

Terms and Conditions

Please read and accept the Insight Terms and Conditions:

MERCHANT REPORTING SERVICES AND LICENCE AGREEMENT

IMPORTANT: READ THIS MERCHANT REPORTING SERVICES AND LICENCE AGREEMENT (**AGREEMENT**) CAREFULLY BEFORE PROCEEDING. BY USING THE MERCHANT INSIGHT SOFTWARE AND WEBSITE (collectively, "**the Merchant Insight service**") YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. YOU MUST INDICATE YOUR ACCEPTANCE TO BE BOUND BY THIS AGREEMENT BY CLICKING ON THE "ACCEPTANCE" ICON AT THE END OF THE SCREEN.

For purposes of this Agreement, the words "**we**", "**us**", "**our**" and "**MERCHANT SERVICES**" mean and refer to First Merchant Processing (Ireland) Limited, a private limited company incorporated under the laws of Ireland, with registered number 355871 and having its registered office at Block 6, Belfield Office Park, Beaver Row, Clonskeagh, Dublin 4, Ireland, trading as First Trust Merchant Services in Northern Ireland, AIB (GB) Merchant Services in the rest of the United Kingdom, and as AIB Merchant Service in the Republic of Ireland and elsewhere, its parents, sister companies, subsidiaries and any agent, independent contractor or assignee that MERCHANT SERVICES may, in its sole discretion, involve in making available the Merchant Insight service. The words "**you**" and "**your**" refers to you, the merchant who has a merchant acquiring services agreement ("**Retailer Agreement**") with us and visitors and users of the Merchant Insight service.

1. LICENSE GRANT.

As permitted by our licence agreement with First Data Deutschland GmbH in respect of the Merchant Insight service, MERCHANT SERVICES hereby grants to you, and you accept, a non-exclusive, non-transferable right and licence to use the Merchant Insight service on a single

computer or computer network owned, leased, or otherwise controlled by you. You may print and download your account data and copyrighted material in the Merchant Insight service solely for your own commercial use in accordance with the terms of this Agreement.

2. OWNERSHIP AND RIGHTS.

2.1 You acknowledge and agree that First Data Deutschland GmbH and its affiliated companies own all intellectual property rights in the Merchant Insight service including any copyright, database rights, trade secrets, trade names, trade marks (whether registered or unregistered) and any other rights and licences in respect thereof.

2.2 You acknowledge and agree that MERCHANT SERVICES does not convey any title or ownership interest in the Merchant Insight service to you. You further acknowledge and agree that the only right granted to you by this Agreement is the limited licence to use the Merchant Insight service according to the terms and conditions of this Agreement.

2.3 Except as expressly set out above, as an essential condition in the use of the Merchant Insight service contemplated by this Agreement, you may not use (or permit any third party including any user specified in the Merchant Registration Form (**Authorised User**) to use) the Merchant Insight service licensed by us under this Agreement and in particular shall not (and shall not permit any third party to) copy, modify, reverse engineer, decompile, disassemble, assign, sublicense, transfer, pledge, lease, rent or otherwise share the Merchant Insight service or any material supplied by us for use by you in connection with the Merchant Insight service.

3. TERM.

3.1 This Agreement will commence immediately upon your clicking on I AGREE at the end of this screen.

3.2 Either party may terminate this Agreement by giving 30 days'

notice in writing to the other party.

- 3.3 MERCHANT SERVICES may terminate this Agreement with immediate effect by notice in writing upon your breach of any term of this Agreement, where your Acquiring Agreement is terminated or where the security of the Merchant Insight service is threatened.
- 3.4 This Agreement may be terminated in accordance with clause 11 below.
- 3.5 Upon expiry or termination of this Agreement all outstanding or unpaid amounts owed by you with respect to the Merchant Insight service provided under this Agreement shall become immediately due and payable.
- 3.6 In the event MERCHANT SERVICES terminates this Agreement due to your breach, you will forfeit all fees paid to MERCHANT SERVICES for the Merchant Insight service and will not be due a pro-rated refund.
- 3.7 Termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect any provision, which is intended to apply after such termination.

