



License #

FIRST AMERICAN PAYMENT SYSTEMS L.P.
301 COMMERCE ST., STE 2000 • FORT WORTH, TEXAS 76102
817.317.9100 • FAX: 817.317.9191 • www.first-american.net

FIRSTPAY.NET TRANSACTION PROCESSING AGREEMENT

BUSINESS NAME(S)

EXACT LEGAL NAME:

NAME OF ACCOUNT (DOING BUSINESS AS):

MAILING/BILLING ADDRESS:

PHYSICAL STREET ADDRESS (IF DIFFERENT FROM MAILING ADDRESS):

CITY, COUNTY, ST., ZIP:

CITY, COUNTY, ST., ZIP:

CORPORATE PHONE NO.:

DBA PHONE NO.:

DBA CONTACT:

MERCHANT WEB SITE ADDRESS:

MERCHANT E-MAIL ADDRESS:

WEB DESIGNER NAME:

WEB DESIGNER PHONE:

WEB DESIGNER E-MAIL:

FIRSTPAY.NET MONTHLY GATEWAY / HOSTING FEE DISCLOSURE

MONTHLY GATEWAY / HOSTING FEE \$ _____

Merchant understands that a First American Payment Systems L.P. Merchant Agreement must accompany this FirstPayNet Transaction Processing Agreement.

These fees will be collected via ACH with other merchant processing fees due as contained in the terms and conditions of the First American Payment Systems Merchant Processing Agreement.

MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY FIRST AMERICAN PAYMENT SYSTEMS L.P.

IMPORTANT NOTICE: *The provisions on the reverse side of this Agreement are a part of this Agreement. Those provisions must be read before signing. By signing below, you agree to the terms on the front and back of this Agreement.*

AGREED AND ACCEPTED

PRINT LEGAL NAME OF MERCHANT BUSINESS

X

SIGNATURE & TITLE

PRINT NAME

DATE

FOR FIRST AMERICAN USE ONLY:

ACCEPTED BY:

FIRST AMERICAN PAYMENT SYSTEMS L.P. 301 Commerce St., Suite 2000, Fort Worth, Texas 76102

SIGNATURE

TITLE:

EFFECTIVE DATE:

FIRSTPAY.NET TRANSACTION PROCESSING AGREEMENT

This Agreement is entered into the day and year indicated on the signature page hereof (hereinafter referred to as the "Agreement") by and between FirstPayNet, whose principal place of business is 301 Commerce Street, Suite 2000, Fort Worth, Texas, 76102 (hereinafter referred to as "FirstPayNet"), and "Merchant," whose name, complete address, business organization and type of business are stated on the Agreement. FirstPayNet is a DBA of First American Payment Systems L.P., located in Fort Worth, Texas. For purposes of this Agreement the corporate entities FirstPayNet and First American Payment Systems L.P. shall be synonymous and reference to one includes reference to the other. In consideration of the premises set forth herein, FirstPayNet and Merchant hereby agree as follows:

1. FirstPayNet 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. By signing the Agreement, Merchant understands and agrees that the FirstPayNet Transaction Processing Services require additional charges to be billed directly by FirstPayNet to the Merchant and payable pursuant to paragraph 14 listed below.
3. By signing this document, Merchant will indemnify, protect, defend and hold FirstPayNet, affiliates and/or subsidiaries and all of its or their officers, agents and/or employees, harmless from and against any and all claims, losses, demands, actions, expenses, damages, liability and/or causes of action, including, (without limitation) attorneys' fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from:
 - a. Merchant breach of this Agreement or any warranty or representation made to FirstPayNet;
 - b. Any damage or loss caused by negligence, fraud, dishonesty or willful behavior by Merchant or any of Merchant employees or agents;
 - c. Any contention, whether well-founded, baseless or otherwise, that Merchant violated the law or any rule or regulation;
 - d. Any damages resulting from or related to any failure or delay of FirstPayNet in providing transaction processing services under this Agreement; or
 - e. 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 FirstPayNet's reasonable control. FirstPayNet 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 FirstPayNet or others), criminal conduct, or accidents.

