



**First Financial Merchant Services**  
Card Processing You Can Count On

RECOMMENDER AGREEMENT

THIS RECOMMENDER AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_ (date) by and between First Financial USA, Ltd. (aka FFUSA) (the "COMPANY"), or assigns, with its principal place of business at 829 Meander Ct., Medina, MN 55340, and (business name) \_\_\_\_\_ with a principal place of business at (address) \_\_\_\_\_, ("RECOMMENDER").

WHEREAS, COMPANY is a registered Independent Sales Organization (ISO) with VISA, U.S.A., and a registered Member Service Provider (MSP) with MasterCard, International, and maintains contractual agreements with MasterCard, VISA U.S.A. and Member Bank(s) (BANKS) and or is an agent of an ISO/MSP, whereby COMPANY solicits prospective merchants to apply to BANKS for Merchant Agreements, and provides and or offers various and sundry merchant services to merchants; and,

WHEREAS, COMPANY desires to retain RECOMMENDER as an independent contractor to refer potential Sales Partners to COMPANY, and RECOMMENDER desires to render such assistance to COMPANY in accordance with the terms and conditions of this Agreement.

In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree as follows:

**1. Relationship of Parties.** COMPANY and RECOMMENDER acknowledge and agree that RECOMMENDER's relationship with COMPANY is solely that of an independent contractor and nothing herein contained shall be construed to constitute COMPANY and RECOMMENDER as partners, co-owners or otherwise as participants in a joint or common undertaking. RECOMMENDER shall have no power or authority, express or implied, to represent, act for, or otherwise create or assume any obligation on behalf of, or binding upon, COMPANY. It is further understood and agreed that RECOMMENDER is responsible for paying any and all required state and federal taxes, including, but not limited to FICA (Social Security), unemployment insurance, federal or state income taxes, disability insurance and workers' compensation insurance.

Initials \_\_\_\_/\_\_\_\_

RECOMMENDER may employ such personnel, as it deems necessary to complete performance. COMPANY may not direct such employees, and the RECOMMENDER takes full responsibility for paying all compensation and expenses of its employees and/or subcontractors, including (but not limited to) all related local, state and federal taxes, unemployment insurance, Social Security/Medicare, disability insurance, and other applicable withholdings, payroll taxes, and workers' compensation insurance premiums. RECOMMENDER understands and agrees that RECOMMENDER is responsible for its operating expenses and that RECOMMENDER may make a profit or loss depending upon their performance and their expenses.

RECOMMENDER will provide their Federal Employer Identification (EIN) number from the Federal Internal Revenue Service and shall provide such EIN number to Company for its records.

**2. Onboarding Recommended Sales Partners.** Though RECOMMENDER is an independent contractor there are still some processes, guidelines and rules that must be followed to make this project work.

- COMPANY will provide RECOMMENDER with trackable links that will lead to a landing page where referrals connect with FFUSA.
- Approval / Disapproval of any potential Sales Partner is at the sole and absolute discretion of COMPANY. COMPANY in its sole and absolute discretion, may cancel any Sales Partner Agreement, without prior consultation with RECOMMENDER.
- Any type of spam is prohibited. Links, ads, emails, comments... any type of spam. Please respect the posting rules of any 3rd-party websites you use to promote FFUSA. P.S. This is not an exhaustive list of spam methods; if we decide that your activity is spam, it's spam.
- MasterCard and VISA have very specific and often changing Rules and Regulations regarding use of their names, logos, and / or marks. The best practice is to simply not use them. RECOMMENDER hereby expressly agrees to not use their names, marks and / or logos.
- Any illegal activity or activity deemed offensive by COMPANY is prohibited.
- Any of the above may result in your referrals being rejected and/or your RECOMMENDER agreement being deactivated. We really do appreciate your use of good solid promotional methods!

If you're unsure or concerned that some activity you're about to proceed with may be objectionable, please ask us.

