

RAPID CONNECT SERVICES(sm) and SPECIFICATION LICENSE AGREEMENT

THIS RAPID CONNECT SERVICES AND SPECIFICATION LICENSE AGREEMENT IS BETWEEN FIRST DATA MERCHANT SERVICES CORPORATION ("FDMS") FDMS AND YOU, AS DEFINED BELOW ("AGREEMENT"). IN ORDER TO USE THE RAPID CONNECT SOFTWARE AND WEBSITE (COLLECTIVELY THE "RAPID CONNECT 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. THIS AGREEMENT SUPERCEDES AND REPLACES ANY PRIOR AGREEMENT THAT YOU HAD CONCERNING THE USE OF THE RAPID CONNECT SERVICE. ANY OTHER AGREEMENTS YOU MAY HAVE WITH US REMAIN IN FULL FORCE AND EFFECT, INCLUDING BUT NOT LIMITED TO YOUR MERCHANT PROCESSING APPLICATION AND AGREEMENT AND/OR YOUR TPSP AGREEMENT OR TPP AGREEMENT, AS APPLICABLE.

For purposes of this Agreement, the words "We", "Us", and "Our" mean and refer to FDMS. The words "You" and "Your" refer to the licensee of the Rapid Connect Service who has agreed to the terms of this Agreement (also referred to herein as "Licensee").

For the purposes of this Agreement, Capitalized terms not defined herein shall have the meaning set for the in the Merchant Processing Application and Agreement and/or the TPP Agreement OR TPSP Agreement, as applicable.

WE RECOMMEND THAT YOU PRINT OUT AND KEEP A COPY OF THIS AGREEMENT FOR YOUR FUTURE REFERENCE.

1. **Specifications License Grant.** FDMS owns or licenses from a third party all rights in and to the specifications (the Specifications). Licensee is developing an interface to such Specifications to enable Licensee to process transactions through FDMS's systems (the Licensee Program). Licensee desires to license the Specifications from FDMS and FDMS has agreed to license such Specifications upon the terms and conditions contained herein. Therefore, FDMS and Licensee agree as follows:

a. **License Grant.** Subject to the terms and conditions of this Agreement, FDMS grants to Licensee a nontransferable, nonexclusive, limited license to use the Specifications for the sole purpose set forth in this Agreement.

b. **Updates.** From time to time, FDMS issues updates to the Specifications. Within 90 days of receipt of such updates, Licensee shall update its application as required to comply with changes to the Specifications and shall recertify its application following such update at all times during the term of this Agreement.

c. **Restrictions.** FDMS reserves all rights in the Specifications not expressly granted herein. Except as expressly provided herein, (i) Licensee shall not copy, nor allow others

to copy, any of the Specifications. (ii) Licensee shall not sell, assign, pledge, lease, deliver, or otherwise transfer the Specifications or any part thereof to any third party. (iii) Licensee shall not disclose to any third party or permit any third party to have access to or use the Specifications or any part thereof. (iv) Licensee shall not modify, alter or change the Specifications or any part thereof, or develop any diagram, drawing or other documentation based on the Specifications or the information contained therein. (v) Licensee shall not use the Specifications to develop, manufacture, modify or reproduce any other product or service that competes with any of FDMS's financial transaction card acquiring, authorization, settlement, processing, clearing or issuing services. (vi) Licensee may not reverse engineer the Specifications. Notwithstanding the foregoing, Licensee may disclose the Specifications to a third party subcontractor for the sole purpose of allowing such third party to write an interface into FDMS's systems. Said third party must agree in writing to be bound by the terms and conditions of this Agreement.

d. Ownership of the Specifications. Licensee acknowledges and agrees that all right, title and interest in and to the Specifications and all patents, copyrights, trademarks, trade names, trade secrets and other proprietary rights related to or residing in the Specifications, and all copies of all or any part thereof in any form whatsoever, shall remain with FDMS. Licensee understands and agrees that the Specifications contain trade secrets of FDMS that must be kept confidential. Licensee shall promptly notify FDMS of any actual or threatened misappropriation or infringement of FDMS' proprietary rights which may come to Licensee's attention.

e. Proprietary Notices. Licensee shall not remove from the Specifications, or alter, any of FDMS's trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Specifications, without the prior express written consent of FDMS. Licensee shall duplicate all such proprietary rights notices on each copy of the Specifications permitted to be made hereunder.