The indemnifications provided for in this Article shall survive any termination of this Agreement.
4. Merchant warrants to FirstPayNet that the Merchant is engaged in the lawful business shown on any agreement with FirstPayNet which includes the sale of merchandise and / or services, and is duly licensed to conduct such business under the laws of the state, county and city in which Merchant is located.
5. FirstPayNet shall not be liable for the individual merit and legitimacy of orders forwarded from Merchant. This liability shall remain the Merchant's.
6. FirstPayNet shall in no event be liable to Merchant or Purchaser (Purchaser is any customer, client, member or entity who elects to do business with or buy goods or services from Merchant) for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement, the performance or breach thereof, or the accuracy or correctness of the data being passed to and from Merchant, even if FirstPayNet and/or Merchant has been advised of the possibility thereof.
7. Any claim or legal action arising out of disputes, failures, misrepresentations, malfunctions, or defects shall be waived. In no event shall FirstPayNet's liability to Merchant exceed the total amount Merchant paid to FirstPayNet hereunder. FirstPayNet shall have no liability to a Purchaser. Merchant agrees that any cause or action arising out of or relating to this Agreement must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred. Jurisdiction of any legal proceeding arising hereby shall be Fort Worth, Tarrant County, Texas, United States of America.
8. Merchant agrees, as a company and/or as an individual, to defend, indemnify, and hold harmless FirstPayNet from any and all claims resulting from Merchant's use of any services contemplated under this Agreement, which cause damage to Merchant, Purchaser, or any other person or entity.
9. FirstPayNet shall not be responsible or liable for unauthorized access of facilities or to Merchant's data or programs due to intentional act, accident, illegal or fraudulent means or devices.
10. FirstPayNet shall retain full ownership of all data submitted by either Merchant or Purchaser through the FirstPayNet Payment Gateway (Payment Gateway refers to the electronic systems through which a Merchant may pass payment information to FirstPayNet) including, but not limited to name, mailing & shipping address, email address, phone number, dollar amount of purchase, type of purchase and description of purchase.

11. Merchant agrees that FirstPayNet's services shall only be used or performed for lawful purposes. Any transaction or transmission, which violates any Federal, State, or local law is expressly prohibited.
12. Merchant understands that Merchant may not process orders on behalf of any other entity or individual and that the use of the transaction processing services is provided herein as a service license for a single Merchant account. Any attempt to use the transaction processing services provided herein for more than one Merchant account without additional service licenses may result in additional fees and charges and/or the revocation of the service license and termination of this Agreement. This Agreement is non-transferable by Merchant and may not be sold, traded, assumed or otherwise transferred to any other individual or entity without the express written consent of FirstPayNet. This Agreement is transferable by FirstPayNet.
13. This Agreement may be amended by FirstPayNet at any time upon written or electronic notice to Merchant of not less than ten (10) days prior to the effective date of such amendment, except for service fee or other fee increases, which take effect upon thirty (30) days' notice.
14. Merchant hereby authorizes FirstPayNet to either initiate transaction entries to Merchant's depository account number or to charge Merchant's credit card known by or provided to FirstPayNet (and as those numbers may be changed, any new account numbers provided to FirstPayNet) for monthly or other applicable charges. This billing will occur once each month regardless of the number of days in which services were actually performed for that month. Merchant agrees that in the event of non-payment Merchant's processing services may be placed on hold and a non-payment fee of \$25.00 will be incurred for each unsuccessful attempt to bill Merchant by either ACH or debit. Service may be restored immediately upon payment in full of past due charges and fees. Merchant agrees to pay all costs and expenses of whatever nature, including attorneys' fees and other legal expenses, incurred by or on behalf of FirstPayNet in connection with the collection of all unpaid charges and fees. Payment Terms:
 - a. It is the Licensee's understanding they will be charged the rates and fees for their use of the Software as set forth in their Agreement at the time of sale.
 - b. If the Licensee fails to stay current with the payment terms, FirstPayNet reserves the right to discontinue use of any Software or processing services.
15. Acceptable Use Policy: Merchant will not engage in Net Abuse, that can be defined as (but is not limited to):
 - a. Sending any kind of unsolicited or unwelcome email to a substantial number of network users, anywhere on the Internet
 - b. Posting a single article or substantially similar articles to an excessive number of newsgroups or mailing lists (i.e., 20 or more).
 - c. Repeated or deliberate posting of articles that are off-topic according to the charter of that newsgroup or mail list.
 - d. Posting commercial advertising in almost any conference or newsgroup, unless it is specifically permitted within that group. I understand that FirstPayNet investigates all reported occurrences of Net Abuse, and will take action according to the circumstances and severity of the abuse. For first offenders, FirstPayNet will normally issue a warning and take necessary action to minimize any damage. Depending on the severity of the breach of this policy, FirstPayNet may in its discretion immediately take any of the following actions:
 - i. Immediate suspension of your account, halting all processing of credit card and/or ACH transactions.
 - ii. Termination of account. FirstPayNet will not tolerate Net Abuse of any kind.
16. Merchant agrees not to change its type of business, without the express written consent of FirstPayNet.
17. The Merchant will be considered in default when past due charges have not been paid for 30 days and will be subject to an interest charge of 1.5% per month on the outstanding balance.
18. Merchant may terminate monthly service with 30 days written notice and only a request in writing relieves Merchant from the obligation to pay charges at the conclusion of thirty days from date of receipt of notice. FirstPayNet reserves the right to cancel this Agreement and Merchant's transaction processing account at any time for any reason. As a condition of this Agreement being effective, Merchant must have and abide by the terms of an effective Merchant Processing Agreement with First American Payment Systems L.P.
19. 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 FirstPayNet agree to substitute for the invalid provision a valid provision which most closely approximates the effect and intent of the invalid provision.
20. This Agreement shall remain ineffectual until signed by a FirstPayNet authorized signatory.