

The following additional terms and conditions in this Addendum shall apply to your use of the First Data Insightics<sup>SM</sup> Solution and shall supersede the terms and conditions contained in the First Data Insightics Temporary Demonstration License.

**Merchant ID:** \_\_\_\_\_

**Sales Rep. Name/Phone #:** \_\_\_\_\_

**Sales Rep. ID:** \_\_\_\_\_

**1. Client's Business Information:**

**Client's Business Legal Name:** \_\_\_\_\_

**DBA Name:** \_\_\_\_\_

**First/Last Contact Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Your Business Phone:** \_\_\_\_\_ **Your Business Fax:** \_\_\_\_\_

**Your Business Address:** \_\_\_\_\_

**Your Business Email Address:** \_\_\_\_\_

**2. Fees.** The Insightics Solution monthly service fee: \_\_\_\_\_ per outlet/location per month. Fees shall be incurred commencing on the first day of the month following the execution of this Addendum. You shall pay Processor the fees for the Insightics Solution in the manner set forth in your Agreement.

**3. Services.** This First Data Insightics Participation Addendum (this "Addendum") supplements, and is hereby made a part of, the merchant services agreement (the "Agreement") you have entered into with Processor and Bank or their respective predecessors. This Addendum governs the provision of the Insightics Solution (as defined below) to you by Processor. By signing below you are electing to receive the Insightics Solution and you agree to the terms and conditions set forth in this Addendum. The Insightics Solution is provided to you by Processor and not Bank. Bank is not a party to this Addendum, and you acknowledge that Bank is not liable to you in any way with respect to the Insightics Solution.

The Insightics Solution and other matters contemplated under this Addendum are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Addendum directly conflict with another provision of the Agreement, in which case the terms of this Addendum will control.

**4. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Addendum or as defined elsewhere in the Agreement.

**"Customer"** means a Person who makes a purchase of goods or services from you, the transaction detail of which is utilized in the Insightics Solution.

**"Customer Information"** means information about your Customers (e.g., name, mailing address, card account number, e-mail address, telephone number) obtained in connection with your use of the Services and may be utilized in the Insightics Solution.

**"Data"** means transaction data that may include processing data from First Data Merchant Services Corporation's credit and debit information warehouse and other available sources that First Data Merchant Services Corporation owns or has a contractual or other right to use in the Insightics Solution.

**"Device"** means a tablet, computer, smartphone or other mobile device, or other device that you use to access the Insightics Solution website to receive or to which you receive communications from the Insightics Solution.

**"First Data"** means First Data Corporation, which is the parent company of First Data Merchant Services Corporation.

**"First Data Insightics Marks"** means the trademarks or service marks related to the Insightics Solution and sub-licensed to you by Processor.

**"First Data Insightics Solution" or "Insightics Solution"** means the website or the application associated with the Insightics Solution, the object code version of the Insightics Solution software applications and communications you receive from the applications. Among other things, the Insightics Solution allows merchants to track and visualize information regarding their own revenue, ticket size, and Customers contained in the Data and other third party data sources. The Insightics Solution may also permit a merchant to compare its performance to groups of similar businesses within their industry and/or certain geographic areas using the Data and other third party data sources, subject to certain limitations. The features and functionality of the Insightics Solution may be modified from time to time by First Data or its third party provider(s). For the avoidance of doubt, the term "software" in this definition does not include any software that may be obtained by you separately from the Insightics Solution (e.g., any applications downloaded by you). The Insightics Solution is deemed part of the "Services," as defined in and provided under the Agreement.

“**Insightics Solution Fees**” means the fees charged for your use of the First Data Insightics Solution, which includes additional fees for multiple locations.

“**Third Party Services**” are the services, products, promotions or applications provided to you by or through someone other than Processor.

“**User Documentation**” means that documentation regarding the operation, guidelines and features and functionality of the Insightics Solution that is made available to you from time to time at the website, by internet link or otherwise. User Documentation may be modified from time to time by First Data or its third party provider(s).

**5. License Grant.** During the term of this Addendum, Processor grants you a personal, limited, non-exclusive, revocable, non-transferable sub-license, without the right to further sub-license or assign in any way, to electronically access and use, solely in the United States, the Insightics Solution to manage your establishment(s) and analyze associated point of sale activities within the United States in accordance with this Addendum.. For purposes of this Addendum “United States” does not include U.S. Territories or possessions. The Insightics Solution is for your internal business use only. This Addendum does not grant you any rights to First Data Insightics Marks. Except for the license expressly granted herein, all intellectual property and proprietary rights in or related to the Insightics Solution and First Data Insightics Marks are and will remain the sole and exclusive property of First Data or its affiliates, vendors, or third party provider(s) (as applicable), and any and all right, title and interest associated with Insightics not expressly granted in this Addendum is deemed withheld.

**6. Restrictions.** You may not, nor may you permit any third party, other than employees and agents with a business need, to do any of the following: (a) access or attempt to access the Insightics Solution (or any part) that is not expressly made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code or any underlying data, ideas or algorithms of the Insightics Solution (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the Insightics Solution (or any part), or First Data Insightics Marks; (d) create derivative works of or based on the Insightics Solution (or any part) or Insightics Marks; (e) directly or indirectly copy the Insightics Solution (or any part), except screen shots may be copied and retained solely for internal business purposes; (f) republish, upload, post, transmit, disclose, or distribute (in any format) Insightics (or any part) except as expressly permitted herein; (g) access or use (in any format) the Insightics Solution (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship the Insightics Solution (or any part) outside of the United States, or access the Insightics Solution (or any part) from outside the United States, without in any case obtaining our advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from the Insightics Solution (or any part), or First Data Insightics Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the Insightics Solution, prevent access to or use of the Insightics Solution by other users, or in our reasonable judgment impose an unreasonable or disproportionately

large load on our infrastructure, network capability or bandwidth; or (l) use the Insightics Solution (or any part) except as permitted in Section 5.

You shall not take any action inconsistent with the stated title and ownership in Section 5. You will not file any action, in any forum that challenges the ownership of any part of the Insightics Solution, any related software, materials or User Documentation. Failure to comply with this provision will constitute a material breach of this Agreement and may restrict Processor’s ability to sublicense the Insightics Solution to you. Processor has the right to immediately terminate Services under this Addendum and First Data has the right to immediately terminate your access to and use of the Insightics Solution in the event of a challenge by you.

## **7. Insightics Solution Limitations and Requirements.**

- 7.1** You may access the Insightics Solution through your Device using a wired (ethernet) or wireless (wifi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of the Insightics Solution may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.
- 7.2** You may use the Insightics Solution to conduct analysis of the Data and third party data made available through the Insightics Solution application and/or other tools made available at the website or in the application.
- 7.3** First Data may alter which Devices and browsers are approved as compatible with the Insightics Solution in its discretion from time-to-time.
- 7.4** First Data may perform maintenance on the Insightics Solution from time to time which may result in service interruptions, delays, or errors. Neither First Data nor its affiliates, vendors, or third party provider(s), will be liable for any such interruptions, delays, errors, or bugs. You agree that First Data or its affiliates, vendors, or third party provider(s) may contact you in order to assist you with the Insightics Solution and obtain information needed to identify and fix any errors.
- 7.5** You shall at all times comply with the User Documentation.
- 7.6** You shall comply with the following requirements in connection with your use of Insightics:
  - a) In the event you are able to discern any information about a particular entity or individual from the information available from the Insightics Solution, either alone or with other information in your possession, you understand and acknowledge that the information may be subject to certain privacy, marketing, insider trading, or other applicable laws and you will limit your use thereof in accordance with all applicable laws.
  - b) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent or the consent must be provided in writing; you are NOT permitted to add or modify a Customer’s consent indication on his behalf.

- c) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer's provided phone number, street address, and/or email address if the Customer has specifically consented in writing executed by the Customer.
- d) NOTWITHSTANDING THE CAPABILITY OF THE INSIGHTICS SOLUTION TO COLLECT AND STORE CUSTOMER INFORMATION, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED ITS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE INSIGHTICS SOLUTION MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

**7.7** You shall comply fully with the requirements of all applicable federal, state and local laws and regulations related to your provision and use of Customer Information and point of sale data in connection with the Insightics Solution. Furthermore, you are solely responsible for monitoring legal developments applicable to the Insightics Solution and 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.

**7.8** You shall receive a username and password to access the Insightics Solution. You are responsible for securely storing and keeping the username and password in accordance with Section 13 below. You will not permit anyone unauthorized by you to use the username and password and you may only authorize your employees and agents with a business need to use the username and password. At such time as multiple usernames and passwords are available, you shall restrict the use of usernames and passwords to single individuals and you shall monitor use of the Insightics Solution to ensure compliance with this Addendum by those to whom you have provided usernames and passwords and you shall keep records regarding who has access to which usernames and passwords at all times.

**8. Equipment.** You must obtain all equipment necessary for you to access and use the Insightics Solution website. No communication channel or device to access the website is included within the provision of the Insightics Solution, and you shall be responsible for all such equipment and communication channels, including but not limited to all device or channel compatibility.

**9. Term and Termination.** This Addendum shall become effective upon execution hereof and shall end when terminated as set forth herein. For the avoidance of doubt, except as set forth below, termination of this Addendum will not terminate the underlying Agreement. You may terminate your First Data Insightics Solution services at any time upon thirty (30) days' notice by calling

the Customer Service number on your statement. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, First Data may immediately terminate your access to, and use of the Insightics Solution if (i) it is determined that you are using the Insightics Solution for any fraudulent, illegal, or unauthorized purpose, (ii) you violate the terms of this Addendum or an Event of Default occurs under the Agreement, (iii) First Data terminates its agreement with any third parties that are involved in providing the Insightics Solution, or (iv) First Data otherwise decides to discontinue providing the Insightics Solution. You acknowledge and agree that an occurrence of (i) or (ii) above may be deemed an Event of Default under the Agreement, thereby affording Processor and Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Agreement (and this Addendum) without notice. This Addendum will terminate automatically upon the termination of the Agreement.

**10. Third Party Services.** The Insightics Solution may be used in connection with Third Party Services that you obtain separately for your purposes (e.g., an accounting application on your Device). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with Insightics). Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Addendum or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., ACCOUNTING APPLICATION) IS DOWNLOADED AT YOUR OWN RISK. NEITHER FIRST DATA NOR ITS AFFILIATES, VENDORS, OR THIRD PARTY PROVIDER(S), WILL BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND SUCH LIABILITY RELATED TO ALL THIRD PARTY SERVICES IS EXPRESSLY DISCLAIMED.

**11. Account Registration.** First Data may require you to register at the Insightics Solution website or through the application. If and when prompted by the registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, First Data has the right to terminate your First Data Insightics account ("Account") and refuse any and all current or future use of Insightics.

**12. Privacy and Data Use.** All data collected from you in connection with the Services or in connection with your use of the Insightics Solution, including Customer Information and information about your business and employees used with or stored in or by the Insightics Solution (collectively, "Account Data"), is collected by First Data, its affiliates, vendors, and/or third party provider(s); therefore, the use and sharing of such Account Data is controlled by the applicable Privacy Policy displayed and available at or through a link on the Insightics Solution website. Notwithstanding the foregoing, you acknowledge and agree that First Data, its affiliates, vendors, and/or third party provider(s) may access your Account Data, and our use of your Account Data is governed by the terms set forth in this Addendum and the Agreement. You also agree that First Data,

its affiliates, vendors, and/or third party provider(s) may access and use Account Data to provide or enhance the Insightics Solution or the Services.

**13. Protecting Your Information.** You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Insightics Solution are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You are responsible for all electronic communications sent to First Data, its affiliates, vendors, or third party provider(s) containing Account Data. When First Data receives communications containing Account Data, it will assume you sent it to First Data. You must immediately notify First Data if you become aware of any loss, theft or unauthorized use of any Account Data. First Data reserves the right to deny you access to the Insightics Solution, in whole or in part, if First Data believes that any loss, theft or unauthorized use of any Account Data or access information has occurred.

**14. Accuracy of Information.** You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to First Data, its affiliates, vendors, and/or third party provider(s) in connection with Insightics (e.g., Customer Information). First Data, its affiliates, vendors, and/or third party provider(s) disclaim any and all liability arising out of any inaccuracies as a result of use of such information or data.

**15. First Data Insightics Solution Disclaimer.**

**15.1 AS IS.** USE OF THE INSIGHTICS SOLUTION IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE INSIGHTICS SOLUTION IS PROVIDED "AS IS" AND NEITHER FIRST DATA NOR ITS AFFILIATES, VENDORS, OR THIRD PARTY PROVIDER(S) MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE INSIGHTICS SOLUTION, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE INSIGHTICS SOLUTION WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE INSIGHTICS SOLUTION IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

**15.2 Financial Advice.** First Data Insightics Solution does not provide any business, investment or financial advice and is not advocating any business decision or the sale or purchase of any real property, stocks, bonds, or securities. First Data expressly states, and you hereby acknowledge, that Insightics Solution is provided solely for informational purposes and are not to be used as a substitute for independent financial investment advice nor are they intended to be relied upon by any person or entity, including you or your Customers for the purposes of investment or other financial decisions. The Insightics Solution should not be used or construed, in whole or in part, as a basis or recommendation for an investment or business decision.

**15.3 Accuracy.** While First Data takes commercially reasonable measures to ensure the accuracy of the information and content contained in the Insightics Solution, it makes no representation or warranty of any kind. You acknowledge and agree that all use of the Insightics Solution by you and all other persons shall be: (i) based upon your own determination and evaluation, (ii) with the understanding that some of the content is derived using statistical modelling, (iii) with the understanding that the Data does not represent all transaction data and (iv) at your sole risk. At times the Data may include third party data that is appended to the Data and First Data has not investigated and does not make any representation or warranty with respect to the accuracy of the third party data.

**16. Indemnity.** Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold First Data, its affiliates, vendors, and third party provider(s) harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to:

- a) Your failure to comply with all terms and conditions in this Addendum, including but not limited to User Documentation;
- b) Your use (alone or in combination with any other information) of any Customer Information, reports, information or analytics obtained in connection with your use of the Insightics Solution;
- c) The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Insightics Solution; or
- d) Any other party's access and/or use of the Insightics Solution with your unique username, password, or other appropriate security code.

**17. Notices.** First Data, its affiliates, vendors, and/or third party provider(s) may provide notices and other information regarding the Insightics Solution to you via the method(s) described in the Agreement or in the E-Sign Consent Agreement set forth below.

**18. Amendment.** First Data has the right to: (i) require changes or additions to the terms of this Addendum at any time, and (ii) change, delete, discontinue, or impose conditions on any feature or aspect of the Insightics Solution with notice provided to you as set forth in the Notices section of this Addendum. Any use of the Insightics Solution after the publication of any such changes shall constitute your acceptance of this Agreement as modified.

**19. Ideas.** You may choose to, or First Data, its affiliates, vendors, or third party provider(s) may invite you to, submit comments or ideas about the Insightics Solution, including, without limitation, about how to improve the Insightics Solution ("Ideas"). By submitting any Idea, you agree that: (a) First Data expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any Idea, (b) your submission will be non-confidential, and (c) First Data is free to use and disclose any Idea on an unrestricted basis without notifying or compensating you and without you claiming any rights therein. You release First Data, its affiliates, vendors, or third party provider(s) from all liability and obligations that may arise from the receipt, review, use or disclosure of any portion of any Idea.

**20. Third Party Beneficiaries.** First Data, its affiliates, vendors, or third party provider(s) used in providing the Insightics Solution are intended third party beneficiaries of this Addendum, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this Addendum, nothing in this Addendum is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Addendum.

**21. Limitation of Liability.** The cumulative liability to you from First Data, its affiliates, vendors, and third party provider(s) for any and all claims arising out of or resulting from this Addendum shall not exceed the total for the Insightics Solution Fees you paid to the Processor in the twelve months immediately preceding any claim.

**22. Ratification.** The terms of this Addendum shall serve to supplement the terms of your Agreement. Nothing contained herein alters any existing contractual obligations. Except as expressly set forth herein, the Agreement is hereby ratified in all respects and shall remain in full force and effect.

**E-SIGN CONSENT AGREEMENT**

**1. Consent**

You consent and agree that:

a. Processor can provide disclosures required by law and other information about your legal rights and duties to you electronically.

b. Where required or requested, your electronic signature (via “click-through” or other method) on agreements and documents relating to the Insightics Solution has the same effect as if you signed them in ink.

c. Processor can send all communications, billing statements, amendments to this Addendum, notices, and other disclosures or information regarding the Insightics Solution or your use of the Insightics Solution or the Services as defined in the Agreement (collectively defined as “Disclosures”) to you electronically (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.

d. If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.

e. This consent applies to all future Disclosures sent to you in connection with this Addendum, the Agreement, or your use of the Insightics Solution or the Services as defined in the Agreement.

**2. Legal Effect**

By consenting, you agree that electronic Disclosures have the same meaning and effect as if Processor provided paper Disclosures to you. When Processor sends you an email or other electronic notification alerting you that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if Processor provided a paper Disclosure to you, whether or not you choose to view or print or download the Disclosure.

**BY SIGNING BELOW, YOU SEPARATELY CONSENT TO THE E-SIGN CONSENT AGREEMENT ABOVE, WHICH YOU ACKNOWLEDGE IS REQUIRED FOR YOUR ACCEPTANCE OF THE INSIGHTICS SOLUTION AND PROCESSOR’S ACCEPTANCE OF THIS ADDENDUM.**

**CLIENT:**

**PROCESSOR:**

\_\_\_\_\_

\_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_



MSC Work Order Category: Banking, Funding & Rate/Fees

MSC Work Order Type: Rate & Fee

April 2014

**Omaha - Miscellaneous Fees and Grids  
Change Request**

Date:	
ISO Name:	Hybrid Payments
ISO Contact Name:	Julita Horobin
ISO Phone Number:	877-755-4829
ISO Email Address:	custservice@hybridpayments.com
Omaha Merchant Number:	
Merchant DBA:	

**Authorization Income Grid:**

Please Select an Option

**Current Statement Bundle  
Option:**

Please Select a option ▼

**User Defined Income Grid:**

Please Select an Option

**Note: Please Select your Bundle Option in order to  
update MPG & TDG on the account**

Account Charge 1 - Monthly Minimum:

Chargeback Fee:

Account Charge 2 - Statement Fee:

Retrieval Fee (12 B Letter):

Account Charge 3:

Sales Transaction Fee:

Account Charge 4:

Batch Fee:

Account Charge 5 - Regulatory Product  
Bundle Fee:

Return Transaction Fee:

Tin Blank | Inactive:

ACH Reject Income:

IVR Usage:

EIDS Charge:

Website Usage:

MFC Grid ID:

Merchant's Signature

**\*Required if Increasing or Adding  
Fees to the Merchant's Account**

Date