**3. Compensation of RECOMMENDER.** RECOMMENDER shall be entitled to receive compensation as shown on Schedule A attached hereto and made a part of this Agreement for so long as COMPANY is receiving its corresponding compensation from "BANKS" for such approved merchants and / or Sales Partners paid subscriptions, provided, however, that in any instance where this Agreement is terminated by COMPANY for any of the reasons enumerated in Paragraphs 6, 7 and 8(b) hereof, all payments to RECOMMENDER hereunder shall cease, and COMPANY shall have no further obligation to make any such payments. Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that COMPANY shall be under no obligation to make any payment to RECOMMENDER hereunder as to any merchant for which COMPANY is no longer receiving, for any reason whatsoever, its corresponding compensation from "BANKS" (i.e. if COMPANY doesn't get paid, then RECOMMENDER doesn't get paid). RECOMMENDER shall be entitled to receive from COMPANY as compensation, for the services rendered, the following:

(a) Residual Income. RECOMMENDER shall be entitled to a net fee which is derived from merchant payment processing fees derived from "BANK's" discount rates, transaction fees, qualified transactions, liability, losses, chargebacks, fines, nonqualified transactions, returns, monthly service fees and monthly minimum fees to merchants on net sales and which is paid to COMPANY by "BANKS", for each merchant solicited by Sales Partners referred to COMPANY by RECOMMENDER. If Sales Partner uses the Giveback, joint venture, referral or marketing partner who participates in Residual Income as well, those commissions are subtracted first and then everyone's, including RECOMMENDERS' commissions/compensation, are calculated.

(b) Pro Tools commission. When a sales partner referrer by RECOMMENDER subscribes to Pro Tools, RECOMMENDER shall be entitled to receive compensation as shown on Schedule A attached hereto and made a part of this Agreement for so long as COMPANY is receiving its corresponding compensation from sales partner.

(c) Offsets. RECOMMENDER agrees that compensation due to the RECOMMENDER shall be subject to offset against any commission due to, but is not limited to, credits, returns, chargebacks, accidental overpayment to RECOMMENDER by COMPANY. In the event that the amounts due RECOMMENDER are insufficient to offset the amount of COMPANY's liability, then RECOMMENDER shall be obligated to make direct payment, or allow COMPANY to affect collection from RECOMMENDER via bank ACH, to COMPANY in an amount necessary to reimburse COMPANY to the full extent of its liability.

**4. Accounting, Payment and Reporting.** COMPANY shall take all reasonable steps to pay all fees due and owing to RECOMMENDER under Paragraph 3 (Residual Income and Pro Tools Subscription Commission) above, on or before the Twentieth (20th) business day of each month, for all fees received by COMPANY during the preceding calendar month.

In conjunction with each fee payment, from COMPANY to RECOMMENDER, COMPANY shall provide to RECOMMENDER a report setting forth the basis upon which the fee payment is computed.

**5. Term of Agreement.** Subject to any provision contained herein for early termination of this Agreement, this Agreement shall be effective upon the execution of same by both parties hereto and shall continue thereafter for an initial term of three (3) years, and at the expiration of the initial term (and any renewal term) of this Agreement, then this Agreement shall thereafter automatically renew for consecutive additional one (1) year terms. Either party may terminate this Agreement, unilaterally and without cause, at any time during the Agreement, for any reason whatsoever, or for no reason, in its sole and absolute discretion. If RECOMMENDER terminates this Agreement it must be in writing and delivered to COMPANY'S address via tractable (ex. certified mail, FedEx, UPS) delivery method. In the event of termination by COMPANY under this Paragraph 5, RECOMMENDER shall continue to receive compensation subject to Paragraph 3 above.

**6. Non-Competition and Non-Solicitation.** Not to be confused with Section 7 Non-Interference, RECOMMENDER acknowledges that they will in the normal course of business with the Company become aware of confidential information and business sensitive information including customer lists, processes, and the like. Therefore, RECOMMENDER agrees that during the term hereof and for a period of two (2) years after termination of this Agreement, and whether with or without cause and whether initiated by the Company or RECOMMENDER, RECOMMENDER will not:

(a) Solicit or seek the business of, any customer or prospective customer of the Company, whether on behalf of himself or as an owner, partner (general or limited), shareholder, director, officer, agent,

RECOMMENDER, contractor, member, advisor, consultant, or otherwise with, of, or in any person, firm, corporation, partnership, limited liability company, limited liability partnership, or other entity; and/or

(b) Solicit or seek the services of any employee, independent contractor, vendor, or subcontractor of the Company to engage in a similar business to, or substantially the same business as, that of the Company, whether for himself or on behalf of or in conjunction with any other party.

