



FIRSTPAY.NET 2.0 Processing Terms & Conditions

The following FIRSTPAY.NET™ Processing Terms & Conditions apply only if MERCHANT has agreed to utilize FIRSTPAY.NET 2.0 Internet Services.

This Supplement is entered into by and between First American Payment Systems, L.P., whose principal place of business is 100 Throckmorton Street, Suite 1800, Fort Worth, Texas, 76102 (hereinafter referred to as "FIRSTPAY.NET" or "BANK"), and "MERCHANT," whose name and address are stated on the Merchant Application & Agreement. For purposes of this Agreement, FIRSTPAY.NET, BANK and First American Payment Systems, L.P. shall be synonymous and reference to one includes reference to the other.

MERCHANT expressly agrees and acknowledges that the FIRSTPAY.NET Processing Terms & Conditions are a Supplement to the Merchant Credit Card Processing Terms & Conditions. The Merchant Credit Card Processing Terms & Conditions, which are incorporated herein by reference, and the Processing Terms & Conditions set forth below shall apply if MERCHANT has agreed to utilize the FIRSTPAY.NET products.

Services:

A. Total Package. If MERCHANT has marked the "Total Package" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services via the Internet. MERCHANT understands that the "Total Package" includes the "Internet Payment Gateway" as described in B. below, as well as a shopping cart and website templates.

B. Internet Payment Gateway. If MERCHANT has marked the "Internet Payment Gateway" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services via the Internet. MERCHANT understands that the "Internet Payment Gateway" consists of a payment gateway and virtual terminal for transmitting cardholder data with an e-commerce indicator via the Internet.

C. MOTO Virtual Terminal. If MERCHANT has marked the "MOTO Virtual Terminal" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services when the purchase and cardholder information has been provided to MERCHANT via telephone or in written form via mail. MERCHANT understands the "MOTO Virtual Terminal" is a secure virtual terminal. MERCHANT also understands that transactions processed utilizing this product does not contain an e-commerce indicator and that all customer orders for purchases must be obtained via the telephone or by mail.

D. Batch Upload (Offline Transactions Only). If MERCHANT has marked the "Batch Upload" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the offline acceptance of and transmission of cardholder data for its customer's purchase of goods and or services.

E. Virtual Point-of-Sale. If MERCHANT has marked the "Virtual Point-of-Sale" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services when the purchase and cardholder information has been provided to MERCHANT in person for a card-present swiped or keyed transaction.

F. 1stPayMobile. If MERCHANT has marked the "1stPayMobile" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services when the purchase and cardholder information has been provided to MERCHANT in person for a card-present swiped or keyed transaction.

G. Payment Plug-in for QuickBooks® - Download. If MERCHANT has marked the "Payment Plug-in for QuickBooks® - Download" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services when the purchase and cardholder information has been provided to a RETAIL MERCHANT for card-present swiped or keyed transactions OR to a MOTO MERCHANT for card-not-present keyed transactions.

1. Transaction Processing. FIRSTPAY.NET agrees to perform transaction-processing services for MERCHANT. This includes the acceptance and authorization of transactions forwarded from MERCHANT in a timely manner, the subsequent transmission of transactions to the processing network and the detailed reporting of those transactions via MERCHANT's web-based Merchant Menu.

2. Fees. In addition to the fees outlined in the Credit Card Processing Terms & Conditions, MERCHANT hereby authorizes FIRSTPAY.NET to initiate debit/credit entries to the bank account supplied or any other bank account number, for monthly or other applicable charges. MERCHANT understands and agrees there are additional fees associated with using the FIRSTPAY.NET products, in addition to the fees described in the Merchant Credit Card Processing Terms & Conditions – Rates; Fees; Adjustments section. MERCHANT further understands FIRSTPAY.NET shall have the right to adjust charges as necessary to offset any direct or indirect cost associated with providing ser-

vices hereunder. Such charges shall, without prior notice, become effective as of the date of change.

3. Acceptable Use Policy. MERCHANT will not engage in "Net Abuse", which can be defined as, but is not limited to: (i) sending any kind of unsolicited or unwelcome email to a substantial number of network users, anywhere on the Internet, (ii) posting a single article or substantially similar articles to an excessive number of newsgroups or mailing lists (i.e., 20 or more), (iii) repeated or deliberate posting of articles that are off-topic according to the charter of that newsgroup or mail list, (iv) posting commercial advertising in almost any conference or newsgroup, unless it is specifically permitted within that group. MERCHANT understands that FIRSTPAY.NET investigates all reported occurrences of Net Abuse, and will take action according to the circumstances and severity of the abuse. Depending on the severity of the breach of this policy, FIRSTPAY.NET may, at its sole discretion, with or without notice, suspend processing or terminate account immediately.

4. Indemnification. MERCHANT hereby releases, indemnifies, and holds FIRSTPAY.NET harmless for any losses, claims, cost or consequential damages to MERCHANT, purchaser, or any other third party as a result of FIRSTPAY.NET's acts or omissions under this Agreement, including but not limited to:

(a) Any delays in the performance of services hereunder or for any failure to perform same hereunder if such delays are due to strikes, inclement weather, acts of God, Internet disruption, network failure, or other causes beyond FIRSTPAY.NET's reasonable control. FIRSTPAY.NET will not be liable for performance of services where delayed by war, riots, embargoes, strikes, or acts of its vendors and suppliers, concealed acts of workmen or third parties (whether of FIRSTPAY.NET or others), criminal conduct, or accidents;

(b) FIRSTPAY.NET shall not be responsible or liable for unauthorized access of facilities or to MERCHANT's data or programs due to any intentional act or accident, and whether by illegal or fraudulent means or devices;

(c) Failures in software, whether known or not known;

(d) Failures in communications or connectivity;

(e) Any damage caused by or resulting in a loss from negligence, fraud, dishonesty, or willful behavior by MERCHANT's employees, customers or agents;

(f) FIRSTPAY.NET shall not be liable for the individual merit, legitimacy or authenticity of orders forwarded from MERCHANT regardless if an authorization number is issued; and

(g) FIRSTPAY.NET is not responsible for the security of data residing on the server of the MERCHANT, or a third party designated by a MERCHANT (e.g., a host).

Further MERCHANT acknowledges it will not make any claim against FIRSTPAY.NET for any losses or damages, including, but not limited to, loss of income, loss of revenue, economical loss, consequential, direct, indirect, special, exemplary, or punitive relating to the use of FIRSTPAY.NET.

5. Transaction Data. FIRSTPAY.NET shall retain full ownership of all data submitted by either MERCHANT or Purchaser through the FIRSTPAY.NET Payment Gateway (Payment Gateway refers to the electronic systems through which a MERCHANT may pass payment information to FIRSTPAY.NET) including, but not limited to name, mailing & shipping address, email address, phone number, dollar amount of purchase, type of purchase and description of purchase. Cardholder data is stored for ninety (90) days in the virtual terminal.

6. Validity. If any provision in this Agreement is invalid, such invalidity shall not affect the validity of the remaining provisions of this Agreement, and MERCHANT and FIRSTPAY.NET agree to substitute for the invalid provision a valid provision that most closely approximates the effect and intent of the invalid provision.

7. Payment Gateway Monitoring. MERCHANT understands that FIRSTPAY.NET has full authority and rights under this Agreement to deny orders, deny transactions or delay or halt processing of transactions, with or without notice, for transactions, which exceed any of the parameters set forth in the Merchant Profile Section of the Merchant Application & Agreement.

8. DISCLAIMER. FIRSTPAY.NET DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MERCHANT ACKNOWLEDGES THAT THE SERVICE MAY NOT BE UNINTERRUPTED OR ERROR FREE.