

In order to use the Cardservice.com and the services, and any ancillary or related parts, offered through the www.cardservice.com (collectively, the **Service**), you must click on the "I Agree" icon at the end of this screen, indicating that you agree to be bound by these Terms of Service.

For purposes of these Terms of Service, the words **we**, **us**, **our** and **First Data** mean and refer to FDS Holdings, Inc., First Data Merchant Services LLC, its parents, sister companies, subsidiaries and any agent, independent contractor or assignee that First Data may, in its sole discretion, involve in the provision of the Service. The words **you** and **your** refer to visitors and users of the Service.

Terms of Service

Last Updated: June 2, 2020

1 Introduction

These Terms of Service (the **Terms**) describe the terms and govern the access and use of the Service made available by First Data, whether via this website or otherwise (**Service**). The Service consists of the proprietary operating system, firmware, applications, service plans, the website associated with the Service and www.cardservice.com (**Website**) and any software, documentation, tools, components, and any updates thereto (including software maintenance, service information, help content, bug fixes, or maintenance releases) provided by First Data in connection with the Service. Any of your obligations set out in these Terms relating to the use of the Service are in addition to, and not in substitution of, any other obligations imposed on you.

2 Agreement

Clicking to accept these Terms represents your agreement to these Terms. These Terms form a legally binding contract between you and First Data in relation to your use of the Service. You represent and warrant that you have the right and authority to bind your business to these Terms and you are not barred or otherwise legally prohibited from accessing or using the Service.

3 Your Use of the Service

First Data grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense or assign in any way, to access and use the Service for your internal business use solely in the United States and Canada in accordance with these Terms.

4 Restrictions

You shall not and shall not permit any third party to:

- (a) access or attempt to access the Service that is not intended to be available to you;

(b) access or use (in any format) the Service through any time-sharing service, service bureau, network, consortium, or other means;

(c) without First Data's advance written consent, use, ship or access the Service outside or from outside of the United States or Canada;

(d) perform or attempt to perform any actions that would interfere with the proper working of the Service, prevent access to or use of the Service by other users, or impose a large load on First Data's infrastructure, network capability or bandwidth; or

(e) use the Service except as permitted in these Terms.

5 Service Requirements and Limitations

5.1 You may access the Service through your tablet or other mobile or fixed form factor identified by First Data as compatible with and capable of accessing and/or supporting the Service using a wired (Ethernet) or wireless (Wi-Fi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of the Service accessed wirelessly or through the Internet is subject to: (a) the terms of any agreements you have with your Internet/data provider; and (b) availability, transmission range and uptime of the services and any wireless equipment.

5.2 You may use the Service to conduct point of sale activities offline. Transactions initiated offline will be queued and submitted for authorization when Internet connectivity to the First Data platform is restored. You assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Service is offline.

5.3 The Service does not function with every mobile device.

5.4 You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Service that are posted on the Website or otherwise provided or made available to you.

5.5 You agree that First Data shall not have any liability to you arising directly or indirectly from or otherwise concerning: (a) any termination, suspension, delay or disruption of the Service (including billing for the Service) by the Internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the Service, the Internet, or any communications network, facility or equipment beyond First Data's or a third party's reasonable control; (c) your failed attempts to access the Service or to complete transactions via the Service; or (d) any failure to transmit, obtain or collect data or for human, machine or software errors or faulty or erroneous input by you.

6 Communicating with Customers through the Service

- 6.1** You must comply with applicable law, including by obtaining any legally required and sufficient consent, when collecting and using customer contact details to communicate with your customers through the Service. You must promptly honor any customer opt-out.
- 6.2** You may not use the Service to send marketing communications except to the contact information provided directly to you by the customer and with the proper customer choice as required by law.

7 Third Party Services

The Service may contain links to services, products or promotions provided by third parties and not by First Data (**Third Party Services**). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with the Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Service). ***Any access of or content downloaded or otherwise obtained through your use of Third Party Services is accessed or downloaded at your own risk. First Data will not be responsible for any actions or any failures to act of any third party, and expressly disclaims all liability related to any Third Party Services. First Data does not warrant, endorse, guarantee, or assume responsibility for any provider of a Third Party Service or Third Party Service advertised or offered through the Service or any hyperlinked website or service, or featured in any banner or other advertising. First Data will not be a party to or in any way monitor any transaction between you and providers of Third Party Services.***

8 Account Registration

If and when prompted by First Data's registration process to register and create an account for purposes of the Service (**Account**), you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, First Data has the right to terminate your Account and refuse any and all current or future use of the Service.

