



ELAVON MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is between Elavon, Inc. (“**Elavon**”) and the entity identified as Company in the signature block below (“**Company**”). The Agreement will be effective on the date in Elavon’s signature block (the “**Effective Date**”). The Agreement consists of:

- This signature page, the General Terms and Conditions, and Appendix 1 – Definitions;
 - Schedule A – Fees;
 - Schedule B – Company Application
 - Schedule C – Affiliated Entities
 - Schedule D – Processing Services Terms;
 - Schedule E – SAFE-T Terms;
 - Schedule F – Services in Canada;
 - Schedule G – Services in Puerto Rico;
 - Schedule H – Government Terms;
 - Schedule I – Electronic Check Services Terms; and
- Any other schedules and any applicable Statements of Work entered into under the Agreement.

Agreed and accepted

CITY OF PALO ALTO, CALIFORNIA,
on behalf of itself and each Affiliated Entity
 (“**Company**”):

By: _____
Name: _____
Title: _____
Date: _____

ELAVON

By: _____
Name: _____
Title: _____
Effective Date: _____

If Company is receiving Processing Services under Schedule D to the Agreement, the Member, as designated on the Company Application (attached as Schedule B), agrees to and accepts the Agreement.

MEMBER

By: _____
Name: _____
Title: _____
Date: _____

1. **Defined Terms.** Capitalized terms used in the Agreement will have the meanings stated in Appendix 1.
2. **Scope of Agreement.** The Agreement governs Company's receipt and use of the Services selected by Company in the Company Application. In addition to the terms of the Agreement, Company will comply with the general terms of the Operating Guide, any terms of the Operating Guide applicable to each selected Service, and any Documentation Elavon provides to Company in writing from time to time that is applicable to the Services.
3. **Affiliated Entities.** Company's Affiliated Entities may use the Services so long as they comply with all restrictions, obligations, and requirements imposed on Company. Company will remain fully responsible for any use of the Services by any Affiliated Entities, will cause its Affiliated Entities to comply with the terms and conditions of the Agreement, and will be liable for the acts and omissions of each Affiliated Entity, in each case as though each Affiliated Entity were Company. Affiliated Entities may not enforce the terms of the Agreement against Elavon, but Company may enforce the terms on behalf of its Affiliated Entities. The parties may add Affiliated Entities to Schedule C after the Effective Date by substituting a new Schedule C that is in writing and signed by Company and Elavon. Company will promptly notify Elavon in writing if any entity on Schedule C no longer qualifies as an Affiliated Entity that Company allows to use the Services. For any acts or omissions of an Affiliated Entity giving rise to a termination right by Elavon under Section 4.2, Elavon may terminate the Agreement with respect to (i) only such breaching Affiliated Entity, or (ii) Company and all Affiliated Entities. If Elavon terminates the Agreement under Section 4.2 as to Company, the Agreement will terminate with respect to Company and all Affiliated Entities.
4. **Term and Termination**
 - 4.1. **Term.** Unless terminated as provided below, the Agreement will remain in effect for the Initial Term stated in Schedule A. Thereafter, the Agreement will automatically renew for successive Renewal Terms as stated in Schedule A unless terminated as provided below.
 - 4.2. **Termination.**
 - (a) **Non-Renewal.** Either party may terminate the Agreement effective at the end of the Initial Term or any Renewal Term by providing written notice of non-renewal to the other party at least 90 days prior to the expiration of the then current Term.
 - (b) **By Either Party for Cause.**
 - (i) Either party may terminate the Agreement if any of the following conditions remain uncured 30 days after the terminating party notifies the other party in writing of the existence of the condition:
 - (1) The other party has failed to pay the party an undisputed amount owed to the party under the Agreement; or
 - (2) The other party has failed to perform a material obligation under the Agreement.
 - (ii) Either party may terminate the Agreement immediately in writing if any of the following occur:
 - (1) The commencement of a Bankruptcy Proceeding by or against the other party;
 - (2) Any representation by the other party in Section 12 is false or misleading in any material respect as of the date made, or becomes false or misleading in any material respect at any time during the Term.
 - (c) **By Elavon for Cause.** Elavon may terminate the Agreement immediately in writing if any of the following occur:
 - (i) A material adverse change in Company's financial condition;
 - (ii) Any Payment Network or application of Payment Network Regulations requires Elavon to terminate the Agreement or cease processing Transactions for Company; or

(iii) Assignment of the Agreement or a Change of Control of Company without Elavon's written consent.

