

CardSwap Terms and Conditions

The following terms and conditions (the "Terms of Service") constitute a binding agreement between you and **First Merchants Bank** and its licensors (collectively "We", "Us" or "Our") with respect to your use of the Q2 CardSwap software (the "Software"), and the Service (as defined in Section 5.1 below) (collectively the "Services"). By accessing or using the Services in any manner, you (A) ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO THESE TERMS OF SERVICE AND OUR [PRIVACY POLICY](#) WHICH IS INCORPORATED HEREIN BY REFERENCE, and (B) affirm that you are at least 18 years of age (or have reached the age of majority in the jurisdiction where you reside). IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE OR OUR PRIVACY POLICY, DO NOT USE THE SERVICES.

- 1. Changes to Terms of Service.** We may revise and update these Terms of Service from time to time in Our sole discretion. All changes are effective when they are posted and apply to all access to and use of the Services thereafter. Your continued use of the Services following the posting of revised Terms of Service means that you accept and agree to the changes.
- 2. Scope of and Restrictions on Use.** Subject to these Terms of Service, We grant you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Services for your personal, non-commercial use. Except as otherwise provided in these Terms of Service, the Software may not be copied, downloaded, or stored in a retrieval system for any other purpose, nor may it be redistributed, reused, or modified for any purpose. You agree not to:
 - collect information from the Services using an automated software tool or manually on a mass basis;
 - use automated means to access the Services, or gain unauthorized access to the Services or to any account or computer system connected to the Services;

- obtain, or attempt to obtain, access to areas of the Services or Our systems that are not intended for access by you;
- "flood" the Services with requests or otherwise overburden, disrupt, or harm the Services or Our systems;
- restrict or inhibit other users from accessing or using the Services;
- modify or delete any copyright, trademark, or other proprietary rights notices that appear in the Software; or
- access or use the Services for any unlawful purpose or otherwise beyond the scope of the rights granted herein.

If you download the Software, you further agree not to:

- copy the Software
- modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software;
- reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or any features or functionality of the Software to any third party for any reason, including by making the Software available on a network where it is capable of being accessed by more than one device at any time; or
- remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Software.

3. **Ownership.** The Services and the Content are licensed or owned by Us and Our licensors and are protected under copyright, trademark, and other applicable United States and international laws and treaties. Without limiting the foregoing, the trademarks, service marks, and logos displayed in the

Software are registered and unregistered marks of Ours and Our licensors. The Software is licensed, not sold, to you. You acknowledge and agree that, as between you and Us, We are and shall remain the sole owner of the Services, including, without limitation, all patents, copyrights, trademarks, trade secrets, and other intellectual property and proprietary rights therein and thereto.

4. **Account Registration and Security.** Access to and use of certain Services may require you to register for an account. You agree to provide true, accurate, current, and complete information about yourself as prompted by the applicable registration or log-in form, and you are responsible for keeping such information up to date. You are responsible and liable for all activities conducted through your account, regardless of who conducts those activities. You are responsible for maintaining the confidentiality of your account information, including your username and password. You agree to immediately notify Us of any unauthorized use of your account, or any other breach of security. We are not liable for any loss or damage arising from your failure to protect your username or password.

5. **Payment Service**

- **Payee Account Information.** In order to use the Service, you will need to link your accounts on Payee Sites to the Payment Service by providing Us with the information necessary to access such accounts (such as account usernames and passwords) ("Payee Account Information"). You hereby authorize Us to use and store your Payee Account Information and to access your accounts on Payee Sites to provide the Payment Service to you and to configure the Payment Service so that it is compatible with the applicable Payee Sites. You represent and warrant to Us that you are the legal owner of any accounts on Payee Sites that you access via the Payment Service and that you have the authority to allow Us to access your accounts using your Payee Account Information on your behalf.

