ACH Processing Services Application & Agreement

Merchant wishes to use the ACH Processing Services, described in the attached ACH Processing Services Agreement, to allow Provider (as defined in the Agreement) to transmit Merchant's ACH Entries to the ODFI selected by Provider, which Provider has engaged to provide ACH origination services for Merchant. This ACH Processing Services Application (the **Application**) describes the permitted Standard Entry Class (**SEC**) Codes, Fees for ACH Processing Services, and information about Merchant. The ACH Processing Agreement attached to this Application governs Merchant's use of the ACH Processing Services. All capitalized terms used in this Application but not otherwise defined herein or the Agreement, shall have the meanings set forth in the Nacha Operating Rules and Guidelines (**Rules**).

PERMITTED STANDARD ENTRY CLASS (SEC) CODES

The ACH Processing Services support transactions for the SEC Codes listed below. Merchant will only initiate Entries for SEC Codes that Provider and the ODFI have expressly authorized in connection with this Application and the ACH Processing Services Agreement. By checking the appropriate SEC Codes below, Merchant has indicated its request to initiate Entries within those SEC Codes.

Merchant Selection	SEC Code
☑	Prearranged Payment and Deposit Entry (PPD)
☑	Telephone-Initiated Entry (TEL)
☑	Corporate Credit or Debit Entry (CCD)
☑	Internet-Initiated Entries (WEB)

MAX AND AVERAGES

Description	Sales	Credit
Average Transaction Amount	$	$
Max Transaction Amount	$	$
Average Monthly Volume	$	$
Max Monthly Volume	$	$

FEE SCHEDULE

ACH Processing Fees*

Description	Amount	Driver	Description	Amount	Driver
ACH Setup Fee	$ 0	one-time	Merchant NSF Fee	$ 25.00	per transaction
ACH Monthly Fee	$ 10	per month	ACH Return Item Fee	$ 1	per Return
ACH Transaction Fee	$ .50	per transaction	ACH Reversal Fee	$ 0.00	per Reversal
ACH/Draft Discount Rate	.5 %	per transaction	Account Validation Fee	$ .25	per validation
ACH Early Termination Fee	$ 0	per account	Unauthorized Debit Fee	pass through	per request
			Notification of Change Fee	pass through	per NOC

*Merchant agrees to pay Network Fees (as defined in the Agreement) imposed on Provider.

By signing the Agreement and using the ACH Processing Services, Merchant represents and agrees that:

- The person signing the Agreement is authorized to enter into the Agreement on behalf of Merchant;
- Provider (or its Affiliates) are authorized to verify the information in this Application and Agreement;
- Merchant has received, and will comply with, the Agreement attached to this Application and
- the ACH Operational Guidelines Overview (available at **developer.fiserv.com/product/CardPointe/docs/?path=docs/documentation/FiservACHDeveloperGuide.md**);
- Merchant is responsible for displaying all point of sale disclosures and obtaining (and maintaining) all required authorizations from customers; and
- Merchant will pay the Fees outlined in this Application.

Merchant full legal name			
Date		**Name**	
Email		**Title**	
Address		**City, State and ZIP Code**	

ACH PROCESSING SERVICES AGREEMENT

This ACH Processing Services Agreement (the **Agreement**) is entered into as of the date on which it is accepted in writing or electronically by BluePay Processing, LLC, an Affiliate of First Data Merchant Services LLC, (**Provider, we**, **us**, or **our**) (the **Effective Date**), and is between Provider and the merchant identified on the signature page of this Agreement (**Merchant**). All capitalized terms used in this Agreement but not otherwise defined herein or on the Application shall have the meanings ascribed to such terms under the Rules. Provider and Merchant are each referred to in this Agreement as a **Party** and collectively as the **Parties.**

Provider and Merchant agree that:

1. ***General.*** The purpose of this Agreement is to set forth certain rights and obligations of each Party related to Merchant's use of the ACH Processing Services (defined below). As between the Parties, and except as otherwise expressly provided hereunder, each Party will be responsible for all costs and expenses it may incur in the performance of its obligations hereunder.
   (a) The ACH Operational Guidelines Overview (the **Guidelines**) is a supplement to the Nacha Operating Rules and Guidelines (**Rules**). Merchant acknowledges that it has received the Guidelines, which is also available at **developer.fiserv.com/product/CardPointe/docs/?path=docs/documentation/FiservACHDeveloperGuide.md**. Merchant agrees that the Guidelines are incorporated into this Agreement, and Merchant is solely responsible for compliance with the most current version of the Guidelines.
   (b) Merchant agrees that: (i) Merchant's use of the ACH Processing Services is subject to Provider's review and approval of the Application and Agreement; (ii) Merchant will comply with the terms and conditions set forth in Application, the Agreement, the Guidelines, and any other documentation provided to Merchant by Provider or its Affiliates (together, the **Agreement**), (iii) Merchant will comply with the Rules (defined below); (iv) some or all of the ACH Processing Services may be provided by Provider or its Affiliates, (v) the terms of the Application and the Agreement are deemed to be provided by Provider and apply to Provider and its Affiliates as if they are one entity, and (vi) Provider's Affiliates may collect Fees on behalf of Provider for the ACH Processing Services.
   (c) Merchant further agrees that Provider and its designated agents and representatives are authorized to obtain from third parties, including from credit reporting agencies and credit bureaus, information from their credit profile or other information from consumer reporting agencies, including financial, credit, and background information relating to Merchant to assist Provider in its determination of whether to accept this Agreement and its continuing evaluation of the financial and credit status of Merchant for the term of

the Agreement. Merchant hereby authorizes Provider to verify all information in this Application and agrees that Provider may contact third parties to verify any such information.