9 Maintenance on the Service

- 9.1** First Data may perform maintenance on the Service which may result in service interruptions, delays, or errors. First Data will not be liable for any such interruptions, delays, errors, or bugs.

First Data may contact you in order to assist you with the Service and obtain information needed to identify and fix any errors.

- 9.2** First Data may, at its discretion, release enhancements, improvements or other updates to any software. If First Data notifies you that such update requires an installation, you shall integrate and install such update into your systems within 30 days of your receipt of such notice. Failure to install any updates in a timely fashion may impair the functionality of the software or Service. First Data shall have no liability for your failure to properly install the most current version of any software or any update, and First Data shall have no obligation to provide support or services for any outdated versions.
- 9.3** Certain software can automatically install, download, and/or deploy updated and/or new components, which may include a new version of the software itself. You shall not, in any event or in any manner, impede the update process. You agree to assume full responsibility and indemnify First Data for all damages and losses, of any nature, for all adverse results or third party claims arising from your impeding the update process.

11 Term and Termination

- 11.1** These Terms commence on the date on which you first use the Service and continue until your Account and/or use terminates.
- 11.2** First Data may permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to the Service without any notice and liability for any reason, including if in First Data's sole determination you violate any provision of these Terms.
- 11.3** Upon termination of these Terms for any reason, you must immediately stop using the Service and your license to use the Service provided under these Terms shall end.
- 11.4** The rights, obligations and limitations of these Terms that by their nature should survive, will survive termination of these Terms.

12 Privacy and Data Use

- 12.1** All data collected via the Website or in connection with your use of the Service, including customer information and information about your business and employees used with or stored in or by the Service, is collected by First Data. The First Data Privacy Policy (available at <https://www.cardservice.com/privacy-policy>) describes First Data's collection, use, disclosure, and other practices of in connection with such data.

- 12.2** You shall comply with all applicable laws pertaining to the privacy, secrecy, confidentiality, collection, usage, sharing, security, protection, disposal, or international transfer, of personal information, including laws applicable to direct marketing, telemarketing, and unsolicited e-mails or text messages. Applicable laws may include, but are not limited to US federal and state laws, such as the FTC Act, the California Consumer Privacy Act, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, Gramm-Leach-Bliley Act, state consumer protection laws, state data security laws, security breach notification laws, laws imposing minimum security requirements, and laws requiring the secure disposal of records containing certain personal information. Applicable laws in Canada may include, but are not limited to, the Personal Information Protection and Electronic Documents Act (Canada), and its provincial counterparts, the National Do Not Call List, the Unsolicited Telecommunications Rules, Canada's Anti-Spam Law and consumer protection laws.
- 12.3** You must implement reasonable security measures designed to protect the personal information that you collect, use, disclose, transfer, or otherwise process in connection with your use of the Service. You acknowledge and agree that you are solely responsible for all privacy and information security obligations and liabilities relating to any data that you download, export, or otherwise transfer from the Service to your own information environment.
- 12.4** You shall maintain and make available to customers a privacy policy applicable to your use of the Service.
- 12.5** You must ensure that any third parties with which you share personal information in connection with your use of the Service (including, without limitation, app developers whose applications are made available through the Website will provide the same level of privacy and data security protection that you are legally required to maintain and which you promise to maintain.
- 12.6** You must respond in a legally appropriate manner to any legally valid requests from individuals pertaining to the individual's privacy or data subject rights at your sole cost and expense.
- 12.7** First Data may process personal information to create aggregated, anonymized, or de-identified information and use that information for its lawful business purposes, including for purposes of creating data insights and analytics and demographic profiling.

- 12.8** Unless you have received prior written consent to do so from First Data, you may not use the Services to (a) process personal information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership; or (b) genetic data, biometric data, data concerning health, or data concerning a natural person's sex life or sexual orientation; or (c) upload or incorporate, process transactions involving, or otherwise provide, any "protected health information" within the meaning of the Health Insurance Portability and Accountability Act of 1996, as amended (**HIPAA**) or any "personal health information" within the meaning of any Canadian privacy statute.
- 12.9** You agree to provide reasonable assistance to help First Data comply with its privacy or data protection legal obligations, or defend against any claims or investigations, in either case, in any way arising from or related to the Terms. You agree to promptly notify us of any opt-outs and legally valid data subject rights requests relating to data within our possession, custody, or control.

