

## Services Terms and Conditions

First Data Merchant Services LLC, through itself or its affiliates (collectively, "**Provider**," "**we**," "**us**," and "**our**") provides the Services (as defined below) for merchants, either directly or through arrangements with third parties. These Terms of Service (these "**Terms**") govern your access to and use of the Services. Please read these terms carefully.

These Terms supplement your merchant processing agreement (the "**Agreement**"). The Services are provided by Provider (through one or more of its affiliates or other subcontractors) and not any sponsor bank. Your sponsor bank shall have no obligations or liability under these Terms, including insofar as it applies to Services, and your sponsor bank shall not be liable to you or Provider in any way with respect to Services.

As used in these Terms:

- "**Associations**" means, collectively, Visa, MasterCard, Discover, American Express, any ATM or debit network, and the other financial service card organizations.
- "**Association Rules**" means Association security rules and regulations as they now exist or as each may be amended or supplemented from time to time.
- "**Platform**" means an information platform that allows merchants to review and manage a merchant processing account and may include, among other features, a mobile app, application programming interfaces, and account reporting;
- "**Customer**" means your customer who would like to provide payment for your goods or services;
- "**Gateway**" means a messenger service that facilitates the transmission of transaction information between a Customer, you, us, and the Customer's bank, and includes a virtual terminal;
- "**Services**" means collectively, the Gateway, the Platform, Software, Updates, features, functionality, and any applicable tokenization, point-to-point encryption, or other related solutions provided to you in connection with your use thereof;
- "**Software**" means all applications, protocols, software components and other interfaces and software provided by us to you pursuant to these Terms, and any and all Updates;
- "**Updates**" means an embodiment of the Software that provides enhancements and/or improvements; and
- "**you**" and "**your**" mean any entity that accesses or uses the Service.

These Terms give you specific legal rights, and you may also have other legal rights in addition, which vary from jurisdiction to jurisdiction. THE DISCLAIMERS, EXCLUSIONS, MANDATORY AND BINDING ARBITRATION, LIMITATIONS OF LIABILITY, INDEMNIFICATION, WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION AND WAIVER OF PUNITIVE DAMAGES UNDER THESE TERMS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of these Terms may not apply to you.

THESE TERMS ARE A LEGAL AGREEMENT. BY ACCESSING AND USING THE SERVICES, YOU ARE ACCEPTING AND AGREEING TO THESE TERMS. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS, YOU SHOULD CEASE ACCESSING OR USING THE SERVICES.

## 1. OVERVIEW, ELIGIBILITY, CUSTOMER SERVICE, TERM AND TERMINATION

A. Overview and Relation to Other Agreements. These Terms govern your use of the Services. Certain features of the Services may be subject to additional guidelines, terms, or rules, which will be posted by Provider at Provider's website. All additional guidelines, terms, or rules are incorporated by reference into these Terms, and you are agreeing to accept and abide by them by accessing and using the Services.

B. Our Role. We may use the services of one or more third parties to provide the Services.

### C. Eligibility.

i. You may use the Services only if you accept these Terms. By accessing or using the Services, you agree that you are in compliance with these Terms and all applicable local, state/provincial, national and international laws, rules, and regulations (including, but not limited to, the rules and regulations promulgated by the Associations, PCI-DSS, and Nacha).

ii. The Services are not available to any users previously prohibited from using the Services by Provider.

D. Term and Termination. These terms will remain in full force and effect so long as you continue to access or use the Services, or until terminated in accordance with these Terms. At any time, Provider may (i) suspend or terminate your right to access or use the Services, (ii) terminate these Terms with respect to you if Provider in good faith believes that that you have used the Services in violation of these Terms, including any incorporated guidelines, terms or rules.

E. Effect of Termination. Upon termination of these Terms, your right to access and use the Services will automatically terminate. Termination does not relieve you of obligations incurred by you under these Terms.

## 2. ACCOUNTS

A. When you access and use the Services, you may be required to establish a user account with Provider (a "**Platform Account**").