f. Confidential Information. The Specifications and all documentation, drawings, designs, specifications, documentation and related information pertaining to the Specifications, whether in oral, written, graphic, or electronic format, are and shall remain the confidential and proprietary information of FDMS (collectively, the Confidential Information). Licensee shall not disclose the Confidential Information, and shall treat the Confidential Information as strictly confidential, using the same degree of care to prevent disclosure of such information as Licensee uses with respect to its own confidential and/or proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances. Licensee shall use Confidential Information only for the purpose set forth in this Agreement and not for any purposes detrimental to FDMS. Except as expressly permitted by this Agreement, Licensee shall not copy any Confidential Information without the prior express written consent of FDMS and all Confidential Information, and any copies thereof, shall be

returned promptly to FDMS upon request in the event of termination of this Agreement.

g. Disclaimer of Warranties. THE LICENSED MATERIALS ARE BEING LICENSED AND PROVIDED TO LICENSEE AS IS, WITH ALL FAULTS, WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

h. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT: (A) FDMS SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER IN CONNECTION WITH THIS AGREEMENT AND THE USE OF ANY LICENSED MATERIALS BY LICENSEE, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), (B) FDMS SHALL NOT BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF FDMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (C) FDMS SHALL NOT BE LIABLE FOR ANY CLAIMS OF THIRD PARTIES RELATING TO LICENSEE'S USE OF ANY LICENSED MATERIALS AND LICENSEE SHALL DEFEND FDMS FROM, AND INDEMNIFY AND HOLD FDMS HARMLESS AGAINST, ALL SUCH CLAIMS. THE FOREGOING STATES THE ENTIRE LIABILITY OF FDMS WITH REGARD TO THIS AGREEMENT AND THE LICENSED MATERIALS. THE LIMITATIONS OF LIABILITY CONTAINED HEREIN ARE A FUNDAMENTAL PART OF THE BASIS OF FDMS'S BARGAIN HEREUNDER, AND FDMS WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS.

i. Effect of Termination of the Agreement. All obligations of Licensee hereunder shall survive termination of this Agreement. Upon termination Licensee shall, at FDMS's sole election, (a) return to FDMS all Specifications, including all copies and portions thereof; or (b) destroy all Specifications, including all copies and portions thereof. In either case, Licensee shall erase from all computer, electronic, or other storage devices or otherwise destroy all images and copies of all Specifications, and all portions thereof, and deliver to FDMS a certificate signed by an officer of Licensee acknowledging that Licensee's obligations under this section have been fully satisfied.

j. Inspection Rights and Further Assurances. During the term of this Agreement and for a period of one year thereafter, FDMS and its agents shall have the right to inspect the business records, equipment, facilities and premises of Licensee during normal business hours to verify Licensee's compliance with its obligations under this Agreement. In conducting such inspection, FDMS shall be entitled to confiscate any Specifications, copies thereof, or other documentation based on the Specifications which Licensee may have in its possession in violation of this Agreement. At any time upon the request of FDMS, Licensee shall promptly and duly execute and deliver any such further instruments and documents and take such further action as FDMS may reasonably deem desirable to obtain the full benefits of this Agreement.

k. Assignments. No right or obligation of Licensee under this Agreement shall be

assigned, delegated or otherwise transferred, whether by agreement, operation of law or otherwise.

2. **License Grant for Rapid Connect Service.** FDMS has the right to license and hereby grants to You, and You accept, a nonexclusive, nontransferable sublicense to use the Rapid Connect 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 Rapid Connect service contemplated by this Agreement, You may not copy, modify, reverse engineer, decompile, disassemble, assign, sublicense, transfer, pledge, lease, rent or otherwise share the Rapid Connect service.

3. **No Ownership Rights Conveyed to Rapid Connect Service.** You acknowledge and agree that this Agreement does not convey any title or ownership interest in the Rapid Connect service to You in any manner whatsoever. You further acknowledge and agree that the only right granted to You by this Agreement is the limited license to use the Rapid Connect service according to the terms and conditions of this Agreement.

4. **Term.** This Agreement will commence immediately Upon your selection of the “I Accept” box on the User Registration screen. Thereafter, this Agreement will continue on a month to month basis unless and until either party terminates this Agreement as provided herein. We may terminate this Agreement upon Your breach of any term of this Agreement. In the event we terminate the Agreement due to Your breach, You will be responsible for all fees due and owing including any amount incurred during the month of termination.

