

Dining Alliance®

— PURCHASE WITH POWER —

NATION'S LEADING PURCHASING GROUP
FOR LOCAL RESTAURANTS



Request For Proposals

Credit Card Processor

Response Deadline: **June 1, 2016**

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- Labeled Exhibit “A” DA Referral Fee Agreement

I. Introduction

Dining Alliance, Inc. (“DA”) is a group purchasing organization located in Boston, Massachusetts, with over 20,000 independent restaurant members. DA is requesting proposals from reputable credit card processors with market leading technology in the form of a merchant processing platform and related processing services (the “Platform and Services”) to its over 20,000 members (the “Members”). The Platform and Services must be competitive with respect to price, features and technology with the leading credit card processing platforms and services available in the market today. Specific requirements are outlined in section IX of this document.

II. Scope

DA The scope of this Request for Proposals (“RFP”) includes not only the successful bidder’s providing the Platform and Services to the Members, but also the terms under which DA shall be incentivized to market, disseminate and assist the successful bidder in securing the Members’ agreement to utilize the Platform and the Services in a referral agreement (the “Referral Agreement”) with successful bidder. As set forth more fully in Section IX of this RFP, the successful bidder must be prepared to engage in cross-marketing of DA’s other offerings to the successful bidders existing customers. It is DA’s expectation that the successful bidder will fully engage with DA’s sales, marketing and information technology departments to provide for the successful rollout, marketing and sign-up of the Member’s to the Platform and the Services, but also for the purposes of referring DA and its group purchasing services (the “GPO Services”) to successful bidder’s customers.

DA reserves the right to withdraw this solicitation at any time for its sole convenience. In any event, DA will not be liable for any expense incurred for preparing a response to this RFP. Further, DA reserves the right to reject any and all proposals received and to award a contract in whole or part at our sole discretion.

III. About Dining Alliance

DA is a group purchasing organization located in Boston, Massachusetts, with over 20,000 independent restaurant members and more than \$5 billion in buying power. Dining Alliance supports restaurants by reducing their purchasing costs and helping them identify and source quality products. In short, we save the Members time and money in procuring all the goods and services they utilize in operating their restaurants and other foodservices businesses and membership is free. DA is a strategic partner of Compass / Foodbuy and affiliated with Fresh Concepts Produce, and Buyer’s Edge which provides us with over \$5 billion in buying power and an infrastructure that is second to none. We bring our members the best combination of buying power, experience, and technology. DA’s philosophy in business is to support continuous business

relationships. Therefore, emphasis will be placed on developing and maintaining continuous excellent relationships with the selected supplier partner. You can learn more about Dining Alliance at www.diningalliance.com

IV. Merchant Processing Initiative

The scope of this initiative includes:

- Development of mutually beneficial relationships
- Platform and Service Provider Selection and Management
- Contract Development and Administration
- Report and Data Management

V. Instructions for Submitting a Proposal

- Carefully read the attached DA Referral Agreement (Labeled Attachment “A”) Terms and Conditions presented within the Request for Proposals. The successful bidder will be expected to execute a referral agreement consistent with terms of the DA Referral Agreement. Any proposed changes must be submitted in a red-lined format by the bid due date and shall be considered exceptions to the RFP. The nature and extent of exceptions taken shall be part of DA’s consideration in awarding a contract to the successful bidder and bidders are encouraged to adopt as much of DA’s proposed contract terms as possible.
- If your company plans to submit a proposal, please respond via e-mail to john.prindiville@diningalliance.com by **May 18, 2016**.
- Document your company’s responses to the information requested in the RFP.
- **The following items comprise a complete response to this RFP:**
 - A competitive merchant processing program with a reputable processor, the terms to be outlined in the bidder’s response, but a minimum must include marketing leading technology with respect to the Platform and a competitive term set with respect to the Services, including a competitive rate based on interchange on AMEX/VISA/MC/Discover card processing, waiver of application and any other fees not traditionally charged by industry leading processors at the time of bidder’s response.
 - A preferred rate of 50% revenue sharing on fees generated by member sign ups, use of vendor’s platform and merchant processing for the over 20,000 member locations based in the restaurant industry, including any fees realized by the vendor generated on the following categories:
 - Any mark-up on interchange

- Transaction fees (authorization/captures/settle fee per transaction)
 - Batch fees and application fees (if any, although bidders should be advised that DA is seeking proposals where such fees are waived for its Members)
 - Additional fees (*e.g.*, monthly service fee, PCI compliance fees and tools, chargeback fees and tools, reversal/retrieval fees)
- A successful bidder must supply all marketing materials, and provide necessary technical support for Dining Alliance to engage in e-commerce marketing, and engage with DA's IT and marketing departments to develop web based tools and portals for the marketing, dissemination and successful signing of members onto bidders merchant platform/agreement.
 - A successful bidder should be willing to openly engage in cross-marketing opportunities beneficial to DA relative to its membership and programs, including referring vendor's existing customers in the restaurant/hospitality space to join DA membership.
 - Electronic copy of your response including your bid specification worksheet.