B. You represent and warrant that: (i) all required information you submit is truthful and accurate; (ii) you will maintain the accuracy of such information; and (iii) your use of the Services will not violate any U.S. or other applicable law or regulation. You are entirely responsible for maintaining the confidentiality of your Platform Account login information and for all activities that occur under your Platform Account, including but not limited to removing access to accounts for former employees or representatives who are not authorized to access the Platform. You agree to maintain your password securely to prevent others from gaining access without your permission. You agree to immediately notify us of any unauthorized use, or suspected unauthorized use, of your Platform Account or any other breach of security. We are not liable for any loss or damage arising from your failure to comply with the above requirements.

C. You may only use Services to facilitate transactions with your customers.

D. At any time during the term of these Terms and your use of the Services, we may require additional information from you to verify beneficial ownership or control of the business, validate information you provided, verify you or your representative's identity, and assess the risk associated with your business. Your failure to provide this information or material may result in suspension or termination of your Platform Account. You authorize us to retrieve information about you from our service providers and other third parties, including credit reporting agencies and information bureaus and you authorize and direct such third parties to compile and provide such information to us. You acknowledge that this may include your name, addresses, credit history, and other data about you or your representatives. You acknowledge that we may use your information to verify any other information you

provide to us, and that any information we collect may affect our assessment of your overall risk to our business. You acknowledge that in some cases, such information may lead to suspension or termination of your Platform Account. Provider may periodically update this information as part of our underwriting criteria and risk analysis procedures.

E. You agree to keep the information in your Platform Account current. You must promptly update your Platform Account with any changes affecting you, the nature of your business activities, your Representatives, beneficial owners, principals, or any other pertinent information. We may suspend your Platform Account or terminate these Terms if you fail to keep this information current.

### **3. YOUR RELATIONSHIP WITH YOUR CUSTOMERS**

A. Provider provides Services to you but we have no way of knowing if any particular purchase, sale, order, or other transaction between you and your customers (each a "**Transaction**") is accurate or complete, or typical for your business. You are responsible for knowing whether a Transaction initiated by your customer is erroneous (such as a customer purchasing one item when they meant to order another) or suspicious (such as unusual or large purchases, or a request for delivery to a foreign country where this typically does not occur).

B. You may only use the Services for legitimate Transactions with your customers.

C. If you are unsure if a Transaction is erroneous or suspicious, you agree to research the Transaction and, if necessary, contact your customer before fulfilling or completing the Transaction. You are solely responsible for any losses you incur due to erroneous or fraudulent Transactions in connection with your use of the Services.

D. The terms of the Agreement apply to all Transactions submitted through the Services.

### **4. ACCESS TO SERVICES**

A. Access and Use. Subject to these Terms, Provider will permit you to access and use the Services for the purpose of enabling:

i. the direction of payment transaction data to applicable payment processors; and

ii. (ii) ancillary processes and activities directly related thereto (the "**Permitted Purpose**") and for no other purposes.

B. Certain Restrictions. The rights granted to you in these Terms are subject to the following restrictions:

i. you agree not to license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Services;

ii. you agree not to modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services;

iii. you agree not to access the Services in order to build a similar or competitive service or product;

iv. except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means;

v. you agree not to upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer or communication network, computer, handheld mobile device, data, the Services, or any other system, device or property;

vi. you agree not to interfere with, disrupt, or attempt to gain unauthorized access to, the servers or networks connected to the Services or violate the regulations, policies, or procedures of such networks; and

vii. you agree not to access (or attempt to access) any of the Services by means other than through application programming interface(s) provided by Provider; and

viii. you agree that any future release, update, amendment, or other addition to functionality of the Services shall be subject to these Terms.

C. Security. Provider cares about the integrity and security of your personal information. However, Provider cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes.

D. Modification. Provider reserves the right, at any time, to modify the Services or any part thereof with or without notice. You agree that Provider will not be liable to you or to any third party for any modification, of the Services or any part thereof.

