

## Addendum to Merchant Application & Agreements

Merchant DBA Name: \_\_\_\_\_

The Merchant Processing Terms & Conditions are amended as follows:

Section 11. Term; Termination. is deleted and replaced with the following:

**Term; Termination.** The initial term of this Agreement shall commence upon BANK's acceptance hereof (as evidenced by BANK's performance hereunder) and continue in full force and effect for the term set forth in the Acknowledgements section of the Merchant Application & Agreement. Thereafter, the Agreement will automatically renew for additional one-year periods unless MERCHANT gives (and BANK receives) written notice of non-renewal prior to the end of the applicable term. The written notice must contain MERCHANT's signature as it appears on the Merchant Application & Agreement in order to be accepted. Notwithstanding any other provision hereof, the Agreement may be terminated by BANK, with or without cause or reason, and with or without notice. Termination by BANK for any service may (at BANK's option) result in termination of all services. In the event MERCHANT submits bank card transactions to BANK after the date of termination, the bank card transactions may (at BANK's option) be processed subject to the terms and conditions of this Agreement. If this Agreement is terminated by MERCHANT prior to the end of the term or by BANK as a result of MERCHANT's breach, BANK will be entitled to recover and MERCHANT shall pay on demand, an early termination fee as set forth in the Acknowledgements section of the Merchant Application & Agreement\* for each MERCHANT location. Termination of any ancillary service (i.e., Debit, Check Services, etc.) is subject to an early termination fee of \$100 per service. BANK may hold payment of any monies due MERCHANT to ensure that all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this Agreement. \*[ARKANSAS MERCHANTS - early termination fee is up to fifty dollars (\$50.00)].

Section 13. Attorneys' Fees and Collection Costs is deleted in its entirety.

Section 17. Arbitration is deleted in its entirety.

Section 20. Indemnification is deleted in its entirety.

Section 21. Governing Law; Jurisdiction is deleted and replaced with the following:

**Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Michigan applicable to agreements made and to be performed entirely within such state without regard to the conflicts of law principles of such state. The parties hereby agree that venue of any action under this agreement shall be exclusively in the state district courts located in Washtenaw County, Michigan.

The FirstPay.Net 2.0 Processing Terms & Conditions are amended as follows:

Section 4. Indemnification is deleted and replaced with the following

**4. a) Force Majeure.** FIRSTPAY.NET shall not be responsible for 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;

**4. b) Uncontrollable Factors.** FIRSTPAY.NET shall not be responsible for liable failures in software, communication or connection beyond its reasonable control. In addition, FIRSTPAY.Net shall not be responsible for any loss resulting from MERCHANT's negligence, fraud, or willful misconduct

**Exhibit A – Data Security, PCI Compliance, and Insurance Requirements** is deleted and replaced with the following:

#### **Exhibit A – Data Security, PCI Compliance, and Insurance Requirements**

##### **1. Payment Card Industry Data Security Standards (PCI DSS) Compliance**

###### **1.1 PCI DSS Certification**

Vendor shall at all times comply with the most current version of the **Payment Card Industry Data Security Standards (PCI DSS)** as published by the PCI Security Standards Council. Vendor shall:

- Maintain PCI DSS compliance applicable to all services performed under this Agreement.
- Make available to the City its current **Attestation of Compliance (AOC)** upon written request by the City.
- Ensure that all systems, applications, and subcontractors involved in storing, processing, or transmitting cardholder data maintain PCI DSS compliance.
- Encrypt all cardholder data in transit and at rest using strong encryption standards consistent with PCI DSS requirements.
- Limit access to cardholder data to personnel with a legitimate business need and maintain appropriate access controls.

###### **1.2 Continuity of Service**

Vendor shall maintain adequate data backup and disaster recovery processes to ensure uninterrupted payment processing service in accordance with PCI DSS standards and industry best practices.

## 2. Information Security and Confidentiality

Vendor shall protect the confidentiality, integrity, and availability of all information and data received or accessed in performance of this Agreement. Vendor shall not use, disclose, or reproduce City data except as permitted by the Merchant Application & Agreement or as needed to provide the payment processing services under this Agreement. The City acknowledged and agrees Vendor may transfer City data to third parties, which are not under the control of Vendor, including payment networks, internet service providers or gateway service providers, card issuing banks and other participants in the payment ecosystems, as needed in order to provide the payment processing services. In addition, City acknowledges that Vendor is not responsible for the security of City data while such data is not in Vendor's possession.

Vendor shall maintain physical, technical, and administrative safeguards consistent with industry standards and all applicable data protection laws.

## 3. Insurance Requirements

Vendor shall maintain, at its own expense and for the duration of this Agreement, insurance coverage meeting or exceeding the following minimum limits. Certificates of insurance shall be provided to the City prior to contract execution and annually thereafter.

Type of Coverage	Minimum Limits	Requirements
<b>Commercial General Liability (CGL)</b>	\$1,000,000 per occurrence / \$2,000,000 aggregate	Coverage for bodily injury, property damage, personal injury, and contractual liability. The City of Ann Arbor shall be named as an <b>Additional Insured</b> .
<b>Umbrella / Excess Liability</b>	\$5,000,000 per occurrence / aggregate	May be used to supplement CGL limits.
<b>Automobile Liability</b>	\$1,000,000 combined single limit	Applies to owned, hired, and non-owned vehicles.
<b>Professional / Network Security &amp; Privacy Workers' Compensation and Employers' Liability</b>	\$1,000,000 per claim / \$1,000,000 aggregate  Statutory / \$500,000 per accident	Must cover unauthorized access, data breaches, malware/ransomware, PCI DSS fines, and remediation costs.  Required by Michigan law.

### 3.1 Additional Requirements

- All policies must be issued by insurers authorized to do business in Michigan with an A.M. Best Rating of **A- or better**.
- Vendor's insurance shall be **primary and non-contributory** to any coverage maintained by the City.

- Certificates of insurance shall include a provision for **thirty (30) days' advance notice** to the City of cancellation or material change in coverage.

#### 4. Survival

The data security obligations contained in this Exhibit A shall survive the expiration or termination of the Agreement for as long as Vendor retains or has access to City data.

By execution of this Addendum, the undersigned acknowledges and agrees that all other terms and provisions of the Merchant Processing Application and Agreement and Merchant Processing Terms & Conditions shall remain in full force and effect except as amended hereby.

The undersigned further warrants and represents that they have the authority to execute this Addendum on behalf of the entity named herein and bind the entity to provisions herein.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Approved by Bank:

DATE: \_\_\_\_\_