- **Limitations.** You acknowledge and agree that: (a) some Payees may not allow Us to access your account on Payee Sites on your behalf; (b) Payees may make changes to Payee Sites and/or other services, with or without notice to Us, that may affect overall performance of the Service and prevent or delay swapping to such Payees; (c) certain Payees may not accept swapping from all types of funding sources (for example, not all Payee Sites may accept credit cards); and (d) We may, in Our sole discretion, impose limits on the number and amount of payments, in aggregate, that you can send using the Service. A swap will occur with the debit or credit card that you link in CardSwap. We are not responsible for loss of service if card on file is declined for any reason.
- **Swap Delays and Errors.** *A swap will occur with the debit or credit card that you link in CardSwap. We are not responsible for loss of service if card on file is declined for any reason.*
You are solely liable for errors you make in using the Service. Without limiting the foregoing, We will not be responsible or liable: (a) if a Funding Account you specify as a payment source is closed or does not contain sufficient funds to complete a transaction; (b) if a payment is rejected, returned, mishandled, closed account, or delayed by the Payee or Us for any reason; or (c) due to (i) any unavailability of the Payment Service for any reason, (ii) fraud or attacks on the Services, or (iii) circumstances beyond Our control (for example, fire, flood, third party networks, or any failure by your computer, software, or Internet connection).
- **Unauthorized Transactions.** You must notify Us immediately if you suspect or believe that a transaction has occurred through the Service that you did not authorize. In an effort to manage Our risk, We and Our service providers may, but are not required to, monitor your transactions and processing activity for high-risk practices or for fraudulent transactions.

6. **Electronic Communications.** The communications between you and Us via the Services use electronic means. For contractual purposes, you consent to receive communications

from Us in electronic form, and you agree that all terms and conditions, agreements, notices, disclosures, and other communications that We provide to you electronically satisfy any legal requirement that such communications be in writing.

7. **Privacy Policy.** You acknowledge and agree that all information collected by Us is subject to Our [PRIVACY POLICY](#).
8. By using the Services, you consent to all actions We take with respect to your information in compliance with Our Privacy Policy.
9. **Software Updates.** We may, from time to time in Our sole discretion, develop and provide Software updates, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, "Updates"). Updates may also modify or delete in their entirety certain features and functionality of the Services. You agree that We have no obligation to provide any Updates or to continue to provide or enable any particular features or functionality of the Services.
10. **Change and Suspension.**
 - **Changes to the Services.** We reserve the right to make changes to, suspend, or discontinue (temporarily or permanently) the Services or any portion thereof at any time. You agree that We will not be liable to you or to any third party for any such change, suspension, or discontinuance.
 - **Suspension/Termination of Access.** We have the right to deny access to, and to suspend or terminate your access to, the Services or to any features or portions thereof, at any time and for any reason, including if you violate these Terms of Service or if We believe there is suspicious or unusual activity related to your account. Neither termination nor suspension shall affect your liability or obligations under these Terms of Service. In the event that We suspend or terminate your access to the Services, you will continue to be bound by the Terms of Service that were in effect as of the date of your suspension or termination.

In the event We terminate your account, any transactions to Payees that We have processed before the termination date may be completed, however you should verify that such transactions have been completed directly with your intended Payee. We are not responsible for any payments not completed by Us as a result of termination.

11. Disclaimer; Limitation of Liability.

- **Disclaimer of Warranties.** THE SERVICES AND THE CONTENT ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, AND WE HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NEITHER WE NOR ANY PERSON ASSOCIATED WITH US MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE SERVICES OR ANY CONTENT. WITHOUT LIMITING THE FOREGOING, NEITHER WE NOR ANY PERSON ASSOCIATED WITH US REPRESENTS OR WARRANTS THAT THE SERVICES OR THE CONTENT WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE SERVICES, CONTENT, OR THE SERVERS THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE SERVICES OR THE CONTENT WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.
- **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE OR OUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, OR SERVICE PROVIDERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE SERVICES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OR LOSS OF DATA, WHETHER CAUSED BY TORT

(INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE. IF, NOTWITHSTANDING THE PROVISIONS OF THIS SECTION 10.2, WE ARE FOUND LIABLE FOR ANY LOSS, DAMAGE, OR INJURY UNDER ANY LEGAL THEORY RELATING IN ANY WAY TO THE SUBJECT MATTER OF THESE TERMS OF SERVICE, IN NO EVENT WILL OUR AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY EXCEED THE TOTAL AMOUNT OF \$100.00. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF YOUR REMEDIES UNDER THESE TERMS OF SERVICE FAIL OF THEIR ESSENTIAL PURPOSE.

- **Exclusions.** Some jurisdictions do not allow the exclusion or limitation of certain warranties or consequential damages, so some of the exclusions and/or limitations in this Section 11 may not apply to you. In such states, Our liability is limited to the maximum extent permitted by law.

12. Indemnification. You agree to indemnify, defend, and hold Us and Our officers, directors, employees, agents, licensors, and service providers harmless from and against any claims, liabilities, losses, damages, judgments, awards, costs, and expenses (including reasonable attorneys' fees) arising out of or resulting from: (a) your use of the Services; (b) any violation of these Terms of Service or applicable law; and/or (c) any claims by another owner of a Funding Account you use in connection with the Payment Service or any joint account holder of an account on a Payee Site. We reserve the right, at Our own expense, to assume the exclusive defense and control of any action subject to indemnification by you, and in such event, you agree to cooperate with Us in defending such action. Your indemnification, defense, and hold harmless obligations will survive the termination of your use of the Services and/or these Terms of Service.

13. Third Party Materials. The Services may display, include, or make available third-party content (including data, information, applications and other products services and/or materials) or provide links to third-party websites or services (collectively, "Third Party Materials"). You acknowledge and agree that We are

not responsible for Third Party Materials, including their accuracy, completeness, timeliness, validity, legality, decency, quality, or any other aspect thereof. We do not assume and will not have any liability to you or any other person or entity for any Third Party Materials. Third Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

14. **Third Party Platforms.** We may provide the Services to you through the Payees Sites and/or other third-party websites, operating systems, platforms, and portals (collectively, "Third-Party Platforms"). Additional terms and conditions will apply to you with respect to your use of Third-Party Platforms, which are not under our control. We do not assume any responsibility or liability for your use of such Third-Party Platforms.
15. **U.S. Export Controls.** The Software may be subject to United States export laws, including the including the United States Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule or regulation. You shall comply with all applicable laws, rules, and regulations, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Software available outside the United States.
16. **Miscellaneous.**
 - **Geographic Restrictions.** We are based in the United States. We make no claims that the Services are accessible or appropriate outside of the United States. Access to and use of the Services may not be legal by certain persons or in certain countries. If you access the Services from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

- **Governing Law; Jurisdiction and Venue.** These Terms of Service and any dispute or claim arising out of or related to these Terms of Service, their subject matter, or their formation (in each case, including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Indiana, other than such laws and case law that would result in the application of the laws of a jurisdiction other than the State of Indiana. Any legal suit, action, or proceeding arising out of or related to these Terms of Service or the Services or Content shall be instituted exclusively in the federal or state courts located in the State of Indiana. You agree to waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.
- **Limitation on Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE OR THE SERVICES OR CONTENT MUST BE COMMENCED WITHIN TWO (2) YEARS AFTER THE CAUSE OF ACTION OR CLAIM ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.
- **Waiver of Jury Trial.** YOU HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE OR THE SERVICES OR CONTENT.
- **Waiver and Severability.** Our failure to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. If any provision of these Terms of Service is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent possible, and the remaining provisions of these Terms of Service will continue in full force and effect.
- **Entire Agreement.** These Terms of Service, including Our Privacy Policy located at <https://www.firstmerchants.com/help/agreements-disclosures/privacy-policy> and additional documents

incorporated herein by reference, constitute the sole and entire agreement between you and Us with respect to the subject matter hereof, and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

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