## 5. AGREED USAGE AND LIMITATIONS OF PROVIDER SERVICES

A. Interruption of Services. While we aim for the Services to be highly reliable and available, they are not intended to be reliable or available 100% of the time. The Services are subject to sporadic interruptions and failures for a variety of reasons beyond Provider's control, including, without limitation, power disruptions, service provider uptime, mobile notifications and carriers, among others. You acknowledge these limitations and agree that Provider is not responsible for any damages allegedly caused by the failure or delay of the Services.

B. Reliability of Services. You acknowledge that the Services are not error-free or 100% reliable and 100% available, and may be interrupted, delayed, refused, or otherwise limited for a variety of reasons, including insufficient coverage, power outages, termination of service and access, environmental conditions, interference, non-payment of applicable fees and charges, unavailability of radio frequency channels, system

capacity, upgrades, repairs or relocations, and priority access by emergency responders in the event of a disaster or emergency (collectively "**Service Interruptions**"). You understand that Service Interruptions may result in the Services being unreliable or unavailable for the duration of the Service Interruption. We cannot and do not guarantee that you will receive notifications in any given time or at all.

C. No Refund or Rebate. The Services may be suspended temporarily without notice for security reasons, system failure, maintenance and repair, or other circumstances. You agree that you will not be entitled to any refund or rebate for such suspensions. Provider does not offer any specific uptime guarantee for the Services.

D. System Requirements. It is your responsibility to ensure that you have all required system elements and that they are compatible and properly configured. You acknowledge that the Services may not work as described when the requirements and compatibility have not been met. If you modify, substitute, move, or otherwise change any of the required system elements, it is your sole duty and responsibility to be sure they are compatible and properly configured to work with the Services.

E. Data Reliability. You are solely responsible for the accuracy and completeness of all data transmitted by you using the Services.

F. Representations. You warrant, represent and agree that you will not transmit any data or other information via the Services, or otherwise use the Services in a manner that:

i. violates rights of publicity or privacy, or other rights of any third party;

ii. violates any law, statute, ordinance or regulation or is otherwise illegal;

iii. contains a virus, Trojan horse, worm, time bomb, or other harmful computer code, file, or program;

iv. jeopardizes the security of your Platform Account or anyone else's Platform Account (such as allowing someone else to log in to the Services as you);

v. attempts, in any manner, to obtain or access the password, account, products, devices, systems, or other security information from any other user or third party;

vi. violates the security of any computer network, or cracks any passwords or security encryption codes;

vii. interferes with the proper working of the Services (including by placing an unreasonable load on the Services infrastructure); or

viii. denigrates or disrupts any network capacity or functionality.

## **6. LIMITATIONS OF PROVIDER SERVICES DUE TO THIRD PARTIES**

A. General. The Services rely on or interoperate with third party products and services. These third-party products and services are beyond Provider's control, but their operation may impact or be impacted by the use and reliability of the Services. You acknowledge and agree that:

i. the use and availability of the Services is dependent on third party product vendors and service providers;

ii. these third-party products and services may not operate in a reliable manner 100% of the time, and they may impact the way that the Services operate, and

iii. Provider is not responsible for damages and losses due to the operation of these third-party products and services.

B. Third Party Service Providers Used by Provider. You acknowledge that Provider uses third party service providers to enable some aspects of the Services and is not responsible for such third

party service providers, their services, or their systems.

C. Equipment, ISP, and Carrier. You acknowledge that the availability of the Services is dependent on: (i) your computer, internet network, and other related equipment; and (ii) your Internet service provider ("**ISP**"). You acknowledge that you are responsible for all fees charged by your ISP in connection with your use of the Services. You also acknowledge that you are responsible for compliance with all applicable agreements, terms of use/service, and other policies of your ISP.

D. Release Regarding Third Parties. Provider is not responsible for third parties or their products and services. Provider hereby disclaims and you hereby discharge, waive and release Provider and its licensors and suppliers from any past, present, and future claims, liabilities, and damages, known or unknown, arising out of or relating to your interactions with such third parties and their products and services.

E. Subcontractors. We may subcontract all or part of the Services using a variety of providers globally. Notwithstanding any such subcontract, we shall remain responsible for performance of the Services.