2. ***ACH Processing Services.*** Pursuant to the terms of this Agreement, Provider will provide Merchant with Automated Clearing House (ACH) services whereby Provider will transmit each Entry it receives from Merchant to the financial institution which Provider has engaged to provide ACH Origination services, and which will serve as the Originating Depository Financial Institution (as defined in the Rules) (ODFI) with respect to Entries originated by Merchant and processed through the ACH Processing Services (each, a **Transaction**), in each case based on the information and instructions received from Merchant, subject to Merchant's compliance with the terms of this Agreement, Rules, and Regulations (such services, the ACH Processing Services). Merchant hereby authorizes Provider, to deliver Merchant's Entries to the ODFI for processing. The Parties agree that, with respect to each Entry transmitted by Merchant to Provider pursuant to this Agreement, Merchant is the Originator and Provider is a Third Party Sender, as such terms are defined in the Rules, and Merchant has all responsibilities and liabilities of an Originator under the Rules. Merchant acknowledges and agrees that the availability and provision of the ACH Processing Services is subject to Merchant's execution of all terms and agreements, and provision of any information related to Merchant, any Transaction, or the ODFI, as and when Provider may require from time to time, or as otherwise reasonably required by Provider or ODFI.
   - **(a)** Merchant agrees to be bound by the Rules and will not originate Entries or otherwise initiate Transactions in violation of the terms of this Agreement, the Guidelines, or the Rules, which Merchant acknowledges familiarity and/or availability of, and applicable U.S. Federal and state laws and regulations (collectively, the **Regulations**). Merchant will only use the ACH Processing Services to conduct Transactions within the United States. For purposes of this Agreement, **Entry** or **Entries** shall mean either a credit Entry and/or a debit Entry, as applicable, as such terms are defined in the Rules.
   - **(b)** Merchant hereby appoints Provider, or its designee, to be its authorized agent, to provide it with ACH services as a third party processor of Merchant's ACH Transactions. Provider or its ODFI will debit money (**Debit Entry**) for the purpose of collecting electronic payments from the accounts of Merchant's customers (**Check Writers**) or credit money (**Credit Entry**) for the purpose of paying Merchant's accounts receivable in accordance with the terms of this Agreement.
   - **(c)** Provider will hold the Transaction funds until all preliminary returns have cleared and then the funds will be transferred to the Merchant DDA. The standard hold period is five (5) banking days which may be modified at the sole discretion of Provider. Provider reserves the right, in its sole and absolute discretion, to place a longer hold period on the funds should questionable activity occur, or in the event that return rate on Transactions increases significantly enough to warrant a longer hold period or as required by Rules, Regulations or applicable law.
   - **(d)** After the hold period for Debit Entries has expired, Provider will credit the Merchant DDA by the amount of the Debit Entries, but this credit will not be final until Provider has available Transaction funds. If any Debit Entry is returned to Provider (as described in the Rules), Provider will debit the Merchant DDA for the amount of the returned item plus fees and costs incurred by Provider. In the event there are not sufficient funds in the Merchant DDA to cover Merchant obligations under this Agreement, Merchant agrees to pay Provider the amount of the deficiency on demand in immediately available funds. Provider may debit any account maintained by Merchant under this Agreement or any other Agreement between Merchant and Provider or its Affiliates, such as for example the Merchant DDA, without further notice to or approval from Merchant. Any Credit Entries that Merchant create will be debited from the Merchant DDA in accordance with the hold period prior to the credit being distributed to Merchant payees' accounts. In the event that a Debit Entry is returned for any reason, the Credit Entries will be cancelled due to the unavailability of funds.