(c) For the purposes of this Agreement, references to any customer of the Company shall include any person, firm, partnership, corporation, or other entity who or which does or did any business with the Company during the twelve (12) month period immediately preceding termination of this Agreement. References to any prospective customer shall include any person, firm, partnership, corporation, or other entity who or which, during the twelve (12) month period immediately preceding termination of this Agreement, has been identified by RECOMMENDER or the Company as being in need of the Company's products or services or as being a potential source of business. RECOMMENDER states and acknowledges that the term of this non-solicitation provision is reasonable and will not unduly restrict his ability to earn a living. RECOMMENDER also states and acknowledges that this commitment is supported by sufficient valuable consideration, the receipt and sufficiency of which he hereby acknowledges. RECOMMENDER understands and acknowledges that this duty of non-competition and non-solicitation survives termination of this Agreement and that RECOMMENDER will advise future employers or contractors of such duty.

**7. Non-Interference.** Not to be confused with Non-Compete, RECOMMENDER acknowledges and agrees that COMPANY has made a significant financial investment boarding merchants (including hefty sales commissions, which may take years for COMPANY to recoup) and paying costs to convert or load merchant to "BANKS" and/or FFUSA system and servicing those merchants - in advance of any income or profit. In fact COMPANY starts out at a loss for every merchant added to the system.

As such, RECOMMENDER agrees that so long as any Merchant Agreement of any merchant solicited by RECOMMENDER'S recommended Sales Partners remains in effect, and for a period not to exceed five (5) years after such date, RECOMMENDER shall not interfere in any manner whatsoever with the contractual rights and interests of "BANK'S" and/or COMPANY under any such Merchant Agreement, either directly or indirectly (including, without limitation, through any partnership, joint venture as an employee or other entity or arrangement whatsoever), or to cause or attempt to cause any approved merchant or other merchant of "BANKS" and/or COMPANY to engage in bank card transaction processing through any person or entity other than of "BANKS" and/or COMPANY. If RECOMMENDER directly or indirectly violates the provisions of this Paragraph 7, by its own act or omission or by permitting

the act or omission of any other person or entity, then all payments due to RECOMMENDER hereunder shall immediately cease and COMPANY shall have no further obligation to make any such payments and shall be entitled to all other remedies it may have under this Agreement or applicable law. The covenants of RECOMMENDER and all other provisions of this Section 4 shall survive termination of this Agreement.

**8. Termination by Company.** It is expressly understood and agreed that this Agreement may be terminated by COMPANY upon the occurrence of any of the following:

(a) Regulatory Order. COMPANY may immediately terminate this Agreement upon written notice to RECOMMENDER in the event that COMPANY, RECOMMENDER and/or BANKS become subject to any change in a statute, law, rule, regulation, policy or other official pronouncement of any state or federal government entity, regulatory agency or of MasterCard and/or VISA which would prohibit COMPANY, RECOMMENDER and/or BANKS from continuing the business and or activities described in this Agreement.

(b) Breach of VISA/MasterCard Rules. COMPANY may immediately terminate this Agreement upon written notice to RECOMMENDER; in the event that RECOMMENDER materially violates any of the respective rules or regulations of VISA and/or MasterCard relating to the performance of RECOMMENDER hereunder.

(c) Loss of VISA/MasterCard Membership; Bank Relationship. COMPANY may immediately terminate this Agreement upon written notice to RECOMMENDER, in the event of any of the following: (i) COMPANY's de-registration with VISA as an ISO and/or COMPANY's de-registration with MasterCard as an MSP; (ii) termination of BANKS applicable VISA and/or MasterCard license, its membership in VISA and/or MasterCard, or both, or in the event of de-registration of BANKS by VISA and/or MasterCard; (iii) termination of COMPANY's Merchant Program Management Agreement with BANKS; or (iv) termination, loss, non-renewal or revocation of any applicable registration of RECOMMENDER with VISA and/or MasterCard or ISO/MSP.

(d) Discretionary. COMPANY may terminate this Agreement at any time upon thirty (30) days notice to the RECOMMENDER.

**9. Termination by Either Party.** In addition to any other remedies provided herein, and subject to Section 5 hereof either party may terminate this Agreement during its term immediately upon written notice to the other party, in the event of any of the following:

(a) Material Breach. The other party commits a material breach of any term or condition of this Agreement, and the breach is not cured within five (5) days after receipt of notice thereof in writing from the non-breaching party (or in the event such breach can be cured but cannot reasonably be cured within

five (5) days, then within such longer period of time (not to exceed sixty (60) days) as is required to cure the same, provided the breaching party promptly commences and diligently pursues remedial action to completion).