## **7. SUSPICION OF UNAUTHORIZED OR ILLEGAL USE**

A. We may refuse, condition, or suspend any Transactions that we believe:

i. may violate these Terms or other agreements you may have with Provider;

ii. are unauthorized, fraudulent or illegal; or

iii. expose you, Provider, or others to risks unacceptable to Provider.

B. If we suspect or know that you are using or have used the Services for unauthorized, fraudulent, or illegal purposes, we may share any information related to such activity with the

appropriate financial institution, regulatory authority, or law enforcement agency consistent with our legal obligations. This information may include information about you, your Platform Account, your customers, and Transactions made through your use of the Services.

## **8. PROCESSING TRANSACTIONS; DISPUTES, REFUNDS, REVERSALS; AUDIT RIGHTS**

A. To enable us to process Transactions for you, you authorize and direct us, our affiliates, the Payment Method Providers and Payment Method Acquirers to receive and settle any payment processing proceeds owed to you through the Services. **"Payment Method"** means a type of payment method that Provider accepts as part of the Services, such as credit card, debit card, and ACH. **"Payment Method Acquirer"** means a financial institution that is authorized by a Payment Method Provider to enable the use of a Payment Method by accepting charges from Customers on behalf of the Payment Method Provider, and routing these charges to the Payment Method Provider. **"Payment Method Provider"** means the provider of a Payment Method, such as Visa, MasterCard, Discover, and American Express.

B. Except where Provider and a customer have otherwise agreed, you maintain the direct relationship with your customers and are responsible for: (i) acquiring appropriate consent to submit charges through the Services on their behalf; (ii) providing confirmation or receipts to customers for each charge; (iii) verifying customers' identities; and (iv) determining a customer's eligibility and authority to complete Transactions. However, even authorized Transactions may be subject to a dispute. Provider is not responsible for or liable to you for authorized and completed Charges that are later the subject of a dispute, refund, or reversal, are submitted without authorization or in error, or violate any laws.

C. Upon notice to you, we may audit your usage, records and security of the Services, your Customer's payment processing information, and

the services provided hereunder to ensure: (i) that you are using the Services in full compliance with the provisions of these Terms; (ii) that all applicable fees have been paid; (iii) that you are adhering to your privacy policy; and (iv) that you are in full compliance with all applicable laws, regulations and rules (including but not limited to Association Rules). Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.

D. If you are integrating the ACH Processing Service into your payment infrastructure, you also agree to comply with all of the rules imposed by Nacha, the current ACH Operational Guidelines Overview (the **"Operational Guidelines"**, available at <https://developer.cardconnect.com/guides/ach>), and all documentation we make available to you, which are incorporated into this Agreement.

## **9. OWNERSHIP AND INTELLECTUAL PROPERTY**

You acknowledge that all intellectual property rights, including without limitation copyrights, patents, trademarks, and trade secrets, in the Services are owned by Provider or our affiliates or licensors. Your access to and use of Services do not transfer to you or any third party any rights, title, or interest in or to such intellectual property rights. Provider and its affiliates and licensors and suppliers reserve all rights not granted in these Terms.

## **10. INDEMNITY FOR THIRD PARTY ACTIONS**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO INDEMNIFY, DEFEND, RELEASE AND HOLD PROVIDER AND ITS LICENSORS AND SUPPLIERS (COLLECTIVELY THE **"PROVIDER PARTIES"**) HARMLESS FROM AND AGAINST: (I) ALL CLAIMS, ACTIONS, LAWSUITS AND ANY OTHER LEGAL ACTION BROUGHT BY ANY THIRD PARTY AGAINST ANY OF THE PROVIDER PARTIES ARISING FROM OR RELATING TO (A) YOUR ACCESS TO AND USE OF THE SERVICES, (B) YOUR VIOLATION OF THESE TERMS, AND (C) YOUR VIOLATION OF ANY LAW OR THE RIGHTS OF ANY THIRD-PARTY (COLLECTIVELY