4. NEW SERVICES.

MERCHANT SERVICES or its third party licensors or licensees, may, from time to time, introduce new online services and information as part of the Merchant Insight service. MERCHANT SERVICES will notify you of the existence of these new services. Access to such new services shall be subject to the terms and conditions of this Agreement.

5. FEES.

The fees (**Fees**) payable (if any) by you are specified in the Merchant Registration Form or the Special Conditions to your Acquiring Agreement with MERCHANT SERVICES. You agree to pay the fees in accordance with the terms of your Acquiring Agreement.

6. EQUIPMENT.

- 6.1 You shall at your own cost access the Merchant Insight service website through your own internet service provider using your own equipment and shall at all times be and remain responsible for all telephone and other equipment and services necessary to access the Merchant Insight service in particular for ensuring that such equipment and services are compatible with the relevant requirements for access and use of the Merchant Insight service.
- 6.2 MERCHANT SERVICES is not responsible and will not be liable for any loss or damage arising directly or indirectly from any interruptions in or suspension or inability to access the Merchant Insight service (including where caused by or related to your hardware or any acts or omission of any third party, including any internet service provider).
- 6.3 You acknowledge that your systems may from time to time be under threat from viruses and other intrusive devices which may have a deleterious effect on their operation. You shall be responsible to take all appropriate and necessary measures for the protection of your own systems and equipment from any such intrusion whether via the Merchant Insight service or otherwise and MERCHANT SERVICES shall not be liable for any loss or damage caused by any such intrusion.

7. CUSTOMER SUPPORT.

MERCHANT SERVICES shall provide certain support and services to you, including: (i) production and distribution of user documentation which describes the Merchant Insight service, (ii) your password(s) and (iii) telephone customer support services.

8. SYSTEM AVAILABILITY AND MONITORING.

- 8.1 You acknowledge and agree that, although you will generally have access to production files containing your processing information from this website 24 hours per day, seven days per week (except in the

event of a force majeure pursuant to clause 22) (as updated from time to time by us), access to your accounts and certain other services may not be available on a continuous basis, and will be subject to periodic downtime without notice to permit hardware and/or software maintenance to take place or for other reasons. We may also suspend without notice access to the Merchant Insight service where it is required for security reasons.

- 8.2 Your Merchant Insight account will be deactivated (i) if your Merchant Insight account remains inactive for more than 90 consecutive days, (ii) following three failed log-in attempts, and (iii) for any other security reasons we may determine. You will need to telephone the customer support service to re-activate your account. De-activation of your account in accordance with this clause shall not affect your obligation to pay the Fees under clause 5 of this Agreement unless you give notice of termination in writing in accordance with clause 3.2.
- 8.3 MERCHANT SERVICES and its sub-contractors shall have the right to monitor the usage by you of the Merchant Insight service for the purposes of providing the Merchant Insight service, billing, ensuring that you comply with your obligations under this Agreement, identifying products and services which might be suitable for you and updating its records about you.
- 8.4 MERCHANT SERVICES reserves the right at any time without notice to you to suspend the Merchant Insight Service or access thereto for such period or periods as it considers appropriate in its absolute discretion if: (a) suspension is necessary for the purpose of (routine or emergency) maintenance or enhancement of the Merchant Insight Service; (b) for technical reasons provision of the Merchant Insight service is not possible; (c) suspension is necessary if there are reasonable grounds to suspect compromise of security or unauthorised or fraudulent use of the Merchant

Insight service or if we suspect that the Merchant Insight service is in any way being abused; or (d) if you breach your obligations under this Agreement.

9. DATA STORAGE.

MERCHANT SERVICES will delete, purge or otherwise dispose of your account data which is over 180 days old. In addition, only a limited amount of data or information may be available online. Therefore, you are advised to print and download your account data, for record keeping purposes, on a periodic basis. You specifically agree that MERCHANT SERVICES shall not be responsible for the deletion or disposal of your data or information from the Merchant Insight service.