VI. The RFP Response Submission, Review and Selection Process and Related Timeline

A. Responding to the RFP

- All participating companies in this process agree to absorb their own costs and expenses in responding to this RFP. Nothing herein shall create an obligation on the part of DA to do business with any company in this RFP process.

B. The Selection Process

- Dining Alliance reserves the right to select the company it deems qualified and terminate negotiations at any time without incurring any liability.
- Any answer provided by DA to a participating company's question will be distributed to all other participants in the RFP and selection process.

C. Duration of Agreement

- DA's intent is to form a relationship with a merchant processing vendor for its members on a 3-5 year contractual basis. DA is seeking a merchant processing relationship that is competitive and able to provide our member locations with a full range of payment processing services.

D. Confidentiality

- Each party may use Information received from the other party hereunder, and may provide such Information to its parent corporations, if applicable, and their respective employees for their use, only in connection with the evaluation and execution of this RFP. Each party agrees that, for a period of two (2) years from receipt of Information from the other party hereunder, such party shall use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Information received.
- The foregoing shall not prevent either party from disclosing Information which belongs to such party or is (i) already known by the recipient party without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party without obligation of confidentiality, (iv) independently developed by the recipient party without use of the other party's Information, (v) disclosed without similar restrictions to a third party by the party owning the Information, (vi) approved by the other party for disclosure, or (vii) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the disclosing party provides the other party with notice of such requirement prior to any such disclosure.

E. Deadline

- All Proposals must be sent electronically via email to john.prindiville@diningalliance.com by **June 1, 2016**

F. Authority to Respond to Questions

- **John B. Davie** (john.davie@diningalliance.com), **Christina Davie** (christina.davie@diningalliance.com), **Sean Donahue** (sean.donahue@diningalliance.com), **Bud Loura** (bud.loura@diningalliance.com), **or Joseph Corrigan** (joseph.corrigan@diningalliance.com), are authorized to commit the company in responding to questions. Statements, responses, promises or any other information from any other person working for or on behalf of DA, are non-binding in this matter. **Questions should be sent via E-MAIL to john.prindiville@diningalliance.com** all questions and responses will be shared with all participating suppliers.

G. RFP Time Frame

DA will contact you regarding the status of your proposal and next steps by **June 8, 2016**. Until such time, please refrain from any questions related to the outcome of your proposal. The following is a summary of key dates related to this RFP:

Date of RFP	<i>May 11, 2016</i>
Respond via Email on Intent to Propose	<i>May 18, 2016</i>
Proposal Deadline	<i>June 1, 2016</i>
You will be contacted by DA	<i>June 8, 2016</i>
Vendor selection complete	<i>June 17, 2016</i>

VII. Reporting and Auditing

A. Reporting

Dining Alliance will require the successful bidder (the “Processor”) to submit monthly reporting within fifteen (15) days of the close of the previous month, outlining the following: (i) the name of the Dining Alliance Member on the Processor’s Platform and Service; (ii) the total charges billed and collected by the Processor; (3) the Referral Fees being remitted by the Processor to DA and the method and manner in which such charges were collected.

B. Auditing

In addition, audit privileges in order to verify compliance with the referral agreement, to confirm that the essential terms of the Platform and the Services are being offered to Members; and to ensure that revenue sharing is occurring as agreed upon by the parties.

- Detailed audits are a required condition of this program. The successful bidder shall agree to work with DA on a potential electronic auditing process of the Platform and the Services as well as the Referral Fee calculated by the Processor and remitted to DA, through DA’s third party price verification provider, Buyers Edge.
- DA will be allowed two (2) more formal audits per year. Audits will be conducted either on-premises at your facility or as a “mail-in” audit. You will be required to provide documentation as to interchange rates, markups, DA Members participating on the program and any fees charge and generated by the Processor to the Members. The documentation required shall include all documents and/or data necessary for DA to confirm the

Processor's interchange costs, the fees and markups and amounts calculate as DA's Referral Fee. Photocopies or original documents can be used for "mail-in" audits.

