



First Data Merchant Services
4000 Coral Ridge Drive
Coral Springs, FL 33065
877-257-2094

Subscription Agreement

Merchant ID	
Sales Rep. Name	Sales ID

Merchant Information

Corporate Business Name		DBA Name		Business Phone Number	
Business Address	City	County	State	Zip Code	
Type of Business	Years in Business	Tax ID#:			
Billing Address (if different than above)	City	State	Zip Code		
Bank Name	Routing Number	Account Number	(Provide copy of Void Check)		

Business Type
 Corporation
 Partnership
 Proprietorship
 Non-Profit
 LLC

Equipment Supplier

First Data Merchant Services, LLC
1169 Canton Rd.
Marietta, GA 30066

Description of Leased Equipment

Equipment Type	Quantity	Unit Price w/o Tax
		\$
		\$
		\$

Schedule of Payments

Equipment Service Program

Payable at Subscription Signing (Amounts include tax)

<input type="checkbox"/> Advance Payments	\$	
<input type="checkbox"/> Security Deposit	\$	
<input type="checkbox"/>	\$	
Total	\$	

Subscription Term: _____ mos.

Total Monthly Subscription Charge: (w/o taxes, late fees, or other charges that may apply) \$ _____

Total Subscription Cost: \$ _____ (without tax)

***All charges subject to applicable tax**

Annual Tax Handling Fee:

- AL, AR, CA, CT, GA, IN, KY, LA, MD, MS, MO, NE, NV, NM, NC, OK, OR, RI, SC, TN, TX, VT, VA, WV, WY **\$30.20**
- All other states **\$10.20**

Subscription Acceptance

Undersigned agrees to all terms and conditions contained in this Subscription Agreement. Merchant authorizes First Data Merchant Services LLC or its agents, to request and obtain from a consumer reporting agency personal and business consumer reports. Each of the undersigned authorizes us to obtain subsequent consumer reports in connection with the maintenance, updating, renewal or extension of the Agreement. Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit financial information to us.

This is a non-cancelable lease for the full term indicated herein. By executing below, the Subscriber confirms that the Subscription Term is provided above. Any attempt by you to terminate this commitment prior to the end of the Subscription Term entitles First Data Merchant Services LLC to all rights and remedies set forth in paragraph 12 including acceleration of the remaining payments due, which shall be calculated as 95 percent of the product of (1) your monthly payment and (2) the number of months then outstanding on the Subscription Term.

X _____, _____, _____

Subscriber Signature **Title** **Print Name** **Date**

Personal Guaranty

Undersigned unconditionally guarantees performance of this Subscription Agreement by Subscriber and payment of all sums due hereunder in the event of default, hereby waiving any modification, amendment or extension and notice thereof, and further agrees to the terms of this Subscription Agreement insofar as they apply to the undersigned as guarantor.

X _____, An Individual

Personal Guarantor's Signature (No Title Allowed)	Print Name	Home Phone Number	Date
Home Address	State	Zip Code	DOB
City			Social Security #

Do Not Write in This Space

Subscriber Acceptance:

_____, _____, _____

Name (Please print or type) Title **X** Signature Date

This Subscription Agreement ("Agreement") is being entered into by and between First Data Merchant Services LLC and the Subscriber identified in the signature panel of this Agreement. In this Agreement, the words "we", "our" and "us" refer to First Data Merchant Services LLC and its successors and assigns and the words "you" and "your" refer to Subscriber and its permitted successors and assigns.

Subscriber hereby authorizes us or our designees, successors or assigns (hereinafter "FDMS") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Subscriber in conjunction with this Subscription Agreement by initiating debit entries to Subscriber's account at the bank named above (hereinafter "Bank"), or such other bank as the Subscriber may from time to time use. In the event of default of Subscriber's obligation hereunder, Subscriber authorizes debit of its account for the full amount due under this Agreement. Further, Subscriber authorizes Bank to accept and to charge any debit entries initiated by FDMS to Subscriber's account. In the event that FDMS withdraws funds erroneously from Subscriber's account, Subscriber authorizes FDMS to credit Subscriber's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until FDMS and Bank have received written notice from Subscriber of its termination in such time and in such manner as to afford FDMS and Bank a reasonable opportunity to act.

1. **Equipment.** We agree to provide to you and you agree to subscribe from us the equipment identified on the cover page of this Agreement or such other comparable equipment we provide you (the "Equipment"), according to the terms and conditions of this Agreement. We are providing the Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Equipment for any particular purpose.

2. **Effective Date, Term and Interim Rent.**

(a) This Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date") or acceptance by us. This Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the site designated by you.

(b) The term of this Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months stated as the "Subscription Term" on the first page. You agree this Agreement is a non-cancelable commitment by you to subscribe for the equipment identified for the entire Subscription Term. You agree to pay all amounts due during the Subscription Term and confirm by executing this Agreement that the Subscription Term is specifically defined as written on the first page of this Agreement.

(c) You agree to pay an Interim Subscription Payment in the amount of one-thirtieth (1/30th) of the monthly subscription charge for each day from and including the Delivery Date until the date preceding the Commencement Date.

(d) **You acknowledge that the equipment and software you subscribe for under this agreement may not be compatible with another processor's systems and that we do not have any obligation to make such software or equipment compatible in the event that you elect to use another service provider. Upon termination of your merchant processing agreement, you acknowledge that you may not be able to use the equipment or software subscribed for under this agreement with any other service provider.**

3. **Site Preparation.** You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

4. **Payment of Amounts Due.**

(a)

Schedule of Fees			
Default Fees	Amount	Administrative Fees	Amount
NSF Fee	\$10	Upgrade Fee	\$50
Collection Fee	\$25	Assumption Fee	\$150
Late Fee (10 percent of Total Due)	min \$5	Agreement Copy Fee	\$7
Collection Invoicing Fee	\$7	Equipment Service Program**	\$4.95
Improper Return Fee*	\$100		

(b) The monthly subscription charge is due and payable on the same day of each successive month thereafter of the Subscription Term for each piece of Equipment. You agree to pay all assessed costs for delivery and installation of Equipment.

(c) In addition to the monthly subscription charge, you shall pay, or reimburse us for, amounts equal to any taxes or assessments on or arising out of this Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, exclusive, however, of taxes based on our net income. Reimbursement of property tax calculation is based on an average tax rate.

(d) Your subscription payments will be due despite dissatisfaction for any reason with the Equipment or related processing services.

(e) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than \$5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$10.00 for any debit we attempt to make against your bank account that is rejected, but in no event more than the maximum amount permitted by law.

(f) In the event your account is placed into collections for past due subscription amounts, you agree that we can recover a collection expense fee of \$25 for each aggregate payment requiring a collection effort, but in no event more than the maximum amount permitted by law.

(g) * See paragraph 5(g) for details regarding this fee.

(h) ** See paragraph 5(j) for details regarding this fee.

5. **Use and Return of Equipment; Insurance**

(a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.

(b) You shall not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent.

(c) You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent.

(d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility.

(e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.

(f) The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership.

(g) You agree that all Equipment returns shall be to First Data Merchant Services, 1169 Canton Road, Marietta, GA 30066, be done in a manner that can be tracked, and shall have the Subscription number referenced on the return packaging. You understand and agree that your failure to return the Equipment in the manner noted in the preceding sentence will delay our receipt of the return and possibly result in you being charged \$100. If returned Equipment shows excessive wear and tear or is not in good operating condition (in each case, as determined by us in our reasonable discretion), you will be charged our cost to restore such Equipment to normal or good operating condition, as applicable.

(h) You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards.

(i) You shall provide proof of insurance as evidenced by a certificate naming First Data Merchant Services, LLC as a loss payee under your insurance policy. The loss, destruction, theft, or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly subscription charges hereunder.

(j) You may choose not to insure the Equipment and participate in the Equipment Service Program. The Equipment Service Program provides a replacement of the Equipment for as long as you participate in the Program during the Subscription Term. The Equipment Service Program includes (i) free comparable replacement terminal (new or refurbished) in the event of a defect or malfunction (terminal defects or malfunctions caused by acts of God are not covered by this Program), (ii) free shipping and handling on both the replacement terminal and return of defective terminal, (iii) free overnight shipping and handling on replacement terminal if requested by 3:00 pm ET (Monday - Thursday). If you don't return your damaged equipment, you will be charged the full purchase price of the replacement equipment sent to you. The monthly fee of \$4.95 for the optional Equipment Service Program is a per terminal fee. You can choose to insure the Equipment and terminate your participation in the program at any time by calling our Customer Service department.

6. **Title to Equipment.** We at all times retain title to the Equipment unless we agree otherwise in writing. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. The transaction contemplated by this Agreement shall be treated as a lease, however, if a court determines that the transaction is not governed by Article 2A of the Uniform Commercial Code (or a similar provision adopted in the relevant jurisdiction), then we shall be deemed to have a first lien

Security interest on the Equipment as of the date of this Agreement, and you will execute such documentation as we may request to evidence such security interest.

7. **Return or Purchase of Equipment at End of Subscription Term.** Upon the completion of your Subscription Term or any extension thereof, you will have the option to (a) return the Equipment to us; (b) purchase the Equipment from us for its then fair market value, calculated as a percentage of the aggregate Subscription payments in accordance with the following: If the Subscription Term is 48 months or more, the buyout option as a percentage of the aggregate subscription payments shall be ten 10 percent. If the term of this subscription is 36 to 47 months, the buyout option as a percentage of the aggregate subscription payments shall be 15 percent. If the term of this subscription is 24 to 35 months, the buyout option as a percentage of the aggregate subscription payments shall be 20 percent; or (c) after the final subscription payment has been received by FDMS, the Agreement will continue month-to-month at the existing monthly subscription payment. If you do not want to continue the Subscription to the Equipment, then you must provide FDMS with at least 30 days prior written notice to terminate and return the equipment to FDMS. If we terminate the subscription pursuant to Section 11(b) due to a default by you, then you shall immediately return the Equipment to us no later than the tenth business day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. You agree we may collect any amounts due to us under this Section 7 by debiting your bank account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

8. **Software License.** We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment other than those owned or licensed by the manufacturer of the Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Equipment.

9. **Limitation on Liability.** We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment, including any damage or injury to persons or property caused by the Equipment. We are not liable for the use or maintenance of the Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Agreement shall not exceed the aggregate subscription amount paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Agreement are your sole and exclusive remedies.

10. **Warranties.**

(a) All warranties express or implied, made to you or any other person are hereby disclaimed including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular use, quiet enjoyment, or infringement.

(b) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

11. **Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, (including attorneys' fees) resulting from (a) the operation, use, condition, liens against, or return of the Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

12. **Default; Remedies.**

(a) If any debit of your bank account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Agreement or any agreement with any of our affiliates, alliances or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a Merchant Processing Agreement ("MPA") with us or with an Alliance or joint venture to which we are a party will be treated as a default under this agreement. Such a default would include a default resulting from early termination of the MPA, if applicable.

(b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this subscription and our future obligations under this Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly subscription charges for the remainder of the applicable Subscription Term together with the fair market value of the Equipment (as determined by us), not as a penalty but as reasonable damages for our loss of the bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. In any case, you shall also be responsible for our costs of collection, court costs and reasonable attorneys' fees, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Agreement by charging your bank account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates, alliances or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Agreement by obtaining directly from an alliance or joint venture to which we are a party and with which you have entered into an MPA any funds held or available as security for payment under the terms of the MPA, including funds available under the "Reserve Account; Security Interest" section of the MPA, if applicable.

13. **Assignment.** You may not assign or transfer this Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer hereof. We may assign or transfer this Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. This Agreement will be assigned to First Data Merchant Services LLC shortly after execution.

14. **Subscription Guaranty.** No guarantor shall have any right of subrogation to any of our rights in the Equipment or this Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

15. **Governing Law; Miscellaneous.** This Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). If any part of this Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

16. **Dispute Resolution and Arbitration.** If the parties disagree as to any matter governed by this Agreement, the parties shall promptly consult with one another in an effort to resolve the disagreement. If such effort is unsuccessful, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except that equitable relief may also be sought in any court of competent jurisdiction.

17. **Notices.** All notices must be in writing, if to you at your address appearing on the cover page of this Agreement and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida, 33065. Attn: Equipment Subscription Department, and shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received, if to you at the address appearing on the cover page of this Agreement or by any electronic means, including but not limited to the email address you have provided on the cover page of the Agreement. Notices sent to the Merchant's last known address, as indicated in our records, shall constitute effective notice to the Merchant under this Agreement. Customer Service toll free number 877-257-2094.

18. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties with respect to its subject matter, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