**"THIRD PARTY ACTIONS"**); AND (II) ANY AND ALL RELATED LOSSES, DAMAGES, SETTLEMENTS AND JUDGMENTS (INCLUDING PAYMENT OF THE PROVIDER PARTIES' ATTORNEYS' FEES AND COSTS) INCURRED BY ANY OF THE PROVIDER PARTIES, ASSESSED OR FOUND AGAINST ANY OF THE PROVIDER PARTIES, OR MADE BY ANY OF THE PROVIDER PARTIES, RELATING TO OR ARISING FROM ANY SUCH THIRD PARTY ACTION (**"THIRD PARTY RELATED LOSSES"**). YOU UNDERSTAND AND AGREE THAT YOUR INDEMNIFICATION OBLIGATION TO THE PROVIDER PARTIES APPLIES EVEN IF SUCH THIRD-PARTY ACTION AND THIRD PARTY RELATED LOSSES ARISE FROM THE NEGLIGENCE OF ANY KIND OR DEGREE, BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NON-COMPLIANCE WITH APPLICABLE LAW, OR OTHER FAULT OR WRONGDOING OF ANY OF THE PROVIDER PARTIES. Provider reserves the right to assume the exclusive defense and control of any matter for which you are required to indemnify Provider and you agree to cooperate with our defense of such claims. You agree not to settle any such claim without Provider's prior written consent. Provider will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

## **11. WARRANTY DISCLAIMERS**

A. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND PROVIDER AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NON-INFRINGEMENT.

B. PROVIDER AND ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTY THAT DEFECTS WILL BE CORRECTED OR THAT THE SERVICES: (i) WILL MEET YOUR REQUIREMENTS; (ii) WILL BE COMPATIBLE WITH YOUR NETWORK OR COMPUTER SYSTEM; (iii) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (iv) WILL BE ACCURATE OR

RELIABLE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM PROVIDER OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY.

## **12. WAIVER OF SUBROGATION**

You should protect against any risk of loss with the appropriate insurance coverage, and you are responsible for obtaining all insurance coverage you believe is necessary. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE APPLICABLE POLICY OR POLICIES OF INSURANCE YOU OBTAIN AND MAINTAIN, YOU RELEASE PROVIDER AND ITS LICENSORS AND SUPPLIERS FROM ALL LIABILITY FOR ANY LOSS, OCCURRENCE, EVENT OR CONDITION COVERED BY YOUR INSURANCE.

## **13. LIMITATION OF LIABILITY**

IN NO EVENT SHALL PROVIDER OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, PARTNERS, OR AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFITS, INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) IN CONNECTION WITH ANY CLAIM, LOSS, DAMAGE, ACTION, SUIT OR OTHER PROCEEDING ARISING UNDER OR OUT OF THE PRODUCTS OR SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER THE ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE.

IN EVERY EVENT, PROVIDER'S TOTAL MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE PRODUCTS OR SERVICES SHALL BE LIMITED TO ONE MONTH OF FEES PAID BY YOU FOR THE SERVICES.

THE CONSIDERATION BEING PAID HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR PROVIDER TO ASSUME ANY RISKS BEYOND THOSE EXPRESSLY ASSUMED HEREIN AND IF ANY

SUCH RISKS WERE TO BE ASSUMED BY PROVIDER, PROVIDER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT CHARGING SUBSTANTIALLY HIGHER FEES.

SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES MAY NOT APPLY TO YOU.

#### **14. ACCOUNT SECURITY; DATA; PRIVACY; GOVERNMENTAL PROVISIONS**

A. You agree not to allow anyone else to have or use your password details and to comply with all reasonable instructions we may issue regarding account access and security. In the event you share your password details, Provider will not be liable to you for losses or damages.

B. You agree to keep your personal details up to date. We may be unable to respond to you if you contact us from an address, telephone number or email account that is not registered with us.

C. You agree to take all reasonable steps to protect the security of the personal electronic device through which you access the Services (including, without limitation, using PIN and/or password protected personally configured device functionality to access the Services and not sharing your device with other people).

