

Schedule 6 SaaS Services Schedule

This Schedule adds the SaaS Services Schedule to the Payment Solutions Agreement (**Agreement**) among First Data and Company. The terms of the Agreement and this Schedule apply to the SaaS Services, but, if anything in this Schedule conflicts with the Agreement, this Schedule will control. The SaaS Services is a **Service** under the Agreement and is provided by First Data and not by Bank. **Bank is not a party to this Schedule and is not liable to Company in connection with this Service or this Schedule.**

Capitalized words or phrases not defined in this Schedule use the definitions given to them in the Agreement.

The Parties agree:

1. Agreement.

- 1.1. This Schedule will be effective on the later of the dates it is signed by Company or First Data (the **Effective Date**).
- 1.2. First Data, itself or through its Affiliates, agrees to provide to Company, and Company agrees to obtain from First Data, in the United States of America and Canada (collectively, the **SaaS Services Territory**), as applicable, the SaaS Services and Documentation described in Section 2 (along with certain implementation, conversion, operational and technical support, development, professional, consulting, and training services, collectively the **Deliverables**), subject to the terms in this Schedule and applicable Schedules attached hereto. An **Affiliate** is an entity that controls, is controlled by, or is under common control with a party, where "control" means the direct or indirect ownership of more than 50% of the voting securities of such entity or party. The SaaS Services, along with other services provided by First Data or its Affiliates under separate agreements, are collectively **First Data Services**.
- 1.3. First Data and Company understand and agree that: (1) First Data may use one or more of its Affiliates to perform some or all of the SaaS Services provided that First Data remains solely liable to Company for the performance of its obligations under this Agreement, (2) First Data may collect Fees on behalf of its Affiliates for parts of the SaaS Services or other First Data Services provided by First Data or its Affiliates, (3) Company's Affiliates may use the SaaS Services only upon First Data's prior written consent (for clarity, First Data consents to the initial Company Affiliates set forth in the Company Affiliates Schedule attached as Exhibit C), (4) Company will pay for the SaaS Services described in the SaaS Services and Fees Schedule, and (5) the Support Services outlined in the SaaS Services Support Schedule (attached as Exhibit B) apply to the SaaS Services.
- 1.4. This Schedule, together with any schedules, appendices, or statements of work related to the SaaS Services, sets forth the terms and conditions that apply to the SaaS Services and supplements the Agreement between Customer and First Data. The terms and conditions of the Agreement are incorporated into this Schedule. If there is any conflict between this Schedule and the documents listed below related to the SaaS Services, the conflict will be resolved by giving precedence in the following order: (1) this Schedule; (2) Agreement, (3) any appendices, statements of work, or schedules to this Schedule; and (4) any schedules, appendices, or statements of work to the Agreement.

2. The SaaS Services.

- 2.1. First Data and its Affiliates provide merchants with business software and payment solutions, including: system integration gateways that transmits payment information (**Gateways**); software platforms to facilitate the acceptance of payment or payment information (**Platforms**, including the **Hosted Services** and **Payment Pages**, as further defined in this Schedule and SaaS Services and Fees Schedule); and other related services as set forth on SaaS Services and Fees Schedule, (**Professional Services**). Together the Gateways, Platforms, and Professional Services, each as set forth on the SaaS Services and Fees Schedule, are the **SaaS Services**.
- 2.2. Any manuals and other written materials provided or made available for use with the First Data Services or the SaaS Services, as amended by First Data, are the **Documentation**. Such Documentation is First Data's Confidential Information.
- 2.3. The Gateway includes: (1) the system integration that transmits payment information among Company, Company's customers, and Company's payment services provider, (2) the technical specifications to integrate with the Gateway, and (3) the components described in the corresponding Documentation.
- 2.4. The **Platforms** (including the **Hosted Services** and **Payment Pages**) are hosted, web payment forms that are designed to accept internet-based transactions.
- 2.5. First Data may provide Company with **Professional Services** as described in the SaaS Services and Fee Schedule attached as Exhibit A. The date that First Data provides notice (via e-mail) to Company's project manager that the Professional Services have been completed is the **Delivery Date**. After the Delivery Date, Company will have 10 days to determine whether the Professional Services materially conform to the specifications that First Data and Company have agreed upon (the **Testing Period**). If Company provides First Data with detailed written notice of any material errors,