VIII. Merchant Processing Platform Services Documents and the DA Referral Fee Agreement

- A. Terms and Conditions for the Processor's Platform and Services.
In responding to the RFP, all bidders shall submit their own documents outlining all terms and conditions of their Platform and the Services, as well as sample of the marketing materials used in promoting the Platform and Services.
- B. The DA Referral Fee Agreement.
Labeled Attachment "A" – DA Referral Agreement; your company will be expected to sign off on this contract including all of its Terms & Conditions.

IX. Evaluation of Proposals

- Any proposal may be accepted or rejected, in whole or part, with or without further negotiation.
- There will be no payment by DA for any costs incurred in connection with the preparation and submission of proposals
- The supplier agrees for the purpose of evaluation of the proposal to allow DA representatives to conduct a detailed review of the bidder's platform and related services, technical capabilities, and financial status to determine if they are adequate for the proper performance of the proposed contract.
- All documents constituting the bidder's proposal are to be provided by the stated closing date. Failure to comply will be grounds for rejection of offers.
- It is anticipated that a contract will be awarded to the supplier whose proposal is technically acceptable and offers the best overall value to DA and the Members. The right is reserved to reject any or all proposals.
- The successful bidder will be based upon a number of criteria, (not necessarily listed in a hierarchical order) including:
 - Most favorable merchant programs
 - Size of referral fee and revenue sharing from the same; and
 - Fewest (if any) exceptions to contract terms

- Pricing structure
- Ability to meet administrative and operational requirements (from an IT support, timing, and logistics perspectives)
- Proven performance and reliability (references from current and past customers)
- Customer service quality
- Compliance and/or agreement with terms and conditions and other non-technical requirements
- Company culture and values
- Business alliance, business relationships, and supplier relationships
- Risk to DA and the Members.

XI. Other Considerations and Comments.

A. Dining Alliance reserves the right to:

- Negotiate changes in the technical content of any proposal
- Negotiate the pricing arrangement of the most satisfactory proposal to determine a fair and reasonable financial arrangement
- Accept the financial proposal without negotiation

B. Prospective vendors are encouraged to provide additional proposal information, innovative alternate solutions, and financial arrangements. However, your proposal must address the requirements outlined in this RFP.

I HAVE REVIEWED ALL INFORMATION PROVIDED IN THIS BID PROPOSAL AND FIND IT TO BE ACCURATE AND IN COMPLIANCE WITH THE PROVIDED GUIDELINES.

(First Name, Last Name – PLEASE PRINT)

COMPANY NAME

SIGNATURE (COMPANY OFFICER)

DATE

TITLE

EXHIBIT A

CREDIT CARD PROCESSOR REFERRAL AGREEMENT

This Referral Agreement (“Agreement”) is made and entered into as of the _____ day of, _____ 2016, by and between CREDIT CARD PROCESSOR and Dining Alliance Inc. (“Referral Company” hereinafter).

RECITALS

A. CREDIT CARD PROCESSOR is engaged in the business of providing services to businesses that require the processing of electronic payments, including debit and credit card processing (“Services”), for goods and services pursuant to a Merchant Agreement between the merchant and CREDIT CARD PROCESSOR (a “Merchant Agreement”).

B. The purpose of this Agreement is to set forth terms and conditions under which CREDIT CARD PROCESSOR will pay a fee to Referral Company for merchants referred by Referral Company to CREDIT CARD PROCESSOR who enter into a Merchant Agreement which is accepted by CREDIT CARD PROCESSOR as set forth herein.

Now, therefore, in consideration of the above Recitals and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Processor Services.** Referral Company desires to participate in the programs offered by and through CREDIT CARD PROCESSOR and CREDIT CARD PROCESSOR agrees to provide processing services to merchants referred to CREDIT CARD PROCESSOR by Referral Company and accepted by CREDIT CARD PROCESSOR pursuant to the terms set forth herein and pursuant to the terms of the merchant agreements to be entered into between CREDIT CARD PROCESSOR and each individual merchant (hereinafter "Merchants"). CREDIT CARD PROCESSOR agrees to provide Referral Company with a proposal with respect to each merchant that Referral Company refers to CREDIT CARD PROCESSOR for the credit card processing programs it intends to offer each such referred merchant. In the proposal, CREDIT CARD PROCESSOR shall outline all gross profits expected to be received from the credit card processing programs and/or services offered to the merchant in detail, including without limitation, outlining in each such proposal, any proposed mark-up over interchange, any fees (application, batch, annual fees, or other fees), and any other fees, surcharges or other costs to be charged to merchant for use of the CREDIT CARD PROCESSOR’s programs and related credit card processing platform and services. A Merchant shall be considered accepted when it has entered into a merchant agreement with CREDIT CARD PROCESSOR and Merchant Bank.

2. **Fees, Charges and Discount Rates.**

2.1. CREDIT CARD PROCESSOR agrees to pay Referral Company (see **attached Schedule B for pricing schedule**) by the Merchants referred to CREDIT CARD PROCESSOR for so long and such Merchants process with CREDIT CARD PROCESSOR (the “Referral Fee”). The Referral Fee shall be paid within 25 days after CREDIT CARD PROCESSOR has received payment from its affiliates with respect to the referred Merchants.

2.2. CREDIT CARD PROCESSOR has the sole right to approve or decline all applications and change the rates in accordance with the agreement for credit card processing submitted by individual Merchants. CREDIT CARD PROCESSOR shall not disclose proprietary information to the Referral Company relative to credit approval or declination.

2.3. This Agreement applies only with respect to those Merchants referred to CREDIT CARD PROCESSOR by Referral Company, and shall not in manner apply to any Merchants acquired by CREDIT CARD PROCESSOR from other sources, including but not limited to, prior Merchants already processing through CREDIT CARD PROCESSOR and Merchants referred to CREDIT CARD PROCESSOR by others.

3. **Limitation of Liability.** In no event shall CREDIT CARD PROCESSOR, officers, directors, members, representatives or agents be liable to Referral Company for any special, incidental, consequential, or indirect damages in connection with this Agreement. Liability of CREDIT CARD PROCESSOR for any and all causes, whether arising out of negligence, breach of contract, tort or otherwise, shall, in the aggregate, not exceed the amounts paid to Referral Company by CREDIT CARD PROCESSOR for the six (6) calendar months preceding any tort, breach or other liability alleged by Referral Company. The limitations set forth in this section shall apply whether or not the alleged breach or default is a breach of a fundamental condition or term, or a fundamental breach, or if any limited warranty or limited remedy fails of its essential purpose.

4. **Liability for Losses/Indemnification.** Referral Company hereby agrees to indemnify and hold CREDIT CARD PROCESSOR harmless from and against any claim, demand, loss, financial or otherwise, damage, liability or cost, including legal fees and expenses, proximately caused by or from any intentional or negligent misrepresentation by the Referral Company related to the referral of merchants to CREDIT CARD PROCESSOR. In the event a merchant commits fraud and CREDIT CARD PROCESSOR incurs losses and CREDIT CARD PROCESSOR closes the account from that point forward CREDIT CARD PROCESSOR will stop paying the Referral Company on that specific account. CREDIT CARD PROCESSOR hereby agrees to indemnify and hold Referral Company harmless from and against any claim, demand, loss, financial or otherwise, damage, liability or cost, including legal fees and expenses, caused by any intentional or negligent misrepresentation by CREDIT CARD PROCESSOR.

5. **Term and Termination.** This Agreement shall have an initial term of one (1) year from the date both parties execute this Agreement and shall thereafter automatically renew for successive twelve (12) month periods. Either party may terminate this Agreement by notifying the other party in writing at least sixty (60) days prior.

If either party defaults in the performance of any obligation under this agreement, and fails to remedy such default within thirty (30) calendar days after receipt of written notice of the default, the other party may terminate this agreement upon written notice.

Upon termination, Referral Company shall return to CREDIT CARD PROCESSOR all marketing materials, price lists, customer lists, equipment, supplies and any other CREDIT CARD PROCESSOR

property in his/her possession at time of termination. Referral Company shall not continue to use the names and logos of CREDIT CARD PROCESSOR or any of its subsidiaries after termination.

6. **Confidentiality.** The parties agree that the terms of this Agreement, as well as all information of a business nature relating to the business operations of the parties, which are disclosed in connection with this Agreement are confidential. The parties shall not, without the express prior written consent of the other party, use (except as contemplated by this Agreement) disclose or permit access to any such confidential information during the term of this Agreement or for a period of two (2) years thereafter. Each party agrees to cause its employees and agents to take such action as shall be reasonably necessary to preserve and protect the confidentiality of such information.

The obligations imposed upon either party herein shall not apply to information which becomes available to the public through no wrongful act of the receiving party; or may be published prior to the date hereof; is already in possession of the receiving party and not subject to an existing agreement of confidence; is received from a third party without restriction and without breach of this agreement or any other agreement of confidence; or is independently developed by the receiving party (without use of information provided hereunder); or is disclosed pursuant to a requirement or request of a government agency or a court of competent jurisdiction.