(b) Insolvency. The other party files a voluntary petition in bankruptcy or files a petition seeking or acquiescing in any relief for itself under any present or future federal, state or other statute or law relating to bankruptcy, insolvency or other statute or law relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of all or any part of its property; or admits in writing its inability to pay its debts generally as they become due.

(c) Dissolution. The other party is dissolved or otherwise ceases to engage in its normal business operations and is unable thereby to fulfill its obligations under this Agreement.

**13. Indemnification.** RECOMMENDER shall indemnify, defend, and hold harmless COMPANY, Processors and "BANKS", their employees, officers, directors, shareholders, agents, corporate parents and RECOMMENDERS against any and all claims, liabilities, losses, damages, costs or expenses (including, without limitation, fees and expenses of attorneys and consultants and court costs) either directly or indirectly related or attributable to the negligence or wrongful act of RECOMMENDER, or any of its employees, agents or nominees, in performance hereunder, or the breach of this Agreement or any provision hereof by RECOMMENDER, or any of its employees, agents or nominees, any such action of RECOMMENDER, or any of its employees, agents or nominees in any way associated with or related to this Agreement. This indemnification obligation of RECOMMENDER shall include, without limitation, any and all claims for contractual, tortious, exemplary, punitive or statutory damages of any nature whatsoever and any and all injunctive or other equitable relief. This Paragraph 13 shall survive any termination of this Agreement.

**14. Confidential Information.** RECOMMENDER acknowledges that during the course of the relationship with the Company, it will have access to the Company's confidential, proprietary, business information, including, but not limited to, business processes, and customer target lists, the dissemination of which would likely result in irreparable injury to the Company ("Confidential Information"). Such Confidential Information is the Company's property. RECOMMENDER agrees at all times during the term of this Agreement and thereafter to hold in the strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm, or corporation without written authorization of the president of the Company, the Confidential Information. RECOMMENDER understands and acknowledges that this duty to always maintain the confidentiality of the Company's Confidential Information survives termination

of this Agreement. RECOMMENDER will ensure that any employees or independent contractors hired by it to perform RECOMMENDER's services hereunder will sign a confidentiality agreement requiring them to maintain the confidentiality of the Confidential Information and prohibiting them from use it for their benefit. Regardless of whether RECOMMENDER obtains confidentiality agreements from its employees and independent contractors, RECOMMENDER will indemnify Company for all damages, costs, and expenses, including reasonable attorney fees, arising out of and/or incurred by Company in connection with the disclosure or use of Confidential Information by any employee or independent contractor of RECOMMENDER.

**15. Remedies.** RECOMMENDER acknowledges that a breach of Sections 2, 7, and 8b, herein will cause irreparable injury to the Company for which monetary damages will be inadequate. RECOMMENDER acknowledges that the Company will be entitled to obtain from any court of competent jurisdiction temporary and permanent injunctive relief necessary to enforce the provisions of Sections 2, 7, and 8b. Such temporary and permanent injunctive relief shall not be exclusive of any other legal remedies that the Company may have upon breach of any provision of Sections 2, 7, and 8b. In addition, RECOMMENDER agrees to pay the Company its costs of bringing any action for the violation of this Agreement, including, but not limited to, Company's attorney fees and costs. RECOMMENDER acknowledges receiving sufficient good and valuable consideration for the commitment made in this Section.

**16. Notice.** Any notice that the parties are required or may desire to deliver, shall be delivered by facsimile transmission, with a confirming copy sent by United States mail, certified or registered, return receipt requested, proper postage prepaid to the other party at the address set forth herein below. Such notice shall be deemed delivered on the first (1st) business day following the facsimile transmission, provided that the sender can reasonably demonstrate its receipt or in the of proof of facsimile transmission, on the first (1st) business day after the date of mailing.

**18. Mutual Warranties.** Each Party to this Agreement warrants to the other Party all of the following: (a) it is duly organized and validly existing under the laws of the state wherein its principal offices are located and is in good standing in every other state where it is doing business; (b) it has all necessary rights, title, license and authority to enter into this Agreement; (c) the person(s) signing this Agreement on its behalf has full authority to bind it to the terms and conditions hereof; (d) performance by it of its duties and obligations under this Agreement has been duly authorized by all necessary action, will not violate any provision of its organization documents, or any amendment thereof, or constitute or result in a violation or breach under, nor conflict with, any statute or other law, any order or ruling of any court or tribunal, or any rule or regulation of any administrative agency or regulatory authority; and (e) with or without the lapse of time after the giving of notice by a third party, will not violate any provision of, nor constitute or result in a



violation or default under, or conflict with any contract, agreement, instrument or other undertaking to which it is a party or by which it or any of its properties or assets may be bound or affected.