defects, or non-conformities that Company discovers during the Testing Period, First Data will correct it in such time and manner as is reasonable under the circumstances. A new Testing Period will begin when First Data notifies Company on the new Delivery Date. **Acceptance** occurs when Company gives First Data written notice of Company's acceptance, or if Company fails to give written notice of any errors, defects, or non-conformities during a Testing Period. The date on which Acceptance occurs is the **Acceptance Date**.

- 2.6. All reports, studies, object and source code (including without limitation the Deliverables and all modifications, enhancements, additions, upgrades, or other works based thereon or related thereto), flow charts, diagrams, specifications, and other tangible or intangible material of any nature whatsoever produced through or as a result of or related to any of the Deliverables (collectively, **Works**) or development of any data analytics or usage models hereunder, and all patents, copyrights, and other proprietary rights related to such Works and models, shall be the sole and exclusive property of First Data or its Affiliates or of their third party providers. Nothing in this Schedule shall convey to Company any title to or ownership of any Deliverables, Works, or models. Company hereby irrevocably assigns and transfers to First Data all rights, title, and interest in any such Works and models. Company may use any Works provided to or rightfully accessed by Company solely as necessary to use the Deliverables in accordance with the applicable terms and conditions of this Schedule.

3. **Company's Systems.**

- 3.1. Any web site(s) or interfaces(s) to the First Data Services that are operated or maintained by Company, or on Company's behalf, through which transactions are submitted for processing, and all Company's other associated systems, are **Company's Systems**. Company is responsible for accepting, processing, and filling any orders by its customers. First Data provides the technical specifications to Company, and Company acknowledges that such specifications alone are insufficient to allow Company's Systems to function with each Platform. Programming, development, and maintenance of Company's Systems and their functionality are Company's sole responsibility. Company has the sole responsibility to select and employ any competent programming agent(s) to accomplish the programming required to make Company's Systems function correctly with each Platform and the payment services contemplated under this Schedule.

4. **Fees and Payment**

- 4.1. First Data will invoice Company, and Company will pay First Data, the **Fees** described in the SaaS Services and Fees Schedule.
- 4.2. Company will pay applicable fees, registrations, assessments, imports, duties, tariffs, and taxes imposed by any international, federal, state, or local authorities with respect to this Schedule.
- 4.3. Where this Agreement refers to invoices being issued by First Data to Company, First Data may have one or more of its Affiliates issue such invoices. If an Affiliate of First Data issues such an invoice to Company, Company will pay such Affiliate in accordance with the payment instructions on such invoice. Company's payment of a given amount against such invoice satisfies its obligation under this Agreement to pay such amount to First Data.
- 4.4. First Data may offset against any amounts owed by First Data to Customer under the Agreement any amounts owed by Company to First Data under this Schedule.

5. **Term and Termination.**

- 5.1. This Schedule begins on the Effective Date and runs conterminously with the Agreement (**Term**). Any actions or events which operate to extend or terminate the Agreement will automatically extend or terminate this Schedule simultaneously.
- 5.2. Notwithstanding Section 5.1, if this Schedule expires or terminates within the first three (3) years after the Effective Date (**Minimum Term**), then, in addition to any other amounts owed by Company to First Data, Company will pay First Data an amount equal to the sum of the average monthly Recurring SaaS Fees paid to First Data during the 12-month period preceding the termination plus the average monthly Recurring Transactions Fees paid to First Data during the 12-month period preceding the termination, multiplied by the number of months (including partial months) remaining in the Minimum Term (**Early Termination Fee**).