(d) **Force Majeure.** Company will have the termination right stated in Section 18.14 if a Force Majeure occurs.

(e) **Additional Termination Rights.** If Company is receiving Processing Services, Elavon also will have the termination rights set out in Section 1.6 of Schedule D.

4.3. **Account Closing.**

(a) Company acknowledges that closing Company's account with Elavon may take up to 30 days following Elavon's receipt of written notice of termination.

(b) All obligations of a party regarding Transactions serviced prior to termination will survive termination. Company will maintain enough funds in the DDA following termination to cover all Chargebacks and returns (if Company is receiving Processing Services), adjustments, fees, fines, penalties, assessments and charges from the Payment Networks and other amounts due under the Agreement for at least 180 days after termination.

4.4. **Early Termination Fee.** If Company terminates the Agreement before the end of the Initial Term (except for termination for Elavon's uncured default as stated in Section 4.2(b), termination pursuant to Section 4.2(d), or as stated in Section 7), Company will immediately pay Elavon an Early Termination Fee. Company acknowledges that the Early Termination Fee is not a penalty, but rather a reasonable estimate of the damages Elavon sustained because of Company's termination of the Agreement before the end of the Initial Term.

4.5. **Transition Assistance.**

(a) At Company's request, Elavon will, at no additional cost to Company and for up to 90 days beginning on the termination date of the Services (or such earlier date following notice of termination as may be requested by Company), provide Company with Elavon's standard assistance in transitioning the Services to another provider designated by Company. In connection therewith, subject to Section 4.5(b) and at Company's request, Elavon will continue to perform the Services for up to 90 days after the date of termination, and Company will continue to pay Elavon, in accordance with the Agreement during any such period. Each party will fully comply with all provisions of the Agreement during any such period.

(b) Elavon will not be obligated to provide any post-termination Services (other than standard transition assistance) to Company under Section 4.5(a) if Elavon terminates the Agreement for cause under Sections 4.2(b), (c), or (e).

5. **Authorized Users; Access; Security of Passwords and User IDs.**

5.1. Company will be responsible for the distribution of all passwords and user IDs issued to any Authorized User and for maintaining the confidentiality and security of Authorized User's passwords and user IDs. Company will ensure that the access granted to each Authorized User to the Services is limited to only the access and information necessary for the Authorized User to perform his or her job functions on behalf of Company. Company will ensure that all Authorized Users will be trained and qualified to access and use the Services in accordance with the terms of the Agreement, the Operating Guide and any Documentation. Company is responsible for its Authorized Users' compliance with the terms of the Agreement, the Operating Guide, and the Documentation, for all acts or omissions of the Authorized Users, and for all use of any Authorized User's user ID and password other than by Elavon or Elavon's third-party contractors or use by third-parties of the user IDs and passwords obtained by such third parties from Elavon or Elavon's third-party contractors.

5.2. Company will not, and will ensure that its Authorized Users do not:

(a) access or use the Services for any purposes other than for its own internal business purposes (except as authorized by Elavon) as disclosed to Elavon in writing;

(b) modify, reverse engineer, disassemble or decompile any part of the Services or Elavon Materials;

(c) knowingly transmit any data that contains software viruses, time bombs, worms, Trojan horses, spyware, disabling devices, malicious code, or other harmful or deleterious computer code, files or programs to or through the Services;

provided, that Company will use commercially reasonable measures (at least industry standard) to screen for the foregoing.

- (d) interfere with or disrupt the servers or networks connected to or providing the Services;
- (e) remove, change or obliterate the copyright, trademark or other proprietary protection legends or notices that appear in connection with access to and use of the Services or any Elavon Materials; or
- (f) copy, re-sell, republish, download, frame or transmit the Services or Elavon Materials, including in order to act as a consultant for any third party or, unless otherwise permitted under the Agreement, as a service bureau, outsourcing or application service provider for any third parties, or otherwise allow any third party to use or access the Services.