**19. Governing Law.** This Agreement and all the documents referred to herein, shall in all respects, be interpreted, enforced and governed by and under the laws of the state of Minnesota.

**20. Jurisdiction and Venue.** RECOMMENDER and Company agree that the State of Minnesota has jurisdiction in any dispute or lawsuit that arises between the parties or pursuant to this agreement. Each party to this Agreement agrees not to bring or participate in a class, Sales Partner or private attorney general action against any other party to this Agreement in court or arbitration. RECOMMENDER and Company further agree that all disputes or litigation shall be venued in the Fourth Judicial District, County of Hennepin, State of Minnesota.

**21. Assignment.** No interest or right of RECOMMENDER under this Agreement shall be assigned or transferred in any manner by RECOMMENDER without the express written consent of COMPANY. COMPANY may assign this Agreement at any time without prior written notice to RECOMMENDER. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

**22. Counterparts.** This Agreement may be executed in one or more counterparts, by facsimile, each of which shall be deemed an original and all of which, taken together, shall constitute a single agreement. All signatories agree to execute a conformed copy of this Agreement within thirty (30) days of the execution of counterparts thereto.

**23. Invalidity.** Should any portion of this Agreement be held to be invalid, unenforceable or void, such holding shall not have the effect of invalidating or voiding the remainder of this Agreement and the parties hereby agree that the portion held invalid, unenforceable or void, shall, if possible, be deemed amended or reduced in scope, or otherwise be stricken from the Agreement, to the extent required for the purpose of the validity and enforcement hereof.

**24. Force Majeure.** Neither party shall be liable for any failure to perform any obligations under this Agreement because of acts of God, Nature or a federal, state or local government agency, war, civil disturbance, labor disputes or shortages, electrical or mechanical breakdowns, or any other cause beyond the control of that party, including the issuance of an injunction by either a state or federal court prohibiting the party from carrying on its day-to-day operations as contemplated under the terms of this Agreement.

**25. Authority.** All signatories executing this Agreement hereby represent that they have the full right, capacity and authority to enter into this Agreement and perform the Agreement set forth herein.

**26. Waiver.** No waiver of any term, covenant, condition or obligation of this Agreement, or any breach thereof, shall be effective unless granted in writing. The waiver by any of the parties of any term, covenant, condition or obligation herein contained or of any breach thereof, shall not be deemed to be a waiver of any other term, covenant, condition or obligation herein contained or any prior, concurrent or subsequent right hereunder. The respective rights and remedies of COMPANY and RECOMMENDER under this Agreement shall be cumulative, and the exercise or partial exercise of any such right, remedy or privilege shall not preclude the exercise of any other right, remedy or privilege. The nonexercise or partial exercise by either Party of any right, remedy or privilege under this Agreement shall not impair or preclude the future exercise by that Party of that same or any other right, remedy or privilege under this Agreement. The provisions of this Paragraph 30 shall survive any termination of this Agreement.

**27. Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, understandings and contracts between the parties with respect to the subject matter hereof. Any exhibits and/or Schedules referred to herein and attached hereto is/are hereby expressly incorporated herein in its/their entirety and made a part of this Agreement. All defined terms under this Agreement shall have the same meanings in any exhibit and/or Schedule referred to herein, except that, in the event of any conflict between any of the provisions of such exhibit and/ or Schedule and the provisions of this Agreement, the provisions of this Agreement shall prevail.

**Agreed and accepted;** the parties have executed this Lease as of the day and year first above written.

COMPANY:

First Financial USA, Ltd.

By \_\_\_\_\_

Its \_\_\_\_\_

RECOMENDER

\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Schedule "A"

COMMISSION & BONUS SCHEDULE

Residual Income

You earn 5% Residual Income Bonus (Paragraph 5.a) from merchant activity generated by Sales Partners you recommend.

Pro Tools Subscription Commission

You earn 50% monthly subscription income paid by Sales Partners you recommend.

Optional:

Beneficiary

Life happens. If you die, 100% of your Residual Income and Pro Tools Subscription Commissions can be transferred to a beneficiary. If you want this you simply need to opt in and complete the paperwork.