6. **Support Services**

- 6.1. Company acknowledges that the successful completion of Support Services may depend on the commitment and quality of the assistance that Company provides to First Data. Company will provide First Data with assistance as First Data reasonably requests related to the Support Services.
- 6.2. The terms of this Schedule apply to First Data's provision of the SaaS Services, and the Support for the applicable SaaS Services is outlined in SaaS Services Support Schedule. First Data may amend or replace the SaaS Services Support Schedule, but any amendment or replacement of support will not (without Company's prior written consent) materially reduce the scope of First Data's obligations under this Schedule.

7. Company's Use Restrictions:

- 7.1. Company agrees that it will:
 - 7.1.1. cause any legal entities, Affiliates, or individuals who access or use the SaaS Services or submit information to the SaaS Services (**Users**) to comply with this Schedule, and Company is solely responsible for Users' compliance with this Schedule;
 - 7.1.2. immediately notify First Data of any unauthorized access or use and take necessary steps to prevent further unauthorized access or use;
 - 7.1.3. use the SaaS Services (including devices) only in accordance with Documentation that First Data may provide and for the purposes set forth by First Data;
 - 7.1.4. ensure that: (a) each transaction will be genuine and the result of a bona fide transaction for the sale of goods and services sold by Company; and (b) Company will apply transaction proceeds solely to satisfy the payment obligations owed to Company for the sale of goods and services sold by the Company and not for other payment obligations of the party that initiated the transaction to include that it may not use First Data Services to receive funds to pay obligations of Company's customers or Users;
 - 7.1.5. obtain all legally required consents for information, including Personally Identifiable Information (as defined in Section 8.2.6), submitted to the SaaS Services; and
 - 7.1.6. comply with all applicable Laws.
- 7.2. Company agrees that it will not, and will not permit Users to:
 - 7.2.1. permit unauthorized access to or use of the SaaS Services, Personally Identifiable Information, or other data in the SaaS Services, or related systems;
 - 7.2.2. resell, redistribute, or otherwise make the SaaS Services available to any third party and will not use the SaaS Services to provide services to any third party (for example, business process outsourcing, service bureau applications, time-sharing, or third party training) without First Data's express written consent (which may be withheld in First Data's sole discretion and may be subject to additional fees and terms);
 - 7.2.3. use the SaaS Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
 - 7.2.4. use the SaaS Services to store or transmit viruses, worms, time bombs, or other harmful or malicious code, files, scripts, agents, or programs;
 - 7.2.5. interfere with or disrupt the integrity or performance of the SaaS Services, or third-party data contained in the SaaS Services;
 - 7.2.6. disclose, send, provide or otherwise give First Data access to (1) **Personally Identifiable Information** (defined as information or data about an identified individual or that can be used to identify an individual, including but not limited to social security numbers; dates of birth; driver's license numbers; payment card data; bank or financial account data or other consumer data or information) other than as necessary to (i) use the SaaS Services or (ii) otherwise process transactions as permitted hereunder; or (2) any "protected health information" within the meaning of the Health Insurance Portability and Accountability Act of 1996, as amended;
 - 7.2.7. use the SaaS Services to process personal data revealing racial or ethnic origin, political opinions, religious beliefs, or genetic data, biometric data, data concerning health, or data concerning a natural person's sex life or sexual orientation;
 - 7.2.8. attempt to gain unauthorized access to the SaaS Services, or their related systems or networks;
 - 7.2.9. submit or deposit any transaction in connection with the SaaS Services that is illegal, fraudulent, or not authorized;
 - 7.2.10. receive funds from any person, User, or customer through a transaction for the purpose of making any payment to a third party on behalf of such person that would constitute the provision of money transmission services for the benefit of such person; and
 - 7.2.11. engage in any activity or submit any Transaction (in connection with the Services) that fails to comply with applicable Laws.
- 7.3. Company agrees that it is solely responsible for:
 - 7.3.1. the accuracy, quality, integrity, and legality of all transactions and information it submits to the SaaS Services (**Company Data**), and of the means by which it acquired all Company Data;
 - 7.3.2. the security of data residing on servers owned or operated by Company or a third party designated by Company (other than First Data); and
 - 7.3.3. maintaining any necessary records of Company Data and transactions.
 - 7.3.4. For clarity, Company acknowledges that First Data has no obligation to maintain any Company Data other than as necessary for First Data to perform the SaaS Services.