13 Protecting Information

- 13.1** You shall safeguard all confidential information we supply or otherwise make accessible to you using a reasonable degree of care. You shall only use the confidential information we provide for the purposes of these Terms and shall not disclose our confidential information to any person, except as we may agree in advance and in writing. At our request, you shall return or destroy all of our confidential information in your possession or control.
- 13.2** You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Service is kept safe and confidential. You must prevent unauthorized access to and use of any of your information or data used with or stored in or by the Service (collectively, **Account Data**). You are responsible for electronic communications sent to us or to any third party containing Account Data and for all uses of the Service in association with your Account Data, whether or not authorized by you. We have the right to rely on user names, password and other signor credentials, access controls for the Service or any software provided or approved by us to authenticate access to, and use of, the Service and any software. You must immediately notify us if you become aware of any loss, theft or unauthorized use of any Account Data (see our Service support center contact information below). We reserve the right to deny you access to the Service, in whole or in part, if we believe that any loss, theft or unauthorized use of any Account Data or access information has occurred.

- 13.3** You may submit comments or ideas about the Service, including about how to improve the Service. By submitting any idea, you agree that (a) you expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any idea; (b) your submission will be non-confidential; and (c) we are free to use and disclose the idea on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from your receipt, review, use or disclosure of any portion of any idea.

14 Intellectual Property

- 14.1** All right, title and interest in and to all confidential information and intellectual property related to the Service (including Marks, all software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by us at any time or employed by us in connection with the Service, shall be and remain, as between us and you, First Data's affiliates', First Data's vendors' or licensors' (as applicable) sole and exclusive property and all right, title and interest associated with the Service not expressly granted by us in these Terms are deemed withheld. You may not use Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent. **Marks** means our names, logos, emblems, brands, service marks, trademarks, trade names, taglines or other proprietary designations.
- 14.2** You shall not, and shall not permit any third party to: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Service, except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the Service or the Marks; (c) create derivative works of or based on the Service, or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the Service; (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Service except as permitted in these Terms; or (f) remove, relocate, or otherwise alter any proprietary rights notices from the Service or the Marks.
- 14.3** If we provide you with copies of or access to any software or documentation, unless otherwise expressly stated in writing, that software and documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of your subscription to the Service and solely for you to access and use the software

and documentation to receive the Service for its intended purpose on Devices owned or licensed by you.

- 14.4** You shall not take any action inconsistent with the stated title and ownership in this Section 14. You will not file any action, in any forum that challenges the ownership of any part of the Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of these Terms.

15 Service Disclaimer

Use of the Service is at your own risk and to the maximum extent permitted by applicable law, the Service is provided "as is" and we disclaim all representations or warranties, express or implied, made to you or any other person, including any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or that the Service will operate uninterrupted or error free or that the Service is secure, free of viruses or other harmful components, or does not infringe the rights of any person.

16 Your Responsibilities

- 16.1** You shall comply fully with the requirements of all applicable federal, state, provincial and local laws and regulations related to your use of the Service and provision and use of any cardholder data, customer information and other point of sale data in connection with the Service. You shall not use the Service for illegal purposes.
- 16.2** You are solely responsible for obtaining all required permits, consents and licenses and monitoring legal developments applicable to the Service and 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.
- 16.3** You are solely responsible for ensuring the accuracy, quality, integrity, legality and appropriateness of all information and data regarding your business that you provide to us or our service providers in connection with the Service. In addition, if applicable, you are solely responsible for verifying that all information and data you provide are accurate. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to any information or data you provide.

17 Limitations on Liability and Damages

In no event shall First Data or its affiliates or any of First Data's or its' affiliates respective directors, officers, employees, agents or service providers, be liable under any theory of tort,

contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any person has been advised of the possibility of such damages.

First Data's and its' affiliates cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including those arising out of or related to these Terms and any indemnities), regardless of the form of action or legal theory, shall not exceed the amount of fees received by First Data under these Terms for the immediately preceding term.

18 Indemnity

You will indemnify, defend and hold First Data and our affiliates (and our and affiliate's, directors, officers, employees, agents and service providers) harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation, reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to:

- (a) any actual or alleged breach of your representations, warranties, or obligations set forth in these Terms, including without limitation any violation of our policies or the card associations' rules;
- (b) your wrongful or improper use of the Service;
- (c) any transaction submitted by you through the Service (including without limitation the accuracy of any product information that you provide or any claim or dispute arising out of products or services offered or sold by you);
- (d) your violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights;
- (e) your use of any personal information obtained in connection with your use of the Service or the Device, or any application used on the Device;
- (f) the activities under your Account, or any other party's access and/or use of the Service or Device with your unique username, password, API key, or other appropriate security code;
- (g) your failure to maintain reasonable security in connection with the use of the Service or the Device;
- (h) any data breach, information security incident, or similar, arising from your action or inaction;

(i) your violation of any law, rule or regulation of the United States, Canada or any other country (or a subdivision thereof); or

(j) any other party's access and/or use of the Service with your user names, password and any other sign on credentials/access controls for the Service or any software provided or approved by us to authenticate access to, and use of, the Service and any software.