D. You agree to comply with applicable data privacy and security rules and requirements under the Payment Card Industry Data Security Standard ("**Association PCI DSS Requirements**"), National Automated Clearing House Association ("**Nacha Rules**"), and any applicable Association data security requirements (including those made available by Visa, MasterCard, American Express and Discover) with regards to your use, access, and storage of certain credit card non-public personal information. Additionally, you agree to comply with its obligations under any applicable law or

regulation as may be in effect or as may be enacted, adopted or determined regarding the confidentiality, use, and disclosure of cardholder information. You must report any customer data breach or incident affecting the Services to Provider and Associations immediately after discovery of the incident. You also agree to ensure data quality and that any Customer Data is processed promptly, accurately and completely, and complies with the Associations' technical specifications.

E. You agree that you will adequately communicate and comply with an appropriate privacy policy explaining your online collection and use of the personal information of your Customers. Unless required by law, the Association Rules, or done pursuant to these Terms or the Agreement, you shall not, under any circumstances, sell, purchase, provide, or otherwise disclose any customer's account information, transaction information, or other personal information to any third party. You shall store all data securely.

F. You agree that we may advise potential users of the Services that we have a relationship with you.

G. The Services may include issuance to you of a security certificate to enable secure and encrypted communications between you and the Services. You hereby acknowledge that all such security certificates are provided by third party certificate authorities and we shall not be responsible for any errors or omissions of third parties in connection with security certificates. You are responsible for reasonably cooperating with us as required in connection with the issuance and maintenance of security certificates.

H. You agree not to export or re-export the Software or any underlying information or technology except in full compliance with all applicable laws and regulations. In particular, but without limitation, none of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported: (i) to any country to which the United States has



embargoed goods (or any national or resident thereof); (ii) to anyone on the United States Treasury Department's list of specially designated nationals or the United States Commerce Department's table of deny orders; or (iii) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable export regulations. If you have rightfully obtained the Software outside of the United States, you agree not to re-export the Software except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained the Software. You warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

I. If you are acquiring the Software on behalf of any part of the United States government (the "**Government**"), then: (i) any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement; (ii) we are the contractor/manufacturer; and (iii) any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this **Section 14(F)** and shall be prohibited except to the extent expressly permitted by the terms of these Terms.

## **15. FEES AND PAYMENT; TAXES**

A. Certain Services may be provided for a fee. You shall pay all applicable fees regarding the Services.

B. You shall pay, indemnify, and hold Provider harmless from: (i) any sales, use, excise, import or export, value-added, or similar tax or duty, and any other tax or duty not based on Provider's income; and (ii) all government permit fees, customs fees

and similar fees which Provider may incur with respect to these Terms. Such taxes, fees and duties paid by you shall not be considered a part of, a deduction from, or an offset against, payments due to Provider hereunder.

## **16. GOVERNING LAW**

These Terms are governed by and construed in accordance with the laws of the State of New York and the United States, without regards to their respective principles of conflicts of law. You agree to the exclusive personal jurisdiction by the federal and state courts located in New York, State of New York, United States, in any matter arising from or related to these Terms and your use of the Services, including any disputes relating to the existence or validity of these Terms, and you waive any jurisdictional, venue, or inconvenient forum objections to such courts.

## **17. GENERAL**

A. We reserve the right to make changes to these Terms. Any changes we make to these Terms will be effective immediately upon notice, which we may provide by any means including, without limitation, posting on the Provider websites. Your use of the Services after such notice will be deemed acceptance of such changes.

B. If any provision of these Terms is found to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

C. Upon termination or expiration of these Terms or the Agreement, a party's obligations shall cease except for those remaining or required to be performed following such termination. For the avoidance of doubt, the parties agree that the provisions of these Terms that logically should survive termination or expiration of these Terms in order to accomplish the fundamental purposes of such provisions will so survive. All representations, warranties, indemnities, and covenants made herein shall survive the termination of these Terms

and shall remain enforceable after such termination.

D. These Terms set out the entire agreement between us relating to the subject matter herein and supersede and any all prior or contemporaneous written or oral agreements between us. These Terms are not assignable, transferable or sub-licensable by you except with Provider's prior written consent. These Terms shall not be construed as a teaming, joint venture, or

other such arrangement, unless the parties expressly and explicitly execute an agreement to that effect. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained in these Terms is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof.

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