10. INTELLECTUAL PROPERTY RIGHTS.

- 10.1 The Merchant Insight service (including the website), contains copyrighted material, trademarks and other proprietary information, including, but not limited to, text, software, photos, video, and graphics.
- 10.2 You may not modify, publish, transmit, participate in the transfer or sale, create derivative works, or in any way exploit any of the content, in whole or in part, whether copyrighted, trademarked or proprietary, or otherwise. You may download copyrighted material solely for your own use as contemplated under this Agreement.
- 10.3 You shall not and shall procure that any Authorised User shall not remove or alter any proprietary markings, copyright notices, confidential legends, trademarks, trade or brand names appearing on the Merchant Insight service or any material supplied by us under this Agreement.
- 10.4 Except as expressly provided by copyright law, any copying, redistribution, or publication must be with the express permission of MERCHANT SERVICES and the owner(s) or such authorised person(s), if other than MERCHANT

SERVICES.

- 10.5 Any copying, redistribution or publication of copyrighted material and any changes to or deletion of author attribution or copyright notice is expressly prohibited.

11. YOUR RESPONSIBILITIES.

- 11.1 You shall use the Merchant Insight service and any components thereof for lawful purposes only. You shall not post or transmit through the Merchant Insight 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 offence, give rise to civil liability or otherwise violate any law, or which, without MERCHANT SERVICES' express prior approval, contains advertising or any solicitation with respect to products or services.

- 11.2 Any conduct by you that restricts or inhibits anyone other than you from using the Merchant Insight service, as determined by MERCHANT SERVICES, will not be permitted and is cause for immediate termination of this Agreement.

- 11.3 You agree to keep any password you are issued secure and to limit disclosure of the password to Authorised Users. You will notify us if you become aware of any disclosure or use of your password to or by an unauthorised third party or of any unauthorised access to the Merchant Insight service.

12. SECURITY OF INFORMATION.

- 12.1 MERCHANT SERVICES will take all commercially reasonable steps to maintain the security of the Merchant Insight service, including by arranging for the issue of secure passwords to allow you and your Authorised Users to gain access to the Merchant Insight service. MERCHANT SERVICES will provide the details related to such security to you upon request. However, you

recognise and agree that there is no guarantee of absolute security of information that is communicated over the Internet, and that the foregoing security measures may change over the term of this Agreement. You acknowledge that all information transmitted and received through the Internet or other electronic means may be subject to unauthorised interception, diversion, corruption, loss access or disclosure.

- 12.2 You accept that MERCHANT SERVICES uses a very high level of encryption which may be illegal in jurisdictions outside of the UK, Jersey, Guernsey and Isle of Man ("Permitted Jurisdictions"). It is your responsibility to ensure that, if outside the Permitted Jurisdictions, your ability to use the Merchant Insight service is permitted by local law and MERCHANT SERVICES shall not be liable for any loss or damage suffered by you as a result of not being able to use, or being prosecuted for using, the Merchant Insight service in these jurisdictions.

13. COMPLIANCE WITH LAWS.

MERCHANT SERVICES and you shall each comply with the requirements of all applicable 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. Please read our Privacy Statement for further terms and information.

14. WARRANTIES AND DISCLAIMERS.

- 14.1 You warrant and represent that to the best of your knowledge, information, and belief you have all rights to enable you to enter into this Agreement and to perform your obligations under this Agreement without infringing the rights of any third party.

- 14.2 MERCHANT SERVICES, its parents or subsidiaries and their respective

employees, officers, directors, affiliates, agents, licensors, or licensees make no representation or express or implied warranty (i) that access to the Merchant Insight service will be uninterrupted or error free, (ii) that security breaches will not occur with respect to any information communicated through the Merchant Insight service, the Internet, or any common carrier communications facility, (iii) as to the results that may or may not be obtained by you in connection with your use of the Merchant Insight service.

14.3 MERCHANT SERVICES, its parents and subsidiaries and their respective employees, officers, directors, affiliates, third party service providers, agents, licensors, or licensees make no express or implied warranty, guarantee, representation or other express or implied term or condition relating to the Merchant Insight service or any other activities or deliverables arising out of or connected to this Agreement, including, but not limited to merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy and all such warranties, guarantees, representations, terms and conditions are hereby expressly excluded.

15. INDEMNIFICATION.

You agree to indemnify and hold MERCHANT SERVICES, its parents and subsidiaries and their respective employees, officers and directors, licensors, and licensees harmless from and against any actions, claims, demands, liabilities, damages, obligations, costs and expenses, including reasonable legal fees, arising out of any breach of this Agreement by you or any negligence or wilful misconduct committed by you or your Authorised Users in your use of the Merchant Insight service.

16. LIMITATION OF LIABILITY.

16.1 You acknowledge and agree that, subject to clause 16.5 below, neither MERCHANT SERVICES, its

parents and subsidiaries nor its licensees or licensors shall be liable to you for any claims, damages, losses, obligations, costs or expenses, including legal fees, 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 Merchant Insight service, the Internet, or any communications network, facility or equipment beyond MERCHANT SERVICES', its licensors', or a third party provider's reasonable control, whether or not attributable to one or more common carriers; (iii) your failed attempts to access the Merchant Insight service or to complete transactions via the Merchant Insight 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 delays and/or losses arising in connection with the services provided hereunder; (vi) any incorrect data or information stored or generated by the Merchant Insight service or MERCHANT SERVICES, howsoever caused; or (vii) any loss of or inability to access data or information stored or generated by the Merchant Insight service or MERCHANT SERVICES, howsoever caused.

16.2 Notwithstanding anything to the contrary in this Agreement or elsewhere, MERCHANT SERVICES and/or its licensors' cumulative liability to you for any claim related to this Agreement and your use of the Merchant Insight service (whether arising from tort, statute, contract or 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 MERCHANT SERVICES BANK PLC'S wilful misconduct or gross negligence.

16.3 Furthermore, MERCHANT SERVICES' or its licensors' cumulative liability to you shall not,

in any case, exceed the Fees paid solely under this Agreement to MERCHANT SERVICES by you during the month preceding the month in which the claim arose.

16.4 Notwithstanding anything to the contrary in this Agreement or elsewhere, in no event shall MERCHANT SERVICES or its licensors be liable to you or to any third party for any lost profits, loss of goodwill, loss of reputation, loss of computer equipment or loss of software, the inability to access your data or information generated or stored on the Merchant Insight service, or for any indirect, special, incidental, consequential, punitive or unproven losses, damages or expenses, howsoever arising and whether such liability was reasonably foreseeable or not, whether or not MERCHANT SERVICES has been advised of the possibility of such loss being incurred and regardless of whether such claim arises in tort, in contract or by statute or regulation.

16.5 Nothing in this Agreement shall be deemed to exclude or limit MERCHANT SERVICES' liability which is not permissible under applicable law including liability for death or personal injury caused by MERCHANT SERVICES' negligence or for fraud or fraudulent misrepresentation or under the Financial Services and Markets Act 2000 or any associated regulations.

16.6 Both MERCHANT SERVICES and you acknowledge and agree that the provisions and limitations of this clause 16 are of the essence of this Agreement and that absent them, neither MERCHANT SERVICES nor you would have entered into this Agreement; and that the exclusions and limitations of liability contained in this Agreement are reasonable within the meaning of section 11 of the Unfair Contract Terms Act 1977.

17. AMENDMENT.

This Agreement may be modified, amended or replaced by MERCHANT SERVICES from time to time, including but not limited to changes to ensure

compliance with legal or regulatory requirements, to rectify errors or omissions, to take account of reorganisations within the MERCHANT SERVICES group, to change the scope of the Merchant Insight service, to improve security or to take account of changes in its systems or rules applicable to the Merchant Insight service. Changes will be notified to you by posting on the Merchant Insight service website. Changes will come into effect once posted on the website. It is your responsibility to periodically review the website for updates to the terms of this Agreement.

18. GOVERNING LAW.

This Agreement shall be construed and governed in accordance with the laws of Ireland and you and MERCHANT SERVICES submit to the exclusive jurisdiction of the Irish courts.

19. DATA PROTECTION.

19.1 All personal data provided by you shall only be used in relation to the provision of the Merchant Insight service and related services under your Retailer Agreement. You shall ensure that any of your employees in respect of whom data is provided to MERCHANT SERVICES by you have consented to such use.

19.2 You shall comply with all relevant data protection and privacy laws applicable to your use of the Merchant Insight service. You are encouraged to read our Privacy Statement for further terms and information.

19.3 You acknowledge that, in the course of making the Merchant Insight website and/or Merchant Insight service and/or other services available to you under this Agreement, your personal data (if any) will or may be transferred to service provider(s) outside the European Economic Area. If so, MERCHANT SERVICES will take steps to ensure that such service provider(s) only use your personal data for the purpose contemplated by this Agreement and that your rights under the Data Protection Act 1998 will not be infringed. You

agree to such use and transfer.

20. FORCE MAJEURE.

20.1 MERCHANT SERVICES shall not be liable for any delay or failure to carry or make continuously available any MERCHANT SERVICES website and/or the Merchant Insight service if such delay or failure is due to any cause beyond the reasonable control of MERCHANT SERVICES or any of its third party providers, licensors or licensees, including without limitation any restriction of law or regulations, labour dispute, strike, lock-out, labour disturbance, act of God, failure or shortage of power supplies, flood, drought, lightning, fire, mechanical or electronic breakdown, telecommunication facilities breakdown or software bug, error or failure, act or omission of government, or any telecommunications operator, or any internet service provider, or administration or any other competent authority, war, military operations or act of terrorism or riot.

20.2 MERCHANT SERVICES' obligations hereunder are subject to its ability to obtain and maintain any and all required governmental licences, permits or other authorisations, and their ability to comply with any and all laws, regulations, orders and other governmental directives which may be imposed on the Internet, any MERCHANT SERVICES website or the Merchant Insight service with respect to any of the foregoing.

21. GENERAL

21.1 **Severability.** Should any term of this Agreement be found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such term shall have no effect on the other terms of this Agreement that shall remain in full force and effect.

21.2 **No waiver.** The failure of either party to enforce (or delay in enforcing) 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 regarded as a waiver of such rights and shall not prevent either party from subsequently enforcing such rights that it has under this Agreement.

21.3 **Entire Agreement.** You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and conditions. This Agreement sets out the entire agreement and understanding of you and MERCHANT SERVICES and supersedes any prior oral and written agreements, representations or warranties, understandings or arrangements relating to the subject matter of this Agreement (other than the Retailer Agreement). You have not entered this Agreement in reliance on any oral or written agreement, representation, or warranty by us which is not contained in this Agreement.

21.4 **Assignment.** You may not assign this Agreement without the prior written consent of MERCHANT SERVICES, which shall not be unreasonably withheld or delayed. MERCHANT SERVICES shall have the right to assign, transfer or novate this Agreement to any third party on providing you with 30 days' notice.

21.5 **Third Party Rights.** This Agreement shall not give any third party, any enforceable right of action or benefit and the Contracts (Rights of Third Parties) Act 1999 is therefore hereby excluded.

21.6 **Notices.** Any notice to be given under this Agreement shall be delivered to, where MERCHANT SERVICES is the receiving party, MERCHANT SERVICES Bank plc, trading as Cardnet, of Cardnet House Paycocke Road, Basildon, Essex SS14 3HX and where you are the receiving party, to your nominated correspondence address as set out in the Special Conditions to your Retailer Agreement, or by email or by posting on the Merchant Insight service website. In the event your address changes you will also notify us in writing within

14 days.

TO PROCEED WITH THE MERCHANT INSIGHT SERVICE, YOU MUST AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH ABOVE. IF YOU DO NOT AGREE, YOU WILL NOT BE ALLOWED TO USE THE MERCHANT INSIGHT SERVICE. SHOULD YOU WISH TO DISCUSS THE TERMS AND CONDITIONS, PLEASE CONTACT YOUR RELATIONSHIP MANAGER.

IF YOU AGREE TO THESE TERMS AND CONDITIONS, INDICATE YOUR AGREEMENT BY INSERTING A "YES" ON THE REQUEST FORM: