

Gift Card/Loyalty Terms & Conditions

THIS AGREEMENT is made by and between First American Payment Systems, L.P. (First American and its gift and loyalty products including FirstAdvantage Gift and 1stPayLoyalty are referred to herein as "FIRSTADVANTAGE" or "BANK") and "MERCHANT," whose name and address are stated on the Merchant Application & Agreement, and shall become effective upon approval by FIRSTADVANTAGE.

WHEREAS, FIRSTADVANTAGE is engaged in the business of providing electronic gift card/loyalty transaction processing services for participating MERCHANTS under the programs herein described;

WHEREAS, MERCHANT wishes to participate in this gift/loyalty program in accordance with this Agreement and under the rules established by FIRSTADVANTAGE; and

NOW, THEREFORE, in consideration of the mutual obligations and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties agree to the following:

1. Agreement. Reference to this "Agreement" includes the Merchant Application & Agreement, all schedules and appendices thereto, additional location documentation, and these terms and conditions. MERCHANT acknowledges that FIRSTADVANTAGE will provide transaction processing and tracking services hereunder either through BANK or through third parties. MERCHANT agrees that FIRSTADVANTAGE may enforce the terms of this Agreement against MERCHANT and any third party as an assignee of FIRSTADVANTAGE's rights hereunder, whether or not FIRSTADVANTAGE is a party to such proceeding or transaction.

2. Services.

A. Cards. If the product or service requires it, FIRSTADVANTAGE may produce cards ("Cards") in the quantities ordered by MERCHANT from time to time for the fees set forth on the FIRSTADVANTAGE Card Reorder Form.

B. System. FIRSTADVANTAGE will maintain the system ("System") which will perform one or more of the following, including but not limited to authorization of transaction, availability of funds, tracking number of visits, point calculations, and tracking balances ("Product Services") which will allow MERCHANTS to sell and redeem electronic gift cards and loyalty products. This will include downloading System software onto the terminals designated by MERCHANT and providing Product Services. MERCHANT understands that all monetary, point and credit values assigned to each customer and collection of funds from customers are the sole responsibility of MERCHANT and that FIRSTADVANTAGE will have no responsibility or liability for any transaction between customers and MERCHANT. Additionally, FIRSTADVANTAGE will also provide access to web interfaces allowing MERCHANT and MERCHANT's customer access to their pertinent data.

3. System License.

A. License. FIRSTADVANTAGE grants to MERCHANT a non-exclusive, non-transferable, limited license to use the System in the United States for MERCHANT's own electronic gift card and loyalty program and to install the System on point-of-sale terminals approved by FIRSTADVANTAGE.

B. Restrictions. MERCHANT shall have no right to obtain source code for the System by any means. MERCHANT shall not reverse engineer, decompile, disassemble, translate, modify, alter or change the System, or any part thereof. Except as set forth in this Agreement, MERCHANT shall have no right to market, distribute, sell, deliver or otherwise transfer the System. MERCHANT shall not copy, nor allow others to copy, any part of the System. MERCHANT shall not remove from the System, or add or alter, any trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the System unless written consent is given by an Executive Officer of BANK. MERCHANT shall not permit any person to use the System in violation of the export control laws of the United States.

C. Assumption of Liability. MERCHANT assumes all liability for use of the System.

4. Additional Locations. MERCHANT must complete an Additional Location Form for each additional MERCHANT location. MERCHANT expressly agrees and acknowledges that each MERCHANT location shall be governed by these Terms & Conditions and the Merchant Application & Agreement, including and without limitations the rates and fees described therein, as may be amended from time to time with or without notice.

5. FIRSTADVANTAGE Verification Statement. Upon initial installation of new equipment or reprogramming of existing equipment, MERCHANT agrees to run a test transaction to ensure equipment functionality. MERCHANT shall immediately notify FIRSTADVANTAGE in writing of any failure of the above within ten (10) banking days. Failure to notify FIRSTADVANTAGE within said time frames shall result in FIRSTADVANTAGE being relieved of any liability and responsibility for any equipment or transaction failure.

6. Warranties by MERCHANT. MERCHANT warrants that it shall fully comply with all federal, state, and local laws and rules, and all Card Brand regulations, as amended from time to time.

As to each gift card or loyalty transaction presented to FIRSTADVANTAGE for processing, MERCHANT warrants that:

- MERCHANT understands and agrees that the FIRSTADVANTAGE Services require additional charges to be billed directly by FIRSTADVANTAGE to MERCHANT, payable pursuant to paragraph 8 listed below;
- By signing this Agreement, MERCHANT will indemnify, protect, defend and hold FIRSTADVANTAGE, affiliates and/or subsidiaries and all of its or their officers, agents and/or employees, harmless from and against any and all claims, losses, demands,

actions, expenses, damages, liability, and/or causes of action, including, without limitation attorneys' fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from any damage or loss caused by negligence, fraud, dishonesty or willful behavior by MERCHANT or any of MERCHANT's employees, customers, or agents;

(c) MERCHANT shall supply to FIRSTADVANTAGE all information and data reasonably required from time to time by FIRSTADVANTAGE to perform the Services, including the dollar value to be attributed to each card, each card transaction, the location of point-of-sale terminals and cardholder data and content as may be agreed upon by the parties from time to time and within the time necessary to perform the Services promptly;

(d) MERCHANT will be responsible for the accuracy and adequacy of all data transmitted by it or on its behalf for processing by the System;

(e) MERCHANT warrants to FIRSTADVANTAGE that MERCHANT is engaged in the lawful business shown on any agreement with FIRSTADVANTAGE which includes the sale of merchandise and/or services, and is duly licensed to conduct such business under the laws of the state, county and city in which MERCHANT is located;

(f) MERCHANT agrees not to change its type of business, without the express written consent of FIRSTADVANTAGE;

(g) MERCHANT understands and agrees that when utilizing FIRSTADVANTAGE certain Product Services must be selected. Once required selections are made those criteria will be used for the duration of the Agreement. Should merchant wish to change certain Product Services during the term of the Agreement, a reprogramming fee, to be determined by BANK, will be assessed; and

(h) MERCHANT warrants it will comply with all local, state and federal regulations regarding use of any cardholder or consumer data.

7. Term; Termination. The initial term of this Agreement shall continue in full force and effect for a term of three (3) years from acceptance by BANK/FIRSTADVANTAGE; provided, however, that if FIRSTADVANTAGE services are added as an additional service to an existing BANK Credit Card Processing Agreement in good standing, the initial term of this Agreement shall end on the same date as the end of the initial term of the existing Credit Card Processing Agreement. Thereafter, this Agreement will automatically renew for additional one (1) year periods unless terminated per this paragraph or other provisions of this Agreement. The initial term of this AGREEMENT shall commence upon FIRSTADVANTAGE's acceptance hereof (as evidenced by FIRSTADVANTAGE's performance hereunder) and continue until either (i) terminated by MERCHANT by giving at least thirty (30) days, but no more than ninety (90) days, written notice of non-renewal to FIRSTADVANTAGE with termination effective at the end of the applicable term (the written notice must contain MERCHANT's signature as it appears on the Merchant Application & Agreement in order to be accepted), or (ii) terminated by FIRSTADVANTAGE, with or without cause or reason, and with or without notice. Termination by FIRSTADVANTAGE for any Service may result in the termination of all Services. If this Agreement is terminated by MERCHANT prior to the end of the term or by FIRSTADVANTAGE as a result of MERCHANT's breach, FIRSTADVANTAGE will be entitled to recover, and MERCHANT shall pay on demand, an early termination fee of no less than one hundred dollars (\$100.00)* for each MERCHANT location. At its sole and absolute discretion, FIRSTADVANTAGE may also assess liquidated damages in connection with such termination, which shall be the average monthly fees paid by MERCHANT to FIRSTADVANTAGE for the 12 months (or the number of months this Agreement has been in effect, if less than twelve months) immediately preceding the month of termination times the number of months remaining in the term, plus any and all additional losses (including consequential damages, costs, expenses and other liabilities) incurred by FIRSTADVANTAGE in connection with such termination. MERCHANT and FIRSTADVANTAGE agree that: (a) the award of liquidated damages is to provide a means of compensation for FIRSTADVANTAGE in the event of a breach by MERCHANT in the form of early cancellation or non-adherence to exclusivity requirement; (b) FIRSTADVANTAGE's damages would be difficult or impossible to prove; and (c) the amount of liquidated damages set forth herein is a fair and reasonable estimate of FIRSTADVANTAGE's damages resulting from any breach or improper termination by MERCHANT. BANK may withhold payment of any monies due MERCHANT until all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this entire Agreement. *[ARKANSAS MERCHANTS - early termination fee is fifty dollars (\$50.00)].

8. Debit/Credit Authorization. MERCHANT hereby grants authorization to FIRSTADVANTAGE to credit and/or debit MERCHANT's account for fees imposed via the automated clearing house ("ACH"). MERCHANT agrees to provide accurate bank and account information. MERCHANT will maintain sufficient funds in MERCHANT's account to satisfy all obligations, including fees, contemplated by this Agreement. Any change in MERCHANT's account status or information or lack of funds during any attempted ACH shall give FIRSTADVANTAGE the right to terminate this Agreement immediately due to MERCHANT'S breach without notice to MERCHANT. MERCHANT agrees that FIRSTADVANTAGE has a right of offset and may take all steps necessary to collect amounts MERCHANT owes.

9. Offset and Security Interest. MERCHANT hereby grants FIRSTADVANTAGE a right of offset against any amounts now or hereafter owing to MERCHANT under this or any other agreement with BANK or held by BANK and agrees that all such amounts may be applied to payment of any obligations now or hereafter owing by MERCHANT to FIRSTADVANTAGE, whether due or not, and in such order as FIRSTADVANTAGE may elect, and for this purpose, FIRSTADVANTAGE may withdraw via ACH or otherwise hold

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or apply any accounts, funds or amounts in its sole discretion. In addition to and independent of all other rights and remedies available to FIRSTADVANTAGE, including, without limitation, the right of offset, whether created by this Agreement or otherwise, MERCHANT hereby grants to FIRSTADVANTAGE a security interest in all accounts, funds, and amounts of any description whatever, whether now or hereafter owing to MERCHANT under this or any other agreement with BANK, and all proceeds thereof, to secure payment of any obligation now or hereafter owing from MERCHANT to FIRSTADVANTAGE, and with respect to the security interest herein granted, FIRSTADVANTAGE shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as may be amended or supplemented from time to time. MERCHANT authorizes FIRSTADVANTAGE to file such financing statements, as FIRSTADVANTAGE may deem appropriate to perfect the security interest granted herein. MERCHANT agrees to provide additional collateral or security upon the request of FIRSTADVANTAGE. The rights of FIRSTADVANTAGE under this security interest shall be independent of and cumulative of any rights of offset. All of the rights of FIRSTADVANTAGE shall survive the termination of this Agreement.

10. Schedule of Fees and Compensation of FIRSTADVANTAGE. Attached to this Agreement and incorporated herein by reference is an Application containing the Schedule of Fees, as well as any other fees described in the FIRSTADVANTAGE Terms & Conditions, that may be amended or supplemented from time to time, and that contains an account setup fee, transaction fees, location fee, pooling fee and any other fee(s) in effect during the term of this Agreement. Fees not paid by MERCHANT within the month of billing will accrue interest at the maximum rate allowed by law per month, beginning on the first day of the month following the billing month until all fees and accrued interest are paid in full. Each month FIRSTADVANTAGE shall provide MERCHANT with accumulated gift card charges based on MERCHANT's activity in the MERCHANT's FirstView statement. The amount of such statement shall be paid by MERCHANT to FIRSTADVANTAGE via ACH. In the event the ACH for collection of fees owed to FIRSTADVANTAGE is rejected by MERCHANT's bank, MERCHANT agrees to pay FIRSTADVANTAGE a reject fee of no less than thirty dollars (\$30.00). These fees shall be paid by MERCHANT to FIRSTADVANTAGE via ACH within thirty (30) days following demand therefor. MERCHANT must notify FIRSTADVANTAGE in writing of any errors on any statement within ninety (90) days after statement is made available on which the error or problem first appeared. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transactions, bank statements and other information indicating activity of FIRSTADVANTAGE and MERCHANT. Save and except FIRSTADVANTAGE's right to funds owed FIRSTADVANTAGE under this Agreement or FIRSTADVANTAGE's right to recover funds incorrectly paid to MERCHANT, if no notice of error is received by FIRSTADVANTAGE within the ninety (90) day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors.

11. Use of MERCHANT Name. MERCHANT hereby authorizes FIRSTADVANTAGE to utilize, in advertisements or otherwise, the name of MERCHANT as being a FIRSTADVANTAGE user.

12. Attorneys' Fees and Costs. MERCHANT shall be liable for and shall indemnify and reimburse FIRSTADVANTAGE for any and all attorneys' fees, arbitration cost, and other costs and expenses paid or incurred by FIRSTADVANTAGE in the enforcement hereof, including but not limited to, collecting any amounts or obligations due from MERCHANT.

13. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state without regard to the conflicts of law principles of such state. The parties hereby agree that venue of any action under this agreement shall be exclusively in the state courts located in Fort Worth, Tarrant County, Texas, to the jurisdiction of which the parties hereby consent for such purposes.

14. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement, including any breach hereof, shall be resolved by arbitration in the City of Fort Worth, Tarrant County, Texas, pursuant to the Federal Arbitration Act and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

15. Force Majeure. FIRSTADVANTAGE is released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any acts of any other party or third party or any acts of God, fire, flood, storm, earthquake, tidal wave, computer or communications failure, software failure, program failure, network problem, sabotage, war, military operation, national emergency, mechanical or electrical breakdown, civil commotion, or the order, requisition, request, or recommendation of any governmental agency or acting governmental authority, or FIRSTADVANTAGE's compliance therewith or government proration, regulation, or priority, or any other cause beyond FIRSTADVANTAGE's reasonable control whether similar or dissimilar to such causes.

16. Amendment. FIRSTADVANTAGE has the right to amend this Agreement, by notice to MERCHANT. Any amendments shall become effective no earlier than ten (10) days from date of notice.

17. Assignment. Except as provided in Paragraph 16 above, any of the terms, provisions, representations, warranties, covenants, or conditions hereof may be amended only by a written instrument executed by all parties hereto, or, in the case of a waiver, by the

party waiving compliance. The failure of any party at any time to require performance of any provision hereof shall not constitute a waiver and in no manner affects the right to enforce the same. The rights and obligations of MERCHANT hereto may not be assigned or ownership of MERCHANT transferred without the prior written consent of FIRSTADVANTAGE.

18. Release. MERCHANT hereby releases and holds FIRSTADVANTAGE harmless for any losses, claims, costs or damages to MERCHANT, MERCHANT's customers or any third party, including without limitation BANK, as a result of FIRSTADVANTAGE's acts or omissions under this Agreement. The provisions of this Paragraph shall survive the termination of this Agreement.

19. Limitations on Liability. FIRSTADVANTAGE shall be responsible for the performance of Services described in this Agreement. MERCHANT agrees that FIRSTADVANTAGE shall not be responsible for any errors, acts, omissions, failures to act, delays or losses unless caused by FIRSTADVANTAGE's gross negligence or willful misconduct. Any liability of FIRSTADVANTAGE shall be limited to the amount of fees paid by MERCHANT to FIRSTADVANTAGE for gift card/loyalty Services for the previous twelve (12) months. In no event shall FIRSTADVANTAGE's cumulative liability to MERCHANT with respect to a transaction, including as a result of FIRSTADVANTAGE's or any processor's own negligence, breach or error, exceed the amount of processing fees paid by MERCHANT to FIRSTADVANTAGE for the transaction in question. The provisions of this Paragraph shall survive the termination of this Agreement.

20. Limitation of Damages. FIRSTADVANTAGE shall not be liable for special, consequential, exemplary, or punitive damages. The provisions of this Paragraph shall survive the termination of this Agreement.

21. Waiver. The parties and any guarantor expressly waive the right and agree not to bring or participate in any class or collective action (or other representative action) or any joinder or consolidation of claims with respect to any dispute arising out of or relating to this Agreement. ALL PARTIES TO THIS AGREEMENT HEREBY **WAIVE TRIAL BY JURY** IN ANY ACTION, PROCEEDING, SUIT, CLAIM, COUNTERCLAIM OR THIRD PARTY CLAIM BROUGHT BY THE PARTIES HERETO ON ANY MATTER ARISING OUT OF OR OTHERWISE RELATED TO OR CONNECTED WITH THIS AGREEMENT.

22. Disclaimer. FIRSTADVANTAGE disclaims all warranties, express or implied, written or oral, including but not limited to warranties of merchantability and fitness for a particular purpose. MERCHANT acknowledges that the Service may not be uninterrupted or error free.

23. Guarantor. Any guarantor hereby guarantees performance of all obligations of MERCHANT and agrees that FIRSTADVANTAGE may require performance of any obligation of MERCHANT hereunder directly from any guarantor.

24. Taxes. MERCHANT shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any Services hereunder.

25. Counterparts. This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

26. Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the illegal, invalid or unenforceable provision is modified to give effect to the original intent consistent with being valid and enforceable under applicable law.

27. Notices. All written notices under this Agreement shall be delivered to:

FIRSTADVANTAGE
100 Throckmorton Street, Suite 1800
Fort Worth, TX 76102

If to MERCHANT, the proper notice shall be the MERCHANT address stated on the records of FIRSTADVANTAGE.

Any notice of termination of this Agreement must be in writing and must contain MERCHANT's signature, as it appears on the Merchant Application & Agreement.

28. Survival. Any and all provisions of this Agreement that impose or could be construed to impose a continuing obligation, duty, or requirement upon MERCHANT including, but not limited to indemnification and limitation on liability, shall survive the expiration or termination, for any reason, of this Agreement.

29. Entire Agreement. This Agreement, when executed by both FIRSTADVANTAGE and MERCHANT, shall constitute the entire agreement as between the parties with respect to the Services, and shall supersede and cancel all prior offers and negotiations whether in writing or otherwise.