19 Representation and Warranties

You represent and warrant that:

(a) you are validly existing, in good standing and have the right, power, and authority to enter into and perform under these Terms;

(b) any sales transaction submitted by you (1) is genuine and arises from a genuine sale or service that you directly sold or provided, (2) accurately describes the goods or services sold and delivered to a purchaser and (3) represents the correct amount of goods or services purchased from your business;

(c) you will fulfill all of your obligations to each customer for which you submit a transaction and will resolve any consumer dispute or complaint directly with the consumer;

(d) you, all transactions initiated by you and your use of the Service will comply with all federal, state, provincial, and local laws, rules, and regulations applicable to your business, including any applicable tax laws and regulations and card association rules and regulations;

(e) except in the ordinary course of business, no sales transaction submitted by you through the Service will represent a sale to any principal, partner, proprietor, or owner of your entity;

(f) you will not use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service; and

(g) you are not engaged in and will not accept payment for any illegal activity, in the legal jurisdiction(s) in which you do business or provide goods and/or services.

20 Consent to Electronic and Mobile Communication

20.1 You agree that we or our affiliates and our third party service providers and/or agents, may use, in addition to any live agent calls, an automatic telephone dialing system, an artificial or pre-recorded voice, or both, to contact you at the telephone number(s) you have provided, and/or may leave a detailed voice message if you are unable to be reached, even if the number provided is a cellular or wireless number or if you have previously registered on a Do Not Call list or requested not to be contacted for solicitation purposes.

20.2 You consent to receiving commercial electronic messages, including e-mail messages, SMS and text messages, and telephone calls, from us, our affiliates and our third party sales contractors and/or agents to a mobile phone number and/or email addresses you provided us as part of your Account, or any other number you provide to us or use in connection with the Service or other Services we may provide. You acknowledge that you contemplated these forms of communication when providing your mobile phone number and email.

21 Amendment

We have the right to change or add to these Terms at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Service with notice that in our sole discretion deem to be reasonable in the circumstances, including such notice on the Website or any other website maintained or owned by us. Any use of the Service after we publish any such changes or providing notice shall constitute your acceptance of these Terms as modified.

22 Assignment

These Terms, and any rights or licenses granted hereunder, may not be transferred or assigned by you (including by operation of law, transfer of voting control of you or otherwise).

23 Publicity

First Data may publicly announce your use of the Service. Any material announcement will be subject to your review and approval, which shall not be unreasonably withheld or unduly delayed.

24 General Provisions

These Terms are a complete statement of the agreement between you and us and describe the entire liability of us and our vendors and suppliers (including processors) and your exclusive remedy with respect to your use and access to the Service. In the event of a conflict between these Terms and the Privacy Policy, the Privacy Policy shall prevail. These Terms shall be governed and construed in accordance with the laws of the State of New York without regard to its conflicts of laws provisions. You agree to submit to the exclusive jurisdiction of the courts located within the County of Suffolk, New York to resolve any legal matter arising from these Terms. If any provision of these Terms is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. These Terms do not limit any rights that we may have under trade secret, copyright, patent or other laws. Except for our affiliates and as otherwise stated herein, no persons shall be third party beneficiaries to these Terms. No waiver of

any provision of these Terms shall be deemed a further or continuing waiver of such provision or any other provision, and our failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision. Notices sent to your last known email address or postal address, as indicated in our records, shall constitute effective notice to you under these Terms. It is the express wish of the parties that these Terms and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.

25 Contacting Us

If you have any questions about these Terms, please contact your account team. Except as otherwise stated in these Terms, all notices to us required or permitted in these Terms relating to the Service shall be in writing and sent by postal mail to: FDS Holdings, Inc., Attn: General Counsel's Office, 4000 NW 120th Avenue, MS/CON – MER, Coral Springs, FL 33065; with a copy to FDS Holdings, Inc., Attn: Legal Department, 6855 Pacific Street, Omaha, NE 68106. Emailed notices to First Data will be sent to: legalpapers@firstdata.com. Notices shall be effective when actually received or, if sent by courier, when delivered.