5.3. Company is responsible for changing the user IDs and passwords of its Authorized Users if it believes that any of those user IDs or passwords have been stolen or might otherwise be misused and for disabling any Authorized User's IDs and passwords promptly upon the termination of employment of such Authorized User or the cessation of such Authorized User's need to access the Services. Company will promptly notify Elavon if Company believes the Services or Elavon's databases have been compromised by use of a user ID or password associated with the Services.

6. Fees and Taxes.

6.1. **Compensation.** Company will compensate Elavon for all fees and other amounts due for the Services and Equipment in accordance with Schedule A, or as otherwise agreed upon in writing by Elavon and Company. Such amounts will be calculated and debited from the DDA (or, if applicable and Company is receiving Processing Services, the Reserve Account) once a month for the previous month's activity, or, if Company is receiving Processing Services, may be deducted from the funds due Company under the Agreement.

6.2. **Change of Fees.** Elavon will not amend the fees for the Services for the Initial Term except (i) as stated in Schedule A or (ii) to pass through to Company increases in interchange, assessments or charges, or increased or new fees imposed by a third party (including a Payment Network).

6.3. Other Amounts Owed.

(a) In addition to the amounts described in Section 6.1 above, Company will promptly pay Elavon for:

- (i) Any fines, penalties, assessments, or charges (including those imposed by the Payment Networks as a result of Company's violation of Payment Network Regulations), attributable to the Agreement (other than those directly attributable to Elavon's acts or omissions); and
- (ii) if Company is receiving Processing Services, any Chargebacks, returns, adjustments and associated fees.

Elavon may debit these amounts from Company's DDA (or, if applicable and Company is receiving Processing Services, the Reserve Account) by ACH, or, if Company is receiving Processing Services, offset these amounts from funds Elavon otherwise owes to Company. If such offset or ACH debit does not fully reimburse Elavon for the amount owed, Company will promptly pay Elavon such amount upon demand.

(b) Elavon will charge interest on all uncollected amounts owed to Elavon that are more than 30 days past due at a rate no greater than the maximum rate of interest permitted under Laws.

6.4. **Taxes.** Company will pay all taxes and other charges imposed by any governmental authority on the Services and Equipment provided under the Agreement, excluding any taxes based on Elavon's property or net income. If Company is a tax-exempt entity, Company will provide Elavon with an appropriate certificate of tax exemption.

6.5. **Demand Deposit Account.** Company will establish and maintain one or more DDAs to facilitate payment of fees to Elavon. Company authorizes Elavon and its Affiliates that provide Services under the Agreement to initiate ACH credit and debit entries to the DDA in order to pay the fees and any other amounts that may be due by Company to Elavon under the Agreement, and Company authorizes its depository institution to grant Elavon access to any information or records regarding the DDA reasonably requested by Elavon to debit or credit the DDA and to otherwise exercise Elavon's rights under the Agreement with respect to the DDA. The foregoing authorizations will remain in effect throughout the Term and after termination of the Agreement until all of Company's payment obligations to

Elavon have been paid in full. Elavon has the right to rely on written instructions submitted by Company requesting changes to the DDA. If Company changes the DDA, the ACH authorizations established under this Agreement will apply to the new account, and Company will provide Elavon such information regarding the new DDA as Elavon deems necessary to effect debits from or credits to the DDA as provided under the Agreement. It may take Elavon up to 10 business days after Elavon's receipt of a written notice from Company to reflect in Elavon's system any change to Company's DDA.

7. **Modifications and Discontinuance of Services.** Elavon may modify the Services or particular components of the Services from time to time and will use commercially reasonable efforts to notify Company of any material modifications. If Elavon ceases to make a Service selected by Company generally available to its merchant customers (a "**Discontinued Service**"), Elavon may cease providing such Discontinued Service to Company upon 180 days' advance written notice. If discontinuing the Discontinued Service or making a modification to the Services has a material negative impact on Company, Company may terminate the Agreement without any obligation to pay the Early Termination Fee by notifying Elavon in writing within 60 days of Company's receipt of Elavon's notice of the Discontinued Service or modification. If Company does not terminate the Agreement within such 60-day period, the Agreement will continue in full force and effect without the Discontinued Service or with the material modification, as applicable. Elavon will not be liable to Company or to any third party for any modification or discontinuance of the Services as described in this Section 7. Company may request transition assistance from Elavon under Section 4.5 for any Discontinued Service.
8. **Compliance with Laws and Payment Network Regulations.**
 - 8.1. **General.** Elavon and Company will comply with all Laws and Payment Network Regulations applicable to the selected Services.
 - 8.2. **Office of Foreign Assets Control Compliance.** Company acknowledges that Elavon is an entity governed by the Laws of the United States of America and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including the Laws promulgated by the Office of Foreign Assets Control (OFAC) or the United States Department of the Treasury or any successor thereto.
 - 8.3. **Export Laws Compliance.** Company will comply with all United States export Laws governing the export and re-export of hardware, software or technology applicable to the Services and Equipment, including United States Department of State International Traffic In Arms Regulations (ITAR), United States Foreign Corrupt Practices Act, United States Commerce Department's Export Administration Regulations, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto. Company will not, and will not request Elavon to, export, directly or indirectly, any technical data pursuant to the Agreement or any product using any such data to any country for which the United States Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
 - 8.4. **Customer Identification.** To help the United States Government fight the funding of terrorism and money laundering activities, federal law requires financial institutions and their affiliates to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Company will provide certain information and identifying documents requested by Elavon to allow Elavon to identify Company.
9. **Confidentiality; Data Security and Use.**
 - 9.1. **Confidentiality.**
 - (a) **Confidential Information Generally.** Each party will protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and will not use, reproduce, distribute, disclose, or otherwise disseminate the other party's Confidential Information except in connection with the performance of its obligations or rights under the Agreement. The Receiving Party acknowledges that any breach of this Section 9.1 by the Receiving Party may result in irreparable harm to the Disclosing Party for which monetary damages may not provide a sufficient remedy. Therefore, the Disclosing Party may seek both monetary damages and equitable relief with respect to any such breach without any obligation to post bond.
 - (b) **Disclosure of Confidential Information.** If the Receiving Party or its agents become legally required or compelled (by applicable public records laws, any publicly filed and noticed deposition, interrogatory, request

for documents, civil subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party if permitted will provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. If the Disclosing Party does not obtain a protective order or other remedy, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party is legally required to disclose and to use reasonable efforts to obtain assurances that confidential treatment will be accorded such Confidential Information. Neither party will be obligated to notify the other of the receipt of any non-public or confidential investigative demand, summons, or grand jury subpoena or other similar process that requires confidentiality on the part of the applicable party.

- (c) **Duration of Obligations.** The non-disclosure obligations in this Section 9.1 will continue (i) with respect to Confidential Information that does not constitute a trade secret, for three years following termination, and (ii) with respect to Confidential Information that is a trade secret under Laws, for the longer of three years after termination and such period as the information retains its status as a trade secret under Laws.
- (d) **Obligations on Termination.** At the request of the Disclosing Party upon the termination of the Agreement, the Receiving Party will promptly delete or return to the Disclosing Party all originals and copies containing or reflecting any Confidential Information of the Disclosing Party (other than those required to be retained by Law, or that would be unreasonably burdensome to destroy, such as archived computer records). If a dispute arises between the parties in relation to the Confidential Information or the Agreement, the Receiving Party may retain a copy of such Confidential Information as the Receiving Party reasonably determines is necessary for its defense of the dispute. In all cases, any retained Confidential Information will continue to be subject to the terms of the Agreement.

9.2. Data Security and Use.

- (a) **Security Programs Compliance.** Elavon and Company will each comply with the applicable requirements of the Security Programs.
- (b) **PCI-DSS Compliance.** Elavon will undergo an annual assessment of its compliance with the PCI-DSS. Company may review Elavon's current PCI-DSS compliance status on the Payment Network websites as available.
- (c) **Elavon Data Breach.** If Elavon suffers an Elavon Data Breach, then it will comply with all Laws and Payment Network Regulations with respect to such Elavon Data Breach, including providing the required reporting and forensic audits to the Payment Networks, and, unless prohibited by law enforcement or the Payment Networks, will inform Company of such Elavon Data Breach. Elavon will not pass-through or require Company to be liable to Elavon for any fees, fines, penalties, assessments, or charges levied against Elavon by the Payment Networks in connection with an Elavon Data Breach.
- (d) **Cardholder Data and Transaction Information.**
 - (i) Elavon and Company will ensure the security of Cardholder Data and Transaction Information in accordance with all Laws and Payment Network Regulations. In accordance therewith, each of Elavon and Company will maintain reasonable and appropriate administrative, physical, and technical safeguards designed to (i) maintain the security and confidentiality of Cardholder Data, Transaction Information, and Confidential Information; (ii) protect such information against anticipated threats or hazards to its security or integrity; and (iii) prevent unauthorized access, use, or exfiltration of such information in violation of applicable Laws. Elavon and Company will retain Cardholder Data and Transaction Information for the duration required by Laws and the Payment Network Regulations and thereafter will destroy, in a manner that will render the information unreadable, all such information that is no longer necessary or appropriate to maintain for ordinary business purposes.
 - (ii) Company will not disclose Cardholder Data to any third party, except to a Service Provider, unless required by Laws or the Payment Network Regulations. Company will not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose. After authorization, Company will retain only the Customer account number, name, and card expiration date if Company has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement. If there is a failure

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or other suspension of Company's business operations, including any Bankruptcy Proceeding, Company will not sell, transfer, or disclose Cardholder Data to third parties, and Company will (a) return this information to Elavon, or (b) provide acceptable proof of destruction of this information to Elavon.

- (iii) Elavon acknowledges that Company may collect information about Company's Customers as part of a Company sales transaction (e.g., price paid, time, store identifier, SKU information) regardless of the Customer's payment type and not in connection with the Services, and that the Agreement does not restrict Company's retention, use or disclosure of such information even though some of that information may overlap with elements of Transaction Information.
- (iv) Notwithstanding anything in Section 9.1, to the extent permitted by Law, any Cardholder Data, Transaction Information, and information regarding Company, its principals, or Affiliates included on the Company Application or that Elavon otherwise obtains in connection with the Agreement may be:
 - (1) Used by Elavon and its Affiliates, third-party contractors, agents, and referral partners (a) to provide the Services and related functions to Company and to respond to any further application for Services, (b) for administrative purposes and to maintain Company's account pursuant to the Agreement, and (c) for Elavon's internal fraud and compliance monitoring;
 - (2) Disclosed and shared by Elavon for reporting purposes to credit rating agencies and to the financial institution where the DDA is maintained;
 - (3) Used to enhance or improve Elavon's products or services generally;
 - (4) Used or disclosed by Elavon in the course of any sale, reorganization or other change to Elavon's business, subject to appropriate confidentiality agreements;
 - (5) Collected, used and disclosed by Elavon as required by Laws (e.g., for tax reporting or in response to a subpoena); and
 - (6) Retained for such periods of time as Elavon requires to perform its obligations and exercise its rights under the Agreement.

Elavon may prepare, use, and share with third parties, aggregated, non-personally identifiable information derived from Transaction Information (so long as such information cannot be identified to Company) that is combined with similar information from all of or specific segments of Elavon's other customers.

10. Assessment and Audit

10.1. **Elavon Reports on Internal Controls.** Elavon will engage independent, qualified, external auditors (the "**Elavon Auditors**") to assess the internal controls and information security measures in place related to the Services ("**Internal Controls Assessment**"). The scope of the Internal Controls Assessment will conform with Laws, applicable Card Brand Regulations and industry standards, including generally accepted auditing standards such as the Statement on Standards for Attestation Engagements No. 18 "Attestation Standards: Clarification and Recodification" issued by the Auditing Standards Board of the American Institute of Certified Public Accountants. The frequency of the Internal Controls Assessment will be consistent with industry standards. Elavon will provide copies of its SOC 1 and SOC 2 reports to Company upon request, subject to Company's compliance with Elavon's confidentiality requirements applicable to the receipt of such reports.

10.2. **Company Audit.** If Elavon reasonably suspects that it is subject to a financial or reputational risk due to Company's acts or omissions, Company authorizes Elavon and its agents to perform an audit or inspection of Company's operations and records to confirm Company's compliance with the Agreement upon reasonable advance notice, during normal business hours, and at Elavon's expense (unless Elavon reasonably determines based on such audit that Company is not in compliance with the Agreement, in which case Company will bear the cost). Company will maintain complete and accurate records of its performance under the Agreement. Company will execute and deliver to Elavon all documents Elavon reasonably deems necessary to verify Company's compliance with Section 8.1.

11. **Proprietary Rights.** As between Elavon and Company, Elavon retains all right, title and interest in and to the Services, Elavon Materials, Updates, and all Intellectual Property Rights in any of the foregoing. Company will not acquire any ownership interest or license rights (except such rights as are expressly stated in the Agreement (including the Operating Guide)) in or to the Services, Elavon Materials, Updates, or Intellectual Property Rights in any of the foregoing. The rights granted to Company under the Agreement are non-exclusive and nothing in the Agreement will limit the ability of Elavon to market, sell, offer for sale, license or otherwise exploit the Services, Elavon Materials, Updates, or Intellectual Property Rights in any of the foregoing to any third parties or to appoint or authorize any other person or entity to do the same.

12. Representations and Disclaimers

12.1. **Elavon Representations.** Elavon represents to Company the following as of the Effective Date:

- (a) **Organization.** Elavon is a corporation validly existing and duly organized under the laws of the state of Georgia with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Elavon conducts business, in compliance with all Laws and Payment Network Regulations.
- (b) **Authority and Power.** Elavon has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Elavon to all provisions of the Agreement and such person is authorized to execute any document and to take any action on Elavon's behalf which may be required to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Elavon is subject.
- (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Elavon's knowledge, threatened, which if decided adversely would impair Elavon's ability to carry on its business substantially as now conducted or which would materially and adversely affect Elavon's financial condition or operations.

12.2. **Company Representations.** Company represents to Elavon the following as of the Effective Date:

- (a) **Organization and Information.** Company is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Company conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Company Application, the bid process, and enrollment forms, as applicable, and in the assumptions in Schedule A or any other document submitted to Elavon is true and complete and properly reflects the business, financial condition and ownership of Company in all material respects.
 - (b) **Authority and Power.** Company has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Company and each Affiliated Entity to all provisions of the Agreement as if each Affiliated Entity had executed the Agreement, and such person is authorized to execute any document and to take any action on behalf of Company that Elavon requires to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Company is subject.
 - (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Company's knowledge, threatened, which if decided adversely would impair Company's ability to carry on its business substantially as now conducted or which would materially and adversely affect Company's financial condition or operations.
 - (d) **Business Use.** Company is obtaining and using the Services from Elavon to facilitate lawful business Transactions between Company and its Customers, and using the DDA only for lawful business purposes.
- 12.3. **Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE AGREEMENT, THE SERVICES AND ELAVON MATERIALS ARE PROVIDED "AS IS," AND ELAVON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, ELAVON MATERIALS, EQUIPMENT, SOFTWARE, DOCUMENTATION, AND COMPANY'S USE OF THIRD PARTY SERVICES, EQUIPMENT, SOFTWARE, OR DATA IN CONNECTION WITH THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, SATISFACTORY QUALITY, TITLE, SECURITY, NONINFRINGEMENT, UNINTERRUPTED OR ERROR-FREE USE, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE.

12.4. **No Viruses, Etc.** Elavon will not code or insert into any portion of the Services, and will use commercially reasonable efforts to ensure that no Service will otherwise contain, any computer virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, time bomb or any other malicious codes or instructions that may be used to access, modify, delete, damage or disable the Services or Company's or any third party's software, firmware, computer system or devices.

13. Indemnification

13.1. **By Elavon.** Elavon will indemnify and defend Company, its Affiliates, and their respective employees, officers, directors, and agents against losses, damages, liabilities, fines, judgements and expenses (including all reasonable attorneys' fees) (collectively, "**Losses**") in connection with claims, actions, demands or proceedings (made or threatened) brought by a third-party ("**Claims**") arising out of (a) Elavon's breach of the Agreement; (b) Elavon's or its third party contractors' gross negligence or willful misconduct; (c) Elavon's or its third party contractors' violation of Laws or Payment Network Regulations; (d) subject to Section 13.5, Elavon's alleged infringement or other violation of a United States or Canada patent, copyright or trademark of a third party by the Services (but not Equipment) in the form delivered or Company's use thereof (an "Infringement Claim"); or (e) any personal injury or real or tangible personal property damage to the extent caused by Elavon or its third party contractors.

13.2. **By Company.** Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against Losses in connection with Claims arising out of (a) any goods or services sold by Company resulting in a Transaction processed under the Agreement; (b) Company's breach of the Agreement; (c) all use of any user ID and password other than by Elavon or Elavon's third-party contractors; (d) Company's or its Service Providers' gross negligence or willful misconduct; (e) Company's or its Service Providers' violation of Laws or Payment Network Regulations; or (f) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers.

13.3. **Exceptions.** The indemnifying party is not required to indemnify the indemnified party for Losses to the extent caused by or resulting from the negligence, gross negligence or willful misconduct of, or breach of the Agreement by, the indemnified party.

13.4. Procedure.

(a) If a Claim is subject to indemnification under the Agreement, the indemnified party will:

- (i) Provide the other party prompt notice of the Claim (provided that any delay in notification will not relieve the indemnifying party of its obligations under this Section 13 except to the extent that the delay materially impairs its ability to fully defend the Claim);
- (ii) Subject to Section 13.4(b), give the indemnifying party the right to exercise exclusive control over the preparation and defense of the Claim, including appeals, negotiations and any settlement or compromise thereof, provided that the indemnifying party will notify the indemnified party in writing of its election regarding the assumption of control of the preparation and defense of such Claim within 15 days following receipt of the indemnified party's written notice of such Claim, but, in any event, no later than 10 days before the date on which any written response to a complaint, summons, or other legal filing is due; and
- (iii) Provide such assistance in connection with the defense and settlement of the Claim as the indemnifying party may reasonably request, at the indemnifying party's expense. The indemnifying party will not enter into any settlement that imposes any liability or obligation on the indemnified party, or contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without the indemnified party's prior written consent.

(b) The indemnified party may join in the defense, with its own counsel, at its own expense.

13.5. Infringement Claims.

(a) If any part of the Services or the use of the Services becomes, or in Elavon's opinion is likely to become, the subject of an Infringement Claim, and as a result of such Infringement Claim Company's use of the Services may be enjoined or interfered with, then Elavon will, at its option and expense, either, and in addition to

defending Company and paying the final amount of Losses as provided for in Section 13.1, (i) obtain a license for Company to continue using the alleged infringing components of the Services; (ii) modify the alleged infringing components of the Services to avoid the infringement in a manner that still permits the Services to perform in all material respects in accordance with the Agreement; or (iii) replace the alleged infringing components of the Services with compatible, functionally equivalent, and non-infringing components. Elavon will use commercially reasonable efforts to accomplish the remedies identified in this section in a manner that minimizes the disruption to Company's business operations. If Elavon is not able to accomplish the above remedies within a commercially reasonable time frame and on commercially reasonable terms, Elavon may terminate the Agreement upon written notice to Company. Upon such termination, Elavon will promptly refund any fees paid for Services not performed as of the date of termination.

- (b) Elavon will have no liability for any Infringement Claim to the extent caused by (i) access to or use of the Services other than as specified under the Agreement and the related Documentation, (ii) combination or use of the Services with non-Elavon products or services (whether or not provided to Company by Elavon), (iii) any hardware, devices, software, services or other resources not provided by Elavon, (iv) failure or refusal by Company to install, implement or use any Update or correction provided by Elavon, (v) modification or alteration of the Services by anyone other than Elavon without Elavon's prior written consent, or (vi) Company's goods or services.
- (c) THIS SECTION 13.5 SETS FORTH THE EXCLUSIVE REMEDY OF COMPANY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO ANY INFRINGEMENT CLAIMS.

14. Limitation of Liability.

- 14.1. **Excluded Damages.** Neither party or its agents, officers, directors, or employees will be liable to the other party for indirect, exemplary, punitive, special, or consequential damages in connection with the Agreement under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise).
- 14.2. **General Limitation.** Company acknowledges that fees for the Services are very small in relation to the funds conditionally credited to Company for Transactions, and, consequently, Elavon's willingness to provide these Services is based on the liability limitations contained in the Agreement. Therefore, Elavon's aggregate liability