5. **New Services.** New online services may be offered from time to time as part of the Rapid Connect service. Access to such new services shall be subject to the terms and conditions of this Agreement and any additional fees, terms and conditions relative to the particular new online service, if any.

6. **Fees.**

(a) You agree to pay fees in connection with the Rapid Connect service as set forth in the Fee Schedule of Your Merchant Application and Agreement and/or your TPSP Agreement or TPP Agreement, as otherwise set forth in the form of electronic terms provided to You for acceptance, or as may otherwise be agreed to in writing by You and FDMS.

(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.

7. **Termination.** FDMS may terminate This Agreement at any time for any reason.

8. **Equipment.** You are responsible for and must provide solely at your own expense, all telephone and other equipment and services necessary to access the Rapid Connect service.

9. **Customer Support.** Certain support and services will be provided to You, including: (i) production and distribution of user documentation which describes the Rapid Connect service and (ii) telephone customer support services.

10. **System Availability.** You acknowledge and agree that, although You will generally have access to the Rapid Connect service twenty-four hours per day, seven days per week (except in the event of a force majeure event), access to certain services may not be available on a continuous basis and the Rapid Connect service will be subject to periodic downtime to permit, among other things, hardware and/or software maintenance to take place.

11. **Copyrighted Material.** The Rapid Connect 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 internal 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 the owner. 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.

12. **Lawful Use.** You shall use the Rapid Connect service and any components thereof for lawful purposes only. You shall not post or transmit through the Rapid Connect 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.

13. **Security of Information.** While commercially reasonable steps are taken to maintain the security of the Rapid Connect services, there is no guarantee of absolute security of

information that is communicated over the Internet. 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.

14. **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 developments 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.

15. **Disclaimers.** We do not make and hereby expressly disclaim any representation or warranty (i) that access to the Rapid Connect service will be uninterrupted or error free, (ii) that security breaches will not occur with respect to any information communicated through the Rapid Connect service the Internet, or any common carrier communications facility, and (iii) as to the results that may or may not be obtained by You in connection with Your use of the Rapid Connect service. **WE 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 RAPID CONNECT 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 RAPID CONNECT SERVICE ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS" BASIS.**

16. **Indemnification.** You agree to indemnify and hold Us 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 Specifications or the Rapid Connect service.

17. **Limitation of Liability.**

(a) You acknowledge and agree that We shall not 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 Rapid Connect service the Internet, or any communications network, facility or equipment beyond Our or a third party's reasonable control, whether or not attributable to one or more common carriers; (iii) Your failed attempts to access the Rapid Connect service or to complete transactions via the Rapid Connect 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 Rapid Connect service.

(b) Notwithstanding anything to the contrary in this Agreement or elsewhere, Our cumulative liability to You for any claim related to this Agreement and Your use of the Rapid Connect 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 Our willful misconduct or gross negligence. Furthermore, Our cumulative liability to You shall not, in any case, exceed the fees paid solely under this Agreement to Us 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 We 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 Rapid Connect service including, without limitation, the inability to access your data or information generated or stored on the Rapid Connect service, and regardless of whether such claim arises in tort, in contract or by statute or regulation.

(d) The Parties acknowledge and agree that the provisions and limitations of this Section are of the essence of this Agreement and that absent them, neither Party would have entered into this Agreement.

18. **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.

19. **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.

20. **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.

21. **Amendment.** This Agreement may be modified, amended or replaced by Us from time to time upon notice to You on the Rapid Connect service website or other form of written notice; provided, however, that if We send 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 Rapid Connect service.

22. **Force Majeure.** We shall not be liable for any delay or failure to carry or make

continuously available the Rapid Connect service if such delay or failure is due to any cause beyond Our reasonable control 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. Our obligations hereunder are subject to Our ability to obtain and maintain any and all required governmental licenses, permits or other authorizations, and Our ability to comply with any and all laws, regulations, orders and other governmental directives which may be imposed related to the Rapid Connect service.

23. 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 Us and supersedes any prior agreements, proposal, representation or warranty between You and Us regarding Your use of the Rapid Connect service.

TO PROCEED WITH THE RAPID CONNECT SERVICE, YOU MUST AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH ABOVE. IF YOU DO NOT AGREE, PROMPTLY LOG-OFF OF THIS PROGRAM. IF YOU AGREE TO THESE TERMS AND CONDITIONS, INDICATE YOUR AGREEMENT BY SELECTING THE "I ACCEPT" BOX ON THE USER REGISTRATION SCREEN.