREEMENT, AND ALL SUCH WARRANTIES, GUARANTEES AND REPRESENTATIONS ARE HEREBY EXPRESSLY DISCLAIMED. ALL SERVICES PROVIDED UNDER THIS AGREEMENT AND THE CLIENTLINE SERVICE ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS" BASIS.**

17. **Indemnification.** You agree to indemnify and hold FDMS, its parents and subsidiaries and their respective employees, officers and directors, licensors, and licensees harmless from and against any claims and expenses, including reasonable attorneys' fees, related to any breach of this Agreement by You or any negligence or willful misconduct with respect to Your use of the ClientLine service.

18. **Limitation of Liability.**

(a) You acknowledge and agree that neither FDMS, its parents and subsidiaries nor its licensees or licensors shall be liable to You for any claims, damages, losses, obligations, costs or expenses or other liability arising directly or indirectly from or otherwise concerning (i) any termination, suspension, delay or disruption of service (including billing for a service) by the Internet, any common carrier or any third party service provider; (ii) any failure, disruption or malfunction of the ClientLine service the Internet, or any communications network, facility or equipment beyond FDMS's, its licensors, or a third party provider's reasonable control, whether or not attributable to one or more common carriers; (iii) Your failed attempts to access the ClientLine service or to complete transactions via the ClientLine service; (iv) any failure to transmit, obtain or collect data or for human, machine or software errors or faulty or erroneous input by You; (v) any damages resulting from any delays and/or losses arising in connection with the services provided hereunder; or (vi) any loss of or inability to access data or information stored or generated by the ClientLine service or FDMS.

(b) Notwithstanding anything to the contrary in this Agreement or elsewhere, FDMSs and/or its licensors' cumulative liability to You for any claim related to this Agreement and Your use of the ClientLine service (whether arising from tort, statute, contractor otherwise) shall in all cases be limited to the actual, direct and proven out-of-pocket losses, damages or expenses suffered or incurred by You arising from FDMS's willful misconduct or gross negligence. Furthermore, FDMS's or its licensors' cumulative liability to You shall not, in any case, exceed the fees paid solely under this Agreement to FDMS by You during the month preceding the month in which the claim arose.

(c) Notwithstanding anything to the contrary in this Agreement or elsewhere, in no event shall FDMS or its licensors be liable to You or to any third party for any indirect, special, incidental, consequential, punitive or unproven losses, damages or expenses of any kind, including, without limitation, lost profits or loss of goodwill arising from the use or inability to use the ClientLine service including, without limitation, the inability access your data or information generated or stored on the ClientLine service, and regardless of

whether such claim arises in tort, in contract or by statute or regulation.

(d) Both FDMS and You acknowledge and agree that the provisions and limitations of this Section are of the essence of this Agreement and that absent them, neither FDMS nor You would have entered into this Agreement.

19. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of New York, excluding its conflict of law provisions.

20. **U.S. Government Restricted Rights.** Use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or to its standard commercial license, as applicable, and in similar clauses in the NASA FAR Supplement. Contractor/ Manufacturer is First Data Merchant Services Corporation.

21. **Account Control Certifications.** You acknowledge that this Agreement and Your use of the ClientLine service may be subject to U.S. economic sanctions and embargo laws, including, but not limited to, the Trading With the Enemy Act, the International Emergency Act, and similar laws, violations of which may be subject to U.S. civil and criminal penalties. You specifically represent and warrant that You have not been designed by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), as a Specially Designated National or blocked person, that You have no reason to believe that You would be considered a blocked person by OFAC, and that You are not acting as agent of any such person. You further represent and warrant that You are not employed by, acting as agent of partially owned or controlled by a government, a government-controlled entity or a government corporation except as You have disclosed to your Bank.

22. **Severability.** Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms of this Agreement.

23. **No Waiver.** The failure of either party to enforce any rights granted by this Agreement or to take action against the other party in the event of any breach of this Agreement shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

24. **Amendment.** This Agreement may be modified, amended or replaced by FDMS from time to time upon notice to You on the the ClientLine service website or other form of written notice; provided, however, that if FDMS sends You any such notice, via electronic communication, a posting on this website or otherwise, of any such modification, amendment or replacement, You confirm Your acceptance of the modification, amendment or replacement by not closing and/or by continuing to use and access Your account on the ClientLine service.

25. **Force Majeure.** FDMS shall not be liable for any delay or failure to carry or make continuously available any FDMS website and/or the ClientLine service if such delay or failure is due to any cause beyond the reasonable control of FDMS, FDMS or any of its third party providers, licensors or licensees, including without limitation restrictions of

law or regulations, labor disputes, acts of God, mechanical or electronic breakdowns, telecommunication facilities breakdowns or software bugs, errors or failures. FDMS's obligations hereunder are subject to its ability to obtain and maintain any and all required governmental licenses, permits or other authorizations, and their ability to comply with any and all laws, regulations, orders and other governmental directives which may be imposed on the Internet, any FDMS website or the ClientLine service with respect to any of the foregoing.

26. **Entire Agreement.** You acknowledge that You have read this Agreement, understand it and agree to be bound by its terms and conditions. This Agreement is the complete and exclusive statement of the Agreement between You and FDMS and supersedes any prior agreements, proposal, representation or warranty between You and FDMS regarding Your use of the ClientLine service.

TO PROCEED WITH THE CLIENTLINE SERVICE, YOU MUST AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH ABOVE. IF YOU DO NOT AGREE, PLEASE CONTACT FDMS FOR A FULL REFUND OF ANY UNEARNED PREPAID FEES. IF YOU AGREE TO THESE TERMS AND CONDITIONS, INDICATE YOUR AGREEMENT BY CLICKING THE FOLLOWING ACCEPTANCE ICON: