

BluePay ACH Processing Services Agreement Terms and Conditions

This Agreement is entered into as of the date on which it is accepted in writing or electronically by BluePay (the “**Effective Date**”), and is between BluePay, the Merchant and Guarantors.

BluePay Appointed as Agent for Receipt of Merchant Payments

Merchant hereby appoints BluePay, or its designee, to be its authorized agent, to provide it with Automated Clearing House (“**ACH**”) services as a third party processor of Merchant ACH transactions (each a “**Transaction**”). Transactions will be placed by BluePay through a bank with whom BluePay has a relationship, who will be acting as the Originating Depository Financial Institution (“**ODFI**”). BluePay or its ODFI will debit money (“**Debit Entry**”) for the purpose of collecting electronic payments from the accounts of your customers (“**Check Writers**”) and/or credit money (“**Credit Entry**”) for the purpose of paying your accounts receivable in accordance with the terms of this Agreement, the operating rules (“**Rules**”) of the National Automated Clearing House Association (“**NACHA**”) available here www.nacha.org, and the applicable U.S. Federal laws and regulations (the “**Regulations**”) governing the ACH Processing Services. The terms of this Agreement do not limit your obligation to comply with the Rules or Regulations. For the purposes of this Agreement, “**Entry**” or “**Entries**” shall mean either a Credit Entry or a Debit Entry.

Upon settlement of any Debit Entry Transaction to BluePay, Merchant agrees to immediately grant to the Check Writer the full benefit of the face value of the associated Transaction. To that end, as and when BluePay is in possession of any Debit Entry Transaction funds, Merchant shall deliver to the Check Writer a receipt for such funds notwithstanding the fact that Merchant has not yet received such funds in the Merchant DDA (as defined below). If, for any reason, any Debit Entry Transaction funds that are settled to BluePay are not remitted to the Merchant, the Merchant is hereby estopped from making a claim for such amounts against the Check Writer.

Merchant Responsibilities

Authorization

You will obtain an ACH authorization from your Check Writers, in a form compliant with the Rules and acceptable to BluePay and its ODFI, prior to transmitting any Entries on account to BluePay. You will maintain records of Check Writer authorizations as necessary to resolve disputes. The authorization must be maintained by you for a period of five (5) years after the termination or revocation of the authorization, or for such longer period as maybe specified by the Rules. You agree to provide the original, a copy or other accurate record of the authorization promptly upon request by BluePay or the ODFI to enable the ODFI to deliver the authorization to the requesting party within the time period required by the Rules. BluePay reserves the right to audit and the ODFI is granted the right to audit the books and records of Merchant related to performance under this Agreement so as to ascertain compliance of the Merchant with the terms of this Agreement, for underwriting purposes and in order to comply with Rules and Regulations. Any actual or attempted Transactions that occur without proper authorization by the Check Writer may result in your funds being frozen pending an investigation by BluePay or the ODFI. You acknowledge that you will be responsible and liable for all unauthorized Transactions.

Submitting Entries

(i) Online Merchants will create a file containing Entries in a format acceptable to BluePay. You may electronically transmit such file to BluePay (such electronic destination being the “**BluePay Host Processing System**”) or deliver the file to BluePay during BluePay’s business hours, as in (ii) below. (ii) All other Merchants will fax or mail signed authorization forms in a format acceptable to BluePay. You agree not to initiate Entries in violation of the laws of the United States of America. You understand that you are not authorized to initiate Entries for any third party without BluePay’s consent.

Representations and Warranties

You represent and warrant that with respect to all Entries we originate for you that: (i) each Check Writer has authorized the debiting and/or crediting of its account and that such authorization contains the information and is in the format required by the Rules and has not been revoked; (ii) each Entry is for an amount agreed by the Check Writer due and

owing by the Check Writer to Merchant on the settlement date or is to correct an erroneous prior Credit Entry; (iii) each Entry complies with the Rules and Regulations and is in all respects properly authorized; and (v) each Entry is of a type that BluePay has approved Merchant to initiate and has been identified with the proper SEC code as defined in the Rules. With respect to each Entry, Merchant gives each of the warranties that an Originator or ODFI as defined in the Rules would be required to give for the type of Entry initiated. You agree to indemnify us and ODFI for any losses, liabilities, costs or expenses we or ODFI suffer or incur as a result of any breach of these representations and warranties. If you receive notice that any pre-notification has been rejected, you will not initiate any Entry until the cause for rejection has been corrected and another pre-notification has been submitted and accepted. You shall cease initiating Entries immediately upon your receiving actual or constructive notice of the termination or revocation of authority from BluePay, ODFI or a designee of either or the Check Writer. You shall not collect, store or disclose Check Writer account information other than as expressly permitted by such Check Writers.

Identifying Numbers

You understand that we may rely solely on identifying numbers provided by you to determine the financial institution or bank and account of Check Writer even if the numbers identify an account holder different from the one you identified by name. You will indemnify us for any losses, liabilities, costs or expenses we suffer or incur as a result of an incorrect account or other identification in an Entry or otherwise.

Regulatory Compliance

Merchant bears the final responsibility to ensure that the Merchant's policies and procedures and the Entries meet the requirements of the Rules and Regulations. Merchant is encouraged to consult its legal counsel regarding compliance of authorization and payment procedures whenever there is any doubt about compliance. You agree to regularly and promptly review all Entries and other communication sent by or to you and to immediately notify BluePay if you discover any discrepancy between your records and those provided by BluePay, the ODFI or your bank, or with respect to any Transaction that you believe was not authorized by you or the applicable Check Writer. If you fail to notify BluePay within fourteen (14) calendar days after the date that BluePay mails or provides a statement of account or other report of activity to you, BluePay has no obligation to investigate. If you transmit ACH files electronically, you agree to review transactions posted on a daily basis, or such other frequency as BluePay may prescribe, and notify BluePay immediately by telephone of any suspected unauthorized transaction.

Merchant represents that neither it, nor any of its affiliates, officers, employees or agents are listed on any Specially Designated Nationals ("SDN") list of the U.S. Department of the Treasury the Office of Foreign Assets Control ("OFAC").

Merchant and each Guarantor hereby state that neither they nor the individual officers of Merchant, or any individual using this processing relationship with BluePay 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.

Furthermore, Merchant and each Guarantor 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; and (iii) acting in the ordinary course of business of the Merchant. The Merchant and Guarantors authorize BluePay and its representatives to obtain from third parties financial, credit and background information relating to Merchant and consumer reports on Guarantors, to assist BluePay in its determination of whether to accept this Agreement and its continuing evaluation of the financial and credit status of Merchant for the entire term hereof.

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

BluePay ACH Gateway Services

As part of the ACH Processing Services, BluePay will transmit the Entries it receives from you to its ODFI. If you have elected to not use the BluePay ODFI but wish to nonetheless use the BluePay ACH gateway services to communicate Entries to your own ODFI (the "**Merchant ODFI**"), BluePay will do so, subject to the terms hereof (such limited ACH Processing Services being the "**BluePay ACH Gateway Services**"). All of the limitations of liability, other restrictions and obligations of Merchant related to the ACH Processing Services shall apply to the BluePay ACH Gateway Services, with the exception that: (i) Entries will not be transmitted to BluePay's ODFI; and (ii) BluePay shall not take possession of any Transaction funds. Merchant assumes sole and exclusive liability for its relationship with the Merchant ODFI and Merchant shall indemnify and hold BluePay harmless from and against any and all liabilities from or arising in respect of the Merchant ODFI.

Indemnification

You shall hereby indemnify and protect, defend and hold harmless BluePay and ODFI, and their 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 arising out of or in connection with or by reason of this Agreement, the Entries, Transactions, the provision of the ACH Processing Services hereunder, or any breach of Rules or Regulations or your representations, warranties or covenants set forth herein (collectively, "**Losses**"), except only that you shall not be required to indemnify any Indemnified Party for any Losses to the extent such Loss is finally determined by a court of competent jurisdiction to have arisen solely out of the gross negligence or willful misconduct of such party. The indemnification obligations of the Merchant under this Agreement shall survive any termination of this Agreement.

BluePay Responsibilities

Accepting Transactions

(i) BluePay will accept on line Entries in the format prescribed by BluePay format via electronic transmission on a 24-hour basis, or office delivery during normal business hours of BluePay. (ii) BluePay will accept all other Entries via facsimile on a 24-hour basis, or office or mail delivery during normal business hours of BluePay. (C) Merchant does not have the right to cancel or amend an Entry after submission to BluePay.

Originating Transactions

BluePay will use the information provided by you to originate your Entries to the ACH. You understand that we may reject your Entries for any reason such as those permitted or required in the Rules or Regulations. You also understand that your Entry may be rejected by us or its origination may be delayed if the Entry would cause us to violate any U.S Federal Reserve or other regulatory risk control program or any other law or regulation. At your request, we will make reasonable efforts to reverse or delete an Entry but we will have no responsibility for the failure of ourselves or any other person or entity to comply with such requests. All such requests must be made in writing and faxed, delivered or mailed to BluePay.

Returned Entries and Notices of Change ("NOC")

BluePay will apply returned Entries to the account that you maintain at a financial institution as indicated in the application for this Agreement or as otherwise amended by written notice to BluePay (the "**Merchant DDA**") when they are received. Unless BluePay is otherwise notified in writing, the Merchant DDA shall be the account indicated on the voided check submitted together with the application for this Agreement. (i) Return items report will be delivered to you by BluePay the day there is activity to report. BluePay is responsible for correcting all NOC's received. BluePay will then create and make available to you a report containing the detailed information about the return Entries. (ii) You shall not initiate Entries until such time as the NOC information has been received and records have been updated to include the NOC conformation. BluePay shall have no obligation to retransmit an Entry if the original transmission was not in compliance with this Agreement. If you request that the returned item be retransmitted, BluePay may do so in accordance with the Rules. You agree to pay any cost associated with retransmission.

Method of Transfer

We will transfer all funds to a custodial account at our financial institution (which may or may not be the same as the ODFI). We 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 extended at the sole discretion of BluePay. We may, at our discretion, reduce the holding time upon written guarantee of the funds by your financial institution. BluePay 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.

Settlement and Finality

After the hold period for Debit Entries has expired, we will credit the Merchant DDA by the amount of the Debit Entries but this credit will not be final until we have available Transaction funds. If any Debit Entry is returned to us (as described in the Rules), we will debit the Merchant DDA for the amount of the returned item plus fees and costs incurred by BluePay. In the event there are not sufficient funds in the Merchant DDA to cover your obligations under this Agreement, you agree to pay us the amount of the deficiency on demand in immediately available funds. BluePay may debit any account maintained by you, such as for example the Merchant DDA, without further notice to or approval from you. Any Credit Entries that you create will be debited from the Merchant DDA in accordance with the hold period prior to the credit being distributed to your payees' accounts. In the event that the Debit Entry is returned for any reason, the Credit Entries will be cancelled due to the unavailability of funds.

Limits of Liability

BluePay will be responsible for our performance of the ACH Processing Services as a third party service provider in accordance with the terms of this Agreement, and the Rules and Regulations. We are not, however, responsible for errors, acts or failures to act of others, including, and among other entities, banks, ODFI, Merchant ODFI, communications carriers or clearing houses through which Entries may be originated or we receive or transmit information, and no such entity shall be deemed our agent.

BluePay is not responsible for any loss, delay, cost or liability which arises, directly or indirectly, in whole or in part, from: your actions or omissions, your negligence or breach of any warranty or agreement ; any ambiguity, inaccuracy or omission in any instruction or information provided to BluePay; accidents, strikes, labor disputes, civil unrest, war, terrorism, fire, earthquake, flood, water damage (e.g., from fire suppression systems), tele-communications 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 BluePay's reasonable control.

BluePay will not be responsible under any circumstances for special, indirect, punitive or consequential damages which you incur as a result of BluePay's actions or omissions, even if BluePay is aware of the possibility for such damages. BluePay's liability and your remedy for actual costs and losses resulting from BluePay's actions and/or omissions during any 12-month period, whether the claim is in contract or tort, will not 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 you to enforce the terms of this Agreement or to recover for any ACH Processing Service-related loss must be commenced within one (1) year from the date that the event giving rise to the claim, action or proceeding first occurs failing which you shall forego right to make such claim. You agree to cooperate with BluePay in any loss recovery efforts BluePay might undertake to reduce any loss or liability that arises in connection with the ACH Processing Services.

We make no representations or warranties other than those expressly made in this Agreement.

Fees

In consideration of the ACH Processing Services, you agree 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 BluePay in performing under this Agreement (collectively, the "**Fees**"). You acknowledge that the Fees have been established in contemplation of: the limitations on

BluePay's liability set forth in this Agreement; your agreement to review statements, confirmations, and notices promptly and to notify BluePay immediately of any discrepancies or problems; and your agreement to assist BluePay in any loss recovery effort.

We will notify you in writing of and you agree to pay promptly, the Fees we establish from time to time for our ACH Processing Services. Your current Fees are set forth on the application for ACH Processing Services, including for BluePay funds transfer, pre-note, returned item, change item and other ACH Processing Services. Additionally, there is a monthly access Fee which is stated on the application for this Agreement. A \$25.00 Fee will be assessed if our debit to your Merchant DDA is returned. There are no additional Fees for data storage. You agree that we may obtain payment for these Fees and any other amounts due us under this Agreement by BluePay-initiated Debit Entry to the Merchant DDA. BluePay shall have, and you acknowledge that BluePay has, the right to set off against any amount payable by BluePay to you under any provision of this Agreement, any amounts owed BluePay by you, or any damages sustained by BluePay, ODFI or Chex Collect[®]™ as a result of your violation, breach or non-performance of your obligations under this Agreement.

Governing Law

This Agreement is governed by, and shall be construed under, the law of the State of Illinois, without regard for the principles and conflicts of law.

Arbitration

Any dispute between us shall be submitted to binding arbitration, to be conducted pursuant to the Rules of the American Arbitration Association. Any award may include an award for reasonable attorney's fees and costs. Arbitration shall take place in Chicago, Illinois and there shall be only one arbitrator who shall be an attorney that is practicing commercial law.

No Jury Trial and Class Action Waiver

You and BluePay each waive any right to request a jury trial in the event any claim is brought with respect to this Agreement, its interpretation or enforcement. You 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.

Amendment

We may amend this Agreement by notice to you. We will notify you in writing before we modify this Agreement. Your use of the ACH Processing Services after any such modification will evidence your acceptance of the modifications.

Entire Agreement

This Agreement makes up the entire Agreement between Merchant, Guarantors and BluePay concerning the ACH Processing Services. If any provision of this Agreement is deemed unenforceable, the remaining provisions will still be enforceable.

Third Party Beneficiaries

The Check Writer is a third party beneficiary under this Agreement as relates to its release from liability to Merchant for any Debit Entry Transaction funds that are settled to BluePay, whether or not they are subsequently settled to the Merchant DDA.

BluePay's ODFI is a third party beneficiary hereunder and entitled to enforce all of the rights of BluePay under this Agreement.

Other than Check Writer and BluePay's ODFI, there are no third party beneficiaries under this Agreement.

Continuing Guaranty

For valuable consideration, the Guarantors unconditionally guarantee and promise to pay BluePay or order, on demand, in lawful money of the United States, any and all indebtedness. The word “**indebtedness**” is used herein in its most comprehensive sense and includes any and all advances, debt, charge-backs for any reasons, and liabilities of Merchant previously incurred, now existing or hereafter made, incurred or created, whether voluntary or involuntary. Guarantor(s) waive any right to require BluePay to:

- (a) proceed against Merchant or any other parties or individuals;
- (b) proceed against or exhaust any security for Merchant’s indebtedness; or
- (c) pursue any other remedy in BluePay’s power whatsoever.

Guarantor(s) waive any defense arising by reason of any act or omission of the Merchant and/or the Guarantor(s) in any legal action by BluePay to recover any indebtedness. Guarantor(s) shall have no right of subrogation, and waive any right to enforce any remedy, which BluePay now has or may hereafter have against Merchant or others, and waive any benefit of, and any right to participate in any security now or hereafter held by BluePay. Guarantor(s) waive all presentments, demand for performance, notices of non-performance, protests, notices of dishonor, and notices of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness. In the event BluePay consults a lawyer or incurs any cost or expenses in connection with enforcing this Guaranty, or otherwise as a result of any transaction(s) arising out of or related to this Guaranty, Guarantors agree to pay all such costs, expenses and reasonable attorneys’ fees.

As a primary inducement for BluePay to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to BluePay under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and any processor, acquiring bank or other vendor of BluePay, as such agreements now exist or are amended from time to time, with or without notice.

Corporate Authorization

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

Cancellation

Any party may cancel this contract with 15 days written notice to the other which will allow the completion of prior Transactions which may be in process. Any cancellation or termination will not affect your obligations arising before the termination or cancellation. In the event the Merchant exercises its right to cancel, cancellation will be subject to a cancellation fee of \$249.

Reserve Account

In BluePay’s sole discretion, at any time during the term of this Agreement, BluePay may require Merchant to maintain a reserve account (the “**Reserve Account**”) at a financial institution determined by BluePay. In the event that BluePay requires a Reserve Account, BluePay shall hereby deduct from the Transaction settlements hereunder and establish the Reserve Account to ensure BluePay’s recovery of any liabilities owed it or reasonably anticipated to be owed to it by the Merchant pursuant to this Agreement or otherwise on account of Merchant, including without limitation, all liabilities in respect of actual and/or potential post-termination chargeback, post-termination Fees, and charges, indemnifications and expenses due or anticipated to be due to BluePay from or on account of Merchant. The Reserve Account shall be funded and maintained by BluePay withholding amounts from the Transaction settlements or by debiting funds from the Merchant DDA. The amount of the Reserve Account shall be amended by BluePay at its discretion as a function of the

financial risk posed to BluePay by Merchant. Upon any termination of this Agreement, for any reason what so ever, BluePay reserves the right to maintain in its possession the Reserve Account any and all amounts then held by BluePay, or its agents, in relation to the Merchant until such time as all actual and potential liabilities of Merchant to BluePay are settled in full, including without limitation, legal fees associated with enforcing the terms of this Agreement. In the event the Reserve Account is not sufficient to cover the items that are returned after the termination of this Agreement, BluePay will debit the Merchant DDA and other account(s) for the amounts owed.

Re-evaluation

BluePay reserves the right to re-evaluate the Merchant from time to time after the initial approval of this Application and reserves the right to terminate or suspend ACH Processing Services, reduce daily or periodic limits on Transactions, change the Fees or make other changes to the ACH Processing Services provided to Merchant during the term of this Agreement.

Binding Agreement

This Agreement shall be binding on the parties only upon execution by an authorized representative of BluePay.

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) your electronic signature is associated with the Agreement and related documents, (2) you consent and intend 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”, you agree (i) that the Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that you have the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize us to conduct an investigation of your 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.

Termination or Suspension of Service

BluePay may, in its sole and absolute discretion, terminate or suspend the ACH Processing Services immediately without prior notice at any time and from time to time. Without limitation of the foregoing, you understand that BluePay may suspend or terminate the ACH Service if: (i) you breach any agreement, representation, warranty or covenant with BluePay or any third party; (ii) BluePay has reason to believe an unauthorized Transaction has taken or may take place involving any of your accounts or the ACH Processing Services; (iii) you become insolvent or the subject of a bankruptcy, receivership, or dissolution proceeding; (iv) BluePay is uncertain as to any person’s authority to give BluePay instructions regarding your account or the Service, (v) BluePay has withdrawn, or caused to be withdrawn, funds from either the Reserve Account or other similar reserve accounts in accordance with the provisions hereof, and such funds have not been restored thereto within three (3) business days; (vi) if reversals exceed 2.5%. The foregoing represents examples of circumstances in which BluePay may terminate or suspend ACH Processing Services, but do not limit BluePay’s right to terminate such service at any time for any reason or for no reason at all. Termination or suspension of ACH Processing Services by BluePay shall not affect your obligations hereunder or under other agreements, and BluePay shall have no liability on account of such termination.