3. ***Merchant Responsibilities***
   - **(a) Authorization.** Merchant will obtain an ACH authorization from each of Merchant's customers (each, a Customer)(each such authorization, a Customer Authorization), in a form and manner compliant with the Rules and Regulations, and acceptable to Provider and the ODFI, prior to transmitting any Entry related to the relevant Customer to Provider. Merchant will maintain each Customer Authorization for a period of two (2) years after the termination or revocation of the relevant Customer Authorization, or for such longer period as may be specified in the Rules. Merchant agrees to provide the original, a copy, or other accurate record of the Customer Authorization promptly upon request by Provider, but in any event, no later than three (3) business days following such request, and pay any Fees associated with such request (**Unauthorized Debit**).
   - **(b) Submitting Entries.** Merchant will comply with the format, content, and specifications for Entries contained in the Rules and this Agreement. Merchant represents that each Entry that it transmits to Provider in connection with Merchant's use of the ACH Processing Services complies with the Rules and Regulations, is in all respects properly authorized, and that each such Entry is of the type Merchant is approved to initiate.
     - **(i)** Merchant shall electronically transmit files to Provider in a format acceptable to Provider (such electronic destination being the **Provider Host Processing System**). Merchant understands that it may not initiate any Entry which is, directly or indirectly, for the benefit of any third party without Provider's prior written consent. Merchant acknowledges and agrees that its use of the ACH Processing Services will be subject to the following limitations:
       1. <u>Permitted Entry Types</u>. Merchant will only initiate those Entry types (Standard Entry Class or **SEC** Codes) that Provider and the ODFI have expressly authorized in connection with this Agreement and as set forth in the Application. Merchant agrees to initiate all Entries in accordance with the requirements of, and in compliance with, Merchant's responsibilities and representations as an Originator under the Rules, and in accordance with such additional instructions as may be received from, and requirements imposed by, Provider from time to time.
       2. <u>Permitted Entry Amounts</u>. The total dollar amount of Entries transmitted by Merchant to Provider on any one day shall not exceed that amount expressly authorized by Provider and the ODFI, as communicated from time-to-time to Merchant.
     - **(ii)** Merchant represents that the information and Entries that Merchant transmits or otherwise provides to Provider in connection with Merchant's use of the ACH Processing Services are, in all respects, true, accurate, and complete, and comply with the Agreement, Rules, and Regulations. Merchant acknowledges and agrees that Provider has no obligation to review or verify the truthfulness, accuracy, or completeness of the information or Entries Merchant provides to Provider. Provider will have no responsibility or liability hereunder, including for any error, omission, delay, or failure to meet any processing timelines or accurately perform any of the ACH Processing Services, due to Merchant (or its Customers) submitting inaccurate, incomplete, erroneous, untimely, or duplicate information or Entries, as applicable, including in instances in which Provider reviews the relevant information or Entry. Merchant acknowledges that Merchant will be responsible and liable for the amount of any Entry that is returned or reversed for any reason and all unauthorized Entries and Transactions and Merchant is solely and fully responsible for all unauthorized or improperly authorized Entries and Transactions. A Transaction that is returned, dishonored, reversed or otherwise unpaid by a consumer's financial institution regardless of the reason or timing is a **Return**. A Transaction that is reversed due to the action of Merchant is a **Reversal**. Reversals submitted within Nacha guidelines are billed as a Transaction. Merchant agrees to pay Provider the Fees for any Return or Reversal as outlined in the Application or as imposed on Provider by the ODFI.
     - **(iii)** For CCD Entries, any credit given by the Receiving Depository Financial Institution (**RDFI**) to the Receiver is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided for in Section 4A-403(a) of the Uniform Commercial Code. If the RDFI does not receive such payment for the provisional entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and Merchant will not be considered to have paid the amount of the credit entry to the Receiver.
   - **(c) Representations and Warranties.** Without limiting any other representation, warranty, or covenant in this Agreement, Merchant hereby represents, warrants, and covenants to Provider that: (a) Merchant is duly incorporated and validly existing and in good standing under the laws of Merchant's jurisdiction of organization and has the corporate power and authority to conduct Merchant's business as presently conducted; (b) Merchant is duly qualified and properly licensed to do business, and is in good standing in each jurisdiction in which the conduct of its business requires Merchant to so qualify or be licensed, and with each regulatory authority, government agency, or the like, having jurisdiction over Merchant (collectively, Regulatory Authorities); (c) Merchant has and shall maintain all necessary licenses, permits, approvals, and registrations from all Regulatory Authorities which are required to perform Merchant's obligations under this Agreement; (d) this Agreement has been duly authorized, executed, and delivered and, assuming due authorization and execution by Provider hereto, constitutes legal, valid, and binding obligations of Merchant, enforceable against Merchant in accordance with its terms; (e) the execution and delivery of this Agreement by Merchant, and the performance of Merchant's obligations under this Agreement, require no consent, approval, order, or authorization of, or registration, declaration or filing with, or other action by, any Regulatory Authority, governmental agency, or other authority, except for such consents, approvals, orders, authorizations, registrations, declarations, or filings which Merchant have made or obtained; and (f) the execution and delivery of this Agreement by Merchant, the performance of Merchant's obligations under this Agreement, and the origination of Entries and initiation of Transactions contemplated hereunder, will not constitute a violation or breach of, or result in a default or loss of material right, under the Rules, Regulations, or any material contract, agreement, or other commitment of Merchant.
   - **(d) Regulatory Compliance.** In connection with Merchant's use of the ACH Processing Services, Merchant agrees to at all times comply with, and conduct Merchant's business in compliance with, the terms of this Agreement, the Rules and Regulations. Merchant further agrees to not initiate any Entry or attempt to engage in any Transaction involving any illegal or illicit activity, product, or service, or in connection with any activity Merchant has not disclosed to Provider and that Provider has not approved.
     - **(i)** Merchant will bear the final responsibility to ensure that its policies and procedures, and each Entry, meet the requirements of the Rules and Regulations, and the terms of this Agreement. Merchant is encouraged to consult Merchant's legal counsel regarding compliance of authorization and payment procedures whenever there is any doubt about compliance. Merchant agrees to regularly and promptly review each Entry and other communication sent by or to Merchant and to immediately notify Provider if Merchant discovers any discrepancy between Merchant's records and those provided by Provider, or with respect to any Transaction that Merchant believes was not authorized by Merchant or the applicable Customer. If Merchant fails to notify Provider within fourteen (14) calendar days after the date that Provider mails or provides a statement of account or other report of activity to Merchant, Provider has no obligation to investigate. If Merchant transmits Entries or other information electronically, Merchant agrees to review transactions posted on a daily basis, or such other frequency as Provider or the ODFI may prescribe, and notify Provider immediately of any suspected unauthorized transaction. Merchant acknowledges and agrees that if Provider, in its sole discretion, suspects or reasonably believes that Merchant is violating, or may violate, this Agreement, or the Rules or Regulations, in connection with Merchant's use of the ACH Processing Services, then Provider may refuse to accept Entries from Merchant, and may immediately suspend or terminate Merchant's access to the ACH Processing Services.
     - **(ii)** Merchant represents that neither Merchant, nor any of Merchant's affiliates, officers, employees, or agents, are on any Specially Designated Nationals (**SDN**) list of the U. S. Department of the Treasury the Office of Foreign Assets Control (**OFAC**).

(iii) Merchant hereby represents that neither Merchant nor the individual officers of Merchant, or any individual utilizing the ACH Processing Services, are now or have been in the past, part of any investigation or action, by the Federal Trade Commission, FBI, or U.S. Postal Authority, or any other governmental authority whether inside or outside the jurisdiction of the United States.

(iv) Furthermore, Merchant agrees to be responsible and liable for any use, whether authorized or unauthorized, of the ACH Processing Services on behalf of Merchant hereunder. For greater certainty, Merchant shall not permit any individual to use the ACH Processing Services unless they are: (i) employees or agents of Merchant; (ii) acting for and on behalf of the Merchant; or (ii) acting in the ordinary course of business of the Merchant. Merchant authorizes Provider and its representatives to obtain from third parties financial, credit, and background information relating to Merchant, to assist Provider in continuing evaluation of the financial and credit status of Merchant for the entire term hereof.

(v) Merchant shall inform Provider immediately of any adverse circumstances or developments impacting Merchant's business or the financial condition of Merchant or Merchant's officers. Upon learning of such adverse circumstances, Merchant agrees to immediately stop transmitting Entries or otherwise initiating Transactions (except as otherwise permitted by Provider) until Provider can make a determination on the viability of Merchant's relationship with Provider. Merchant also agrees and understands that the withholding of said information could be harmful to Provider, and Merchant will be liable to Provider for any or all damages resulting from such withholding.

(e) Books and Records; Audit Rights. Merchant shall maintain complete and accurate books of account and records, in accordance with generally accepted accounting principles in the United States, for all financial transactions arising in connection with Merchant's obligations pursuant to this Agreement for a period of not less than that legally required for such records from the date last recorded or created, but in no event less than five (5) years following the end of the term of this Agreement, or such longer period as may be required by Rules or Regulations.

(i) Merchant will at all times provide Provider, ODFI, Provider's third-party auditors, and any Regulatory Authority, government agency, or the like having jurisdiction over Provider or ODFI, with reasonable access to Merchant's books, records, or any other information and documents related to the subject matter hereof which it requires to comply with the Rules and Regulations and which may be in Merchant's control or possession.

(ii) In addition to any other audit right set forth in this Agreement, Provider reserves the right to audit Merchant's books and records related to Merchant's performance under this Agreement and as otherwise reasonably necessary so as to ascertain compliance of Merchant with the terms of this Agreement, the Rules, and/or Regulations, for underwriting purposes, and in order for Provider and ODFI to comply with Rules and/or Regulations.

(f) Indemnification. In addition to any other indemnification right set forth in this Agreement, Merchant shall indemnify and protect, defend, and hold harmless, Provider, ODFI, and their respective officers, officials, agents, employees and counsel and their respective heirs, administrators, executors, successors and assigns (each of the foregoing, an Indemnified Party), from and against, any and all losses, liabilities, claims, damages, interest, judgments, costs, or expenses, including without limitation fees and disbursements of counsel, incurred by any of them (collectively, Losses) arising out of, related to, in connection with, or by reason of: (a) Merchant's breach of any representation, warranty, covenant, or obligation under this Agreement; (b) any action taken by Provider in accordance with or in good faith reliance upon information or instructions, including Entries, provided by Merchant or Merchant's agents or representatives; (c) obligations owed to any third party by Merchant, or any third party retained by Merchant; (d) any inaccurate, incomplete, erroneous, or duplicate information or Entry, or any Entry that does not comply with the Rules, Regulations, this Agreement, or any inaccurate, incomplete, erroneous, or untimely information provided by Merchant to Provider; or (f) any rejection of an Entry by Provider or the ODFI, or any action taken to effect or attempt to effect Merchant's request to reverse or delete an Entry. Notwithstanding the foregoing, Merchant shall not be required to indemnify any Indemnified Party for any Losses to the extent such Losses are finally determined by a court of competent jurisdiction to have arisen solely and directly out of the gross negligence or willful misconduct of such Indemnified Party. The indemnification obligations of the Merchant under this Agreement shall survive any termination of this Agreement.

(g) Transmission of Information and Instructions. Merchant agrees that Provider is not liable to Merchant for any losses or damages arising from or in connection with the transmission of electronic data or information through the Provider Host Processing Services or to Provider through any other electronic means, or for any failure to receive any such electronic data or information from Merchant for any reason whatsoever. Any electronic data or information that Merchant sends via the Provider Host Processing Services or otherwise to Provider, or electronically received by Provider, will be deemed to be duly authorized by Merchant, and Provider and ODFI will be entitled to rely on such electronic data and information. The fact that Merchant may not receive confirmation of receipt of such communications from Provider shall not invalidate any Transactions initiated pursuant to such data or information from Merchant.

(h) Data & Security Obligations. Merchant shall not collect, store or disclose any Customer's account number or routing number, or other Customer account information, to any third party, other than as expressly permitted by the Rules and Regulations. Merchant represents and warrants that it does, and will at all times hereunder possess all necessary rights, power, and authority to provide data associated with Transactions, and any other information which may be required or requested hereunder, to Provider and the ODFI.

(1) Merchant acknowledges and agrees that Merchant is responsible for the security of all data in its possession or control and is responsible for its compliance with the Rules and Regulations in connection with its data security practices, including its collection of personal, financial, and transaction data and information. Merchant agrees to use reasonable efforts to protect and secure all data in its possession or control from unauthorized access, use, and disclosure. If Merchant experiences a security breach or other compromise of third party data, Merchant shall immediately notify Provider and shall take such actions as may be necessary to prevent such breaches or compromises from occurring in the future.

(2) Merchant acknowledges and agrees that Merchant is responsible for maintaining adequate security and control over Merchant's access and credentials to the ACH Processing Services, including all usernames, passwords, PINs, and other equivalent authentication credentials, and for ensuring that its employees, contractors, and agents comply with these security requirements and all other terms of this Agreement. Merchant will keep any login credentials secure and confidential, not share such information will third parties, and understands that it is solely responsible for all activity any person conducts using its login credentials to access the ACH Processing Services, regardless of whether Merchant authorized the activity.

(i) Reserve Account. Provider may require Merchant to fund a cash reserve (**Reserve**) in an amount that reflects Provider's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of Provider, established by holding back transaction proceeds or debiting the Merchant's account in order to potentially offset any obligations that Merchant may have to Provider. The Reserve is not a segregated fund that Merchant may claim to own. Provider is obligated to pay to Merchant any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Merchant's payment transactions have expired (as provided for under the Rules and Regulations or by the ODFI). The obligations due to Merchant from the Reserve will not accrue interest unless required by applicable laws. Provider will notify Merchant if a Reserve is established (including its amount) or if the amount of the Reserve is modified. Provider may set off any obligations that Merchant owes to Provider from the Reserve. Although Merchant acknowledges that the Reserve is a general obligation of Provider, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Merchant that is held by Provider, Merchant grants and acknowledges that Provider has a security interest in the Reserve and, at Provider's request, will provide documentation to reflect this security interest.

4. ***Provider Responsibilities***

(a) Accepting Transactions. Provider will accept online Entries from Merchant in the format prescribed by Provider via electronic transmission on a 24hour basis. Merchant does not have the right to cancel or amend any Entry after transmission to Provider.

(b) Originating Transactions. Provider will use the information provided by Merchant to transmit Entries on Merchant's behalf to the ODFI. Provider's sole obligation is to transmit such Entries to the ODFI in accordance with the information and instructions provided by Merchant to Provider, except that Merchant acknowledges and agrees that an Entry may be rejected by Provider or the ODFI if such Entry is not consistent with permitted SEC Entry Class types set forth herein, or its transmission to the ODFI may delayed if Provider reasonably believes that the Entry would cause Provider to violate the Rules, Regulations, or any U.S. Federal Reserve, or other regulatory risk control program or any other law or regulation, including in the event that Merchant's return rates exceed the thresholds prescribed by the Rules and Regulations or, those thresholds otherwise established by Provider or the ODFI from time-to-time. Provider may also require that Merchant adopt and implement a detailed plan and timeline for reducing the return rate below the applicable thresholds. If at any time the return rate thresholds as established by Rules and Regulations are lower than Provider's or ODFI's thresholds, the thresholds set forth in the Rules shall control and shall be automatically incorporated as the applicable threshold for purposes of this Agreement. Provider's transmission of Merchant's Entries to the ODFI will be in such manner as Provider reasonably determines in order to perform its obligations under this Agreement.

(c) Error Detection. Provider does not have an obligation to discover, and will not be liable to Merchant for, any error made by Merchant in any Entry it transmits to Provider or any duplicate Entry transmitted by Merchant to Provider.

(d) Reinitiated Entries. Merchant may reinitiate any Entry that was previously returned only if (i) the Entry was returned for insufficient or uncollected funds; (ii) the Entry was returned for stopped payment, and re-initiation has been separately authorized by the receiver after Merchant, Provider or ODFI receives the Return Entry; or (iii) Client has taken corrective action to remedy the reason for the return. Client must reinitiate an Entry within one hundred eighty (180) days after the settlement date of the original Entry. Merchant is prohibited from reinitiating an Entry that has been returned for insufficient or uncollected funds more than two (2) times following the return of the original Entry. Merchant will comply with the formatting requirements for reinitiated Entries as set forth in the Rules.

5. ***Limitation on Liability.*** Provider will be responsible for its provision of the ACH Processing Services as a Third-Party Sender in accordance with the terms of this Agreement. Provider is not, however, responsible for errors, acts, or failures to act of others, including, and among other entities, banks, the ODFI, communications carriers, or clearing houses through which Entries may be originated or Provider receives or transmits information, and no such entity shall be deemed Provider's agent.

(a) Provider is not responsible for any loss, delay, cost, or liability which arises, directly or indirectly, in whole or in part, from Merchant's actions or omissions, negligence, or breach of any warranty, obligation, or agreement, or any ambiguity, inaccuracy, or omission in any instruction or information provided to Provider, including in Entries. Provider shall not be liable to Merchant for any failure or delay on its part to perform, and shall be excused from performing any of its non-monetary obligations hereunder, if such failure, delay, or non-performance results in whole or in part from any cause beyond the absolute control of Provider, including accidents, strikes, labor disputes, civil unrest, war, terrorism, fire, earthquake, flood, water damage (e.g., from fire suppression systems), pandemic, telecommunications or communication network disruption, power surges or failures, legal constraints, or acts of God or government, or the actions of others or causes that are beyond Provider's reasonable control.

(b) Provider AND ITS AFFILIATES SHALL not be responsible OR LIABLE TO MERCHANT OR ITS AFFILIATES, WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE, under any circumstances, for ANY special, indirect, punitive, INCIDENTAL, consequential, OR EXEMPLARY damages, INCLUDING LOST PROFITS (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT MERCHANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING THE WRONGFUL DEATH OR INJURY OF ANY PERSON. IN NO EVENT WILL PROVIDER'S TOTAL AGGREGATE LIABILITY TO MERCHANT, WHETHER IN CONTRACT, IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE, AND STRICT LIABILITY IN TORT), OR OTHERWISE, ARISING OUT OF, RESULTING FROM, OR IN ANY WAY CONNECTED WITH, THE PERFORMANCE OR BREACH OF THIS AGREEMENT, exceed three (3) times the average monthly Fees (as defined below) for the ACH Processing Services provided over the three (3) months prior to the event giving rise to liability. Any claim, action, or proceeding by MERCHANT to enforce the terms of this Agreement or to recover for any ACH Processing Servicesrelated loss must be commenced within one (1) year from the date that the event giving rise to the claim, action, or proceeding first occurs following which Merchant shall forego the right to make such claim. MERCHANT AGREES to cooperate with Provider in any loss recovery efforts Provider might undertake to reduce any loss or liability that arises in connection with the ACH PROCESSING SERVICES. THE FOREGOING LIMITATIONS WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

(c) EXCEPT IF OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, ALL SERVICES PROVIDED BY PROVIDER HEREUNDER ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, PROVIDER AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES, AND HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

6. *Fees.* In consideration of the ACH Processing Services, Merchant agrees to pay the fees set out in this Agreement, such as they may be from time to time, together with other costs and fees incurred by Provider in performing its obligations under this Agreement (collectively, the Fees). Merchant acknowledges that the Fees have been established in contemplation of: the limitations on Provider's liability set forth in this Agreement; Merchant's agreement to review statements, confirmations, and notices promptly and to notify Provider immediately of any discrepancies or problems; and Merchant's agreement to assist Provider in any loss recovery effort.

(a) Provider will notify Merchant in writing of, and Merchant agrees to pay promptly, the Fees that Provider may establish from time to time for the ACH Processing Services. Merchant agrees that Provider may obtain payment for these Fees and any other amounts due to Provider under this Agreement by Provider-initiated debit Entry to the Merchant DDA. Provider shall have, and Merchant acknowledges that Provider has, the right to set off against any and all amounts payable by Provider to Merchant under any provision of this Agreement or any other agreement between the Provider and Merchant, any amounts owed Provider by Merchant, or any damages sustained by Provider as a result of Merchant's violation, breach, or non-performance of Merchant's obligations under this Agreement.

(b) Merchant will pay Provider the fees described in the Application Fee Schedule (the **ACH Processing Fees**) for the ACH Processing Services. The ACH Processing Fees are based on Merchant's business methods and the types of transactions it will submit for processing that Merchant disclosed to Provider. Provider may modify the ACH Processing Fees if Merchant materially changes its business methods or the types of transactions that it submits for processing. Fees will be debited or offset from Merchant's account as outlined in the Application or imposed on Provider.

(c) Nacha, the ODFI, and other third parties (the **Networks**) may impose additional Fees on Merchant's transactions, some of which are charged to Provider. Merchant will pay Provider for all fees and charges that are imposed on Provider or Merchant by the Networks, ODFI,or other third parties (together **Network Fees**). The Networks and other third parties may modify their Network Fees during the Term of this Agreement. Modifications to the Network Fees will be effective on the dates set by the Networks or other third parties. Network Fees are in addition to the ACH Processing Fees.

(d) Provider may modify or add Fees to cover any additional costs incurred from its third party service providers or in connection with complying with changes in Rules or applicable laws; and, further, if Provider makes such modifications and the parties are unable to agree upon corresponding changes to the terms and conditions of this Agreement, either party may terminate this Agreement upon 30 days written notice without penalty as its sole and exclusive remedy.

(e) As part of the ACH Processing Services, Provider offers a service that performs a verification on customer accounts for the first payment attempt and any subsequent payment attempts using updated customer account information (the **Account Validation Services**). By submitting WEB debit Entries through the ACH Processing Services, Merchant agrees that the Account Validation Services will be used for WEB debit Entries (and any other Entries as requested by Merchant) as applicable. The Account Validation Services may use services offered by Provider, Provider's affiliates, or Provider's third party service providers, and may incur additional costs and fees (the **Account Validation Fees**). Merchant acknowledges that the Account Validation Fees are in addition to the ACH Transaction Fee and any other Fees incurred for the ACH Processing Services, and agrees to pay Provider all Account Validation Fees charged to Merchant. The Account Validation Services are not a warranty that any account or transaction is valid, and Provider disclaims any warranties (express or implied) regarding the Account Validation Services.

7. *Term and Termination*

(a) Term. The Term of this Agreement shall commence on the Effective Date, and shall continue for five (5) years (the Initial Term), unless terminated earlier as provided below. After the Initial Term, this Agreement shall automatically extend for additional two-year periods (each a Renewal Term). Such Initial Term together with any Renewal Term shall collectively be referred to as the Term.

(b) Termination for Cause. Provider shall have the right to terminate this Agreement for cause:

(i) In the case of any breach of any duty or obligation under this Agreement, or any other agreement with Provider or its Affiliates, involving the nonpayment of money of monies due Provider and such breach continues for a period of five (5) days after Merchant receives written notice specifying the breach.

(ii) In the case of a breach of any material duty or obligation under this Agreement, or any other agreement with Provider or its Affiliates, not involving the payment of money, but only if the breach continues for a period of ten (10) days after Merchant receives written notice specifying the breach. In the event such breach is not cured during the period, then this Agreement may be terminated.

(iii) A violation by Merchant of the Rules or applicable laws in connection with the performance of this Agreement, or any other agreement with Provider or its Affiliates, but only if the breach continues for a period of ten (10) days after Merchant receives written notice specifying the breach. In the event such breach is not cured during the period, then this Agreement may be terminated. Provided that if Provider determines imminent threat to safety and soundness, termination may be effected immediately.

(iv) Discovery that any financial statement, representation, warranty, statement or certificate furnished to it by Merchant in connection with or arising out of this Agreement is materially adverse to Provider and intentionally untrue as of the date made or delivered.

(v) The commencement by Merchant of any proceeding or filing of any petition seeking relief under Title 11 of the United States Code or any other Federal, state or foreign bankruptcy, insolvency, liquidation or similar law; application for or consenting to the appointment of a receiver, trustee, custodian, sequestrator or similar official for a substantial part of its property or assets; a general assignment for the benefit of creditors; or taking corporate action for the purpose of effecting any of the foregoing.

(vi) The commencement by any person against Merchant of an involuntary proceeding or the other Party is the subject of an involuntary petition in a court of competent jurisdiction seeking: relief in respect of the other Party, or of a substantial part of its property or assets under Title 11 of the United States Code or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law; the appointment of a receiver, trustee, custodian, sequestrator or similar office for a substantial part of its property or assets; or the winding up or liquidation, if such proceeding or petition shall continue un-dismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for sixty (60) days.

(vii) Upon any change to or enactment of any Rule or Regulation which would render any portion of a Services or Agreement illegal, or otherwise have a material adverse effect upon the Services or Agreement.

(c) Cancellation. Provider or Merchant may cancel this Agreement at any time upon fifteen (15) days written notice to the other Party. Any cancellation or termination will not affect Merchant's obligations arising before the termination or cancellation. In the event Merchant exercise Merchant's right to cancel this Agreement, as set forth in the attached Fee Schedule, cancellation will be subject to a Cancellation Fee outlined in the Fee Schedule immediately payable by Merchant to Provider, which may be off-set against any and all sums due and owing to Merchant pursuant to Section 6, above.

(d) Re-evaluation. Provider reserves the right, in its sole discretion, to reevaluate and re-assess Merchant's eligibility to access and use the ACH Processing Services from time to time after the initial approval of the Agreement and reserves the right to terminate this Agreement or suspend Merchant's access to and use of the ACH Processing Services, change the Fees, or make other changes to the ACH Processing Services provided to Merchant during the Term of this Agreement, at any time in Provider's sole discretion. Provider will exercise commercially reasonable efforts to provide notice to Merchant as soon as reasonably practicable following Provider's determination to exercise any of such rights pursuant to this Section 7.

(e) Termination or Suspension of Service. In addition to any other termination right set forth in this Agreement, Provider may, in its sole and absolute discretion, immediately terminate this Agreement or suspend Merchant's access to and use of the ACH Processing Services without prior notice and at any time and from time to time, including if: (i) Merchant breaches any agreement, obligation, representation, warranty, or covenant with or to Provider or any third party, including Merchant's agreement to not initiate or originate any Entry in violation of the Rules or Regulations, or breaches any of the Rules or Regulations, or causes Provider to breach any of the Rules or Regulations; (ii) Provider has reason to believe an unauthorized Transaction has taken or may take place involving any of Merchant's accounts or Merchant's use of the ACH Processing Services; (iii) Merchant becomes insolvent or the subject of a bankruptcy, receivership, or dissolution proceeding; or (iv) Provider is uncertain as to any person's authority to give Provider instructions regarding Merchant's account or Merchant's use of the ACH Processing Services. The foregoing represents examples of circumstances in which Provider may terminate this Agreement or suspend Merchant's access to and use of the ACH Processing Services, but do not limit Provider's right to terminate this Agreement or such service at any time for any reason or for no reason at all. Termination of this Agreement or suspension of Merchant's access to and use of the ACH Processing Services by Provider shall not affect Merchant's obligations hereunder or under any other agreement(s), and Provider shall have no liability arising from any such suspension or termination.

8. ***Miscellaneous***

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard for, and giving effect to, the conflict of law principles thereof.

(b) Arbitration. Any dispute between Merchant and Provider shall be submitted to binding arbitration, to be administered by JAMS in accordance with the then current Comprehensive Arbitration Rules & Procedures (the Arbitration Rules), including the expedited procedures set forth in those Arbitration Rules. Arbitration hearings will be held New York, New York. A single arbitrator will be appointed by JAMS and will be a practicing attorney or retired judge having experience with and knowledge of the matters herein. The arbitrator will follow the law and will give effect to any applicable statutes of limitation. The prevailing party will be entitled to an award of the costs and expenses of the arbitration, including attorneys' fees and expert witness fees. A judgment on the award may be entered by any court having jurisdiction.

(c) No Jury Trial and Class Action Waiver. Merchant and Provider each waive any right to request a jury trial in the event any claim is brought with respect to this Agreement, its interpretation, or its enforcement. Merchant shall not bring or join any class action of any kind, in court or in arbitration, or seek to consolidate or bring previously consolidated claims in arbitration.

(d) Amendment. Provider may amend this Agreement by notice to Merchant. Provider will notify Merchant in writing before it modifies this Agreement. Merchant's use of the ACH Processing Services after any such modification will evidence Merchant's acceptance of the modifications.

(e) Entire Agreement. This Agreement and any schedules, attachments, and exhibits hereto, constitutes the entire agreement and understanding, and supersedes all prior agreements, understandings, and arrangements, oral and written, between Merchant and Provider, concerning the subject matter hereof.

(f) Severability; Waiver. If any provision of this Agreement (or any portion thereof) is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall be binding upon the Parties and shall be enforceable, as though said invalid or unenforceable provision (or portion thereof) were not contained in this Agreement. The failure by either Party to insist upon strict performance of any of the provisions contained in this Agreement shall in no way constitute a waiver of its rights as set forth in this Agreement, at law or in equity, or a waiver of any other provisions or subsequent default by any other Party in the performance of or compliance with any of the terms and conditions set forth in this Agreement.

(g) Third Party Beneficiaries. Except as otherwise set forth in this Agreement, no third party is a third party beneficiary to this Agreement.

(h) Successors and Third Parties. Except as limited by Section8.i (Assignment) below, this Agreement and the rights and obligations hereunder shall bind, and inure to the benefit of, the Parties and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties and their successors and permitted assigns, any of the rights hereunder.

(i) Assignment. Merchant may not assign or otherwise transfer any of its rights or obligations under, or its interest in, this Agreement. Merchant agrees that any transaction whereby the effective control of its business changes, then such change shall be deemed an assignment for purposes of this Agreement. Provider may assign this Agreement without prior notice to Merchant and without Merchant's consent. This Agreement, including all interest in any transactions, shall inure to the benefit of Provider and its successors and assigns, and shall remain binding on upon Merchant and Merchant's respective successors and assigns.

(j) Construction. Captions contained in this Agreement are for convenience only and do not constitute a limitation of the terms hereof. The singular includes the plural, and the plural includes the singular. All references to herein, hereunder, hereinabove, or like words shall refer to this Agreement as a whole and not to any particular section, subsection, or clause contained in this Agreement. The terms include and including are not limiting. Reference to any agreement or other contract includes any permitted modifications, supplements, amendments, and replacements. The headings, captions, headers, footers, and version numbers contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

(k) Provider may use transaction data obtained from providing the Services to Company to fulfill performance obligations under this Agreement and investigate fraud, or suspected fraud, related to Company's transactions. Merchant agrees that Provider shall have full right, as permitted by applicable Laws, to use in Provider's products or services, any information relating to a consumer obtained by Provider in connection with the Services, including for use in Provider's payment acceptance and account screening services.

(l) Binding Agreement. This Agreement shall be binding on the Parties only upon execution by an authorized representative of Provider.

(m)Electronic or Paper Acceptance. Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (1) Merchant's electronic signature is associated with the Agreement and related documents, (2) Merchant consents and intends to be bound by the Agreement and related documents, and (3) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign. By pressing Submit, Accept or I Agree, Merchant agrees (A) that the Agreement and related documents shall be effective by electronic means, (B) to be bound by the terms and conditions of this Agreement and related documents, (C) that Merchant has the ability to print or otherwise store the Agreement and related documents, and (D) to authorize Provider to conduct an investigation of Merchant's credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the applicant for Merchant status or equipment leasing. This information is kept strictly confidential and will not be released.

(n) Corporate Authorization. The indicated officer(s) identified below have the authorization to execute this Agreement on behalf of Merchant. Merchant understands that this Agreement shall not take effect until Merchant has been approved and a Merchant number is issued to Merchant by Provider for the ACH Processing Services.

(o) Survival. All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive the termination or expiration of this Agreement.

(p) Notices. Unless stated otherwise, Merchant agrees that any notice or communication to Merchant in respect of this Agreement may be given in the following ways: (i) by mail or overnight courier to the address Merchant provided to Provider , in which case the notice shall be deemed to have been received on the date it is delivered; or (ii) by electronic mail to the email address Merchant provided to Provider below.

Provider Mailing Address:
Fiserv, Attn: BluePay Processing, LLC, 255 Fiserv Drive, Brookfield, WI 53045; with a copy to: First Data Merchant Services LLC, Attn: Attn: General Counsel's Office, 3975 NW 120th Avenue, Coral Springs, FL 33065; with a copy to First Data Merchant Services LLC, Attn: Legal Department, 6855 Pacific Street, Omaha, NE 68106.

ACCEPTANCE

AUTHORIZED SIGNATURES:

Merchant full legal name		**BluePay Processing, LLC (an affiliate of First Data Merchant Services LLC)**	
Signature		**Signature**	
Name		**Name**	
Title		**Title**	
Date		**Date**	