8. System Passwords and Security.

- 8.1. **Passwords.** Parts of the SaaS Services are password protected. Company will solely and exclusively control the creation and provision of passwords for access to the SaaS Services.

- 8.1.1. Company is responsible for the confidentiality of all passwords and access obtained by Company passwords, and Company is liable for all access to the SaaS Services other than First Data's access.
- 8.1.2. Except for access to the SaaS Services by First Data, or access to the SaaS Services granted by First Data to a third party, Company is liable for all access to the SaaS Services.
- 8.1.3. First Data will promptly suspend access rights for a Company-generated password if Company informs First Data in writing (including via electronic mail) of potentially improper access to or use of the Company-generated password.
- 8.2. **Security Certificates.** The SaaS Services may include issuance of an SSL or other security certificate (**Security Certificates**) to enable secure and encrypted communications between Company and the SaaS Services.
 - 8.2.1. Security certificates are provided by third party certificate authorities, and Processor is not responsible for any errors or omissions of those third parties in connection with the Security Certificates.
 - 8.2.2. Company will reasonably cooperate with Processor as required related to the issuance and maintenance of Security Certificates.
- 8.3. **Security.** Company agrees that it is responsible for: (1) the safety, security, and administrative safeguards of its systems, (2) unauthorized access through Company's systems, SaaS Services, or First Data systems as a result of Company's integration with the First Data's systems, or Company's receipt of the SaaS Services, other than access by First Data; and (3) access to Company's Systems, the SaaS Services, or First Data systems through Company's integration with First Data systems, or Company's receipt of the SaaS Services, other than access by First Data.
- 8.4. **Suspension.** First Data may immediately suspend Company's access to the SaaS Services if First Data in its sole discretion, has reason to believe that there has been any unauthorized access or use of the SaaS Services, Company's integration with the SaaS Services, or other First Data Services.

9. Allocation of Risk.

- 9.1. First Data and Company will each be responsible for maintaining appropriate technical, physical, and administrative safeguards to prevent unauthorized access to each of their respective systems, the First Data Services, or Company's integration with the First Data Services.
- 9.2. First Data will defend Company against third party claims for Losses due to alleged intellectual property infringement in respect of the SaaS Services and will pay for the resulting costs and damages finally awarded against Company to such third party by a court of competent jurisdiction or agreed to in settlement by First Data arising from such claims, unless the alleged infringement arises from Company's: (1) use of the SaaS Services (a) in violation of this Schedule or the Agreement, or (b) in combination with software, equipment, systems, or other elements that the other party does not provide; or (2) modification of the SaaS Services; and the alleged infringement arises because of these uses or modifications.
- 9.3. ***First Data disclaims all warranties (express or implied) related to the SaaS Services; including warranties of merchantability, fitness for a particular purpose, non-infringement, accuracy, and uninterrupted or error-free operation.***
- 9.4. In addition to the terms set forth in the Agreement, the Liability Cap (as defined under the Agreement) will not apply under this Schedule to Company's infringement or misappropriation of any intellectual property right of First Data.

10. General.

- 10.1. This Schedule is binding upon the parties, their participating or authorized Affiliates, and their respective successors and permitted assigns. Company represents and warrants that it has the authority to bind any participating or authorized Affiliates to the terms of this Schedule, and Company and its Affiliates are jointly and severally liable for their obligations under this Schedule.