7. **Ownership of Merchants.** Referral Company acknowledges that performing its duties and obligations under this Agreement confers no rights and/or equity in any of the Merchants nor the Merchant Agreements obtained CREDIT CARD PROCESSOR through Referral Company's referral.

8. **Marketing Materials.** Referral Company agrees that all marketing and promotional materials must receive written approval from CREDIT CARD PROCESSOR prior to use.

9. **Representations.** Referral Company represents and warrants to CREDIT CARD PROCESSOR as follows:

(a) Referral Company has the full power and authority to execute, deliver and perform this Agreement. This Agreement is valid, binding and enforceable against Referral Company in accordance with its terms.

10. **Non-Solicitation of Merchants.** Without CREDIT CARD PROCESSOR's prior written consent, Referral Company shall not (i) solicit or otherwise cause any Merchant to terminate its Merchant Agreement or receipt of Processing Services; or (ii) solicit or market processing services to any merchant that is already directly or indirectly provided Processing Services by CREDIT CARD PROCESSOR, whether or not such are provided under the terms of this Agreement. This Section 9 shall survive for a period of six (6) months following any termination of this Agreement.

11. **Notices.** All notices and other communication required or permitted under this Agreement shall be in writing and given by personal-delivery, telecopy (with telecopy confirmation and confirmed by a mailed copy) or first-class mail, postage prepaid, addressed as follows:

If to CREDIT CARD PROCESSOR:

Attention: _____

If to Referral Company: Dining Alliance Inc.
307 Waverley Oaks Road
Suite #401
Waltham, MA 02452

Attention: _____

12. **Additional Terms and Conditions.**

12.1 **Governing Law/Waiver/Jurisdiction.** This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law provisions. If any provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Jurisdiction and venue for any claim, dispute or cause of action between the parties shall be exclusively located in Suffolk County, in Boston, Massachusetts.

12.2. **Business Relationship.** CREDIT CARD PROCESSOR and Referral Company hereby acknowledge and agree that Referral Company will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed to imply that Referral Company, or any employee, agent or other authorized representative of Referral Company, is a partner, joint venture, agent, officer or employee of CREDIT CARD PROCESSOR and neither party shall hold itself out as the same. Except as expressly authorized in writing, neither party may bind the other or make representations on behalf of the other.

12.3 **Entire Agreement.** This Agreement including all schedules, exhibits and attachments thereto, embodies the entire understanding and agreement of the parties with respect to the subject matter hereof. This Agreement shall be binding upon and shall inure only to the benefit to the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

12.4. **Assignment.** Referral Company shall not assign, delegate, subcontract, license, franchise, or in any manner attempt to extend to any third party any right or obligation under this Agreement without the prior written consent of CREDIT CARD PROCESSOR, which consent shall be at the sole discretion of CREDIT CARD PROCESSOR.

12.5. **Authority.** Each party represents that the individual executing this Agreement on its behalf has the requisite power and authority to do so and that this Agreement constitutes the valid and binding

obligation of each party.

12.6. **Attorneys' Fees and Costs.** All disputes, controversies or differences that may arise between the parties out of or in relation to or in connection with this Agreement, or the breach hereof, shall be finally settled exclusively by binding arbitration in accordance with the United States Arbitration Act (Title 9, U.S. Code), notwithstanding any choice of law provision in this Agreement, and under the Commercial Arbitration Rules of the American Arbitration Association then in effect. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrators.

EACH PARTY HERETO UNDERSTANDS AND AGREES THAT THIS AGREEMENT TO ARBITRATE CONSTITUTES A WAIVER OF ANY RIGHT TO A TRIAL BEFORE A COURT OR JURY OR A HEARING BEFORE A GOVERNMENTAL AGENCY ON ANY MATTERS SUBJECT TO ARBITRATION UNDER THIS AGREEMENT.

12.7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

12.8. **Section Headings.** The section headings contained in this Agreement are for convenient reference only, and shall not in any manner affect the meaning or interpretation of this Agreement.

12.9. **Interpretation.** This Agreement or any section of this Agreement shall not be construed against any party due to the fact that the Agreement or any section of it was drafted by said party.

12.10. **Force Majeure.** Neither party shall be liable for failure to fulfill its obligations under this agreement if such failure is due to any cause or condition beyond such party's reasonable control, such as: natural disaster, acts of God, strikes, fire, floods, war, riot, and electrical power failure, decrees of governmental bodies or communications failure.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date first above written.

(Credit Card Processor)

By: _____
Officer, Title

Dining Alliance Inc.

By: _____
Officer, Title