

## PCI Rapid Comply<sup>SM</sup> Agreement

For the purposes of this Agreement, the words "We", "Us", and "Our" mean and refer to First Data Merchant Solutions Pty Ltd ABN 51 115 245 531 (First Data). The words "You" and "Your" refer to the Merchant as designated in your Merchant Processing Application and Merchant Agreement who has agreed to the terms and conditions of this Agreement.

For the purposes of this Agreement, Capitalized terms not defined herein shall have the meaning set forth in the Merchant Processing Application and Merchant Agreement.

### Basic Services and Fees

The basic services described herein are included with Your PCI Rapid Comply Subscription Fee on your Merchant Application Form. Basic services include access to the PCI Rapid Comply<sup>SM</sup> application, access to the pre-assessment questionnaire, and access to the PCI DSS Self-Assessment Questionnaires (SAQ). If an Internet scan is required to complete the SAQ, Merchant will have access to such scanning services while Merchant has an open account with Us. You understand and agree that the payment of the PCI Rapid Comply Subscription Fee does not affect your compliance responsibilities and obligations associated with your Merchant Account. All fees for services may be automatically deducted from your Settlement Account designated on your Merchant Processing Application, or as it may be changed from time to time. 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 First Data. We shall not be liable for, and You shall pay directly and indemnify and hold Us and our affiliates harmless from and against any and all liability for, all such taxes and/or surcharges.

### New Services

New services may be offered from time to time as part of the PCI Rapid Comply<sup>SM</sup> 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 service, if any.

This Agreement will commence immediately upon You accepting the Terms and Conditions of this Agreement by signing your Merchant Processing Application Form (Effective Date).

The initial term of this Agreement shall be for the term of 12 months (the "Initial Term") commencing on the Effective Date. At the expiration of the Initial Term, on each anniversary date, this Agreement will automatically renew for successive one (1) year periods (each "Renewal Term" and collectively with the Initial Term known as the "Term") unless You provide Us with notice of Your intent not to renew this Agreement at least thirty (30) days prior to the expiration of the then Renewal Term.

We may terminate this Agreement immediately upon Your breach of any term of this Agreement. In the event we terminate this Agreement due to Your breach, You will be responsible for all fees due and owing including any amount incurred during the Term.

We may terminate this Agreement at any time without any reason by giving you a thirty (30) day notice.

### Licensing

First Data has the right to license and hereby grants to You, and You accept, a nonexclusive, nontransferable sublicense to use the PCI Rapid Comply<sup>SM</sup> 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 PCI Rapid Comply<sup>SM</sup> service contemplated by this Agreement, You may not copy, modify, reverse engineer, decompile, disassemble, assign, sublicense, transfer, pledge, lease, rent or otherwise share the PCI Rapid Comply<sup>SM</sup> service.

You acknowledge and agree that this Agreement does not convey any title or ownership interest in the PCI Rapid Comply<sup>SM</sup> 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 PCI Rapid Comply<sup>SM</sup> service according to the terms and conditions of this Agreement.

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

From time to time, Your account data or information, which is over 180 days old, may be deleted, purged or otherwise disposed. In addition, only a limited amount of Your account data or information may be available online. Therefore, You are advised to print and download Your account data and information, for record keeping purposes, on a periodic basis. You specifically agree that We are authorized to delete or dispose of Your data or information and shall not be responsible for the deletion or disposal of your data or information from the PCI Rapid Comply<sup>SM</sup> service.

The PCI Rapid Comply<sup>SM</sup> 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.

While commercially-reasonable steps are taken to maintain the security of the PCI Rapid Comply<sup>SM</sup> 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. Furthermore, you agree not to share your personal information (DDA, tax ID, MID, etc.) with a third party so that party may gain access to the PCI Rapid Comply<sup>SM</sup> services.

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. You shall use the PCI Rapid Comply<sup>SM</sup> service and any components thereof for lawful purposes only.

## Equipment

You are responsible for and must provide solely at your own expense, all telephone and other equipment and services necessary to access the PCI Rapid Comply<sup>SM</sup> service.

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.

## No Representation of Warranty

To the extent permitted by law, We do not make and hereby expressly disclaim any representation or warranty (i) that access to the PCI Rapid Comply<sup>SM</sup> service will be uninterrupted or error free, (ii) that security breaches will not occur with respect to any information communicated through the PCI Rapid Comply<sup>SM</sup> service over the Internet, or over 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 PCI Rapid Comply<sup>SM</sup> service..

USE OF THE PCI RAPID COMPLY<sup>SM</sup> SERVICE DOES NOT GUARANTEE OR PREVENT A SECURITY BREACH OR COMPROMISE. TO THE EXTENT PERMITTED BY LAW, WE MAKE NO WARRANTIES, EITHER DIRECT OR IMPLIED, THAT PARTICIPATION AND/OR USE OF OUR SERVICES WILL DETECT EVERY VULNERABILITY ON YOUR SYSTEM, IF ANY, OR THAT OUR VULNERABILITY ASSESSMENTS, SUGGESTED SOLUTIONS, OR ADVICE WILL BE ERROR-FREE OR COMPLETE..

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 PCI Rapid Comply<sup>SM</sup> service.

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 PCI Rapid Comply<sup>SM</sup> service by 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 PCI Rapid Comply<sup>SM</sup> service or to complete transactions via the PCI Rapid Comply<sup>SM</sup> 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 PCI Rapid Comply<sup>SM</sup> service.

'Subject to the qualification in Section 64 of Schedule 2 of the Competition and Consumer Act 2010 (Cth) (the Act) Our liability for any breach of a condition or warranty implied by Schedule 2 Part 2-3 Division 1 of the Act (other than a condition or warranty implied by Section 51-53 inclusive of Schedule 2 of the Act) shall be limited to one of the following (as We may determine):

- In case of services, supplying of the services again; or paying the cost of having the services supplied again;
- In case of goods, the replacement of the goods or the supply of equivalent goods; the repair of such goods or the payment of the cost of having the goods repaired; or the payment of replacing the goods or acquiring equivalent goods.

You agree that You use this website at Your sole risk. You agree that any content downloaded by You is done so entirely at Your own risk and you shall be solely responsible for the consequences of downloading any such content.

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 PCI Rapid Comply<sup>SM</sup> service including, without limitation, the inability to access your data or information generated or stored on the PCI Rapid Comply<sup>SM</sup> service, and regardless of whether such claim arises in tort, in contract, or by statute or regulation, even if We have been advised specifically of the possibility of such damages or losses.

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.

This Agreement shall be construed and governed in accordance with the laws of New South Wales.

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.

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.

This Agreement may be modified, amended, or replaced by Us from time to time upon notice to You on the PCI Rapid Comply<sup>SM</sup> 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 the PCI Rapid Comply<sup>SM</sup> service.

To the extent permitted by law, We shall not be liable for any delay or failure to carry or make continuously available the PCI Rapid Comply<sup>SM</sup> 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 PCI Rapid Comply<sup>SM</sup> service.

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 PCI Rapid Comply<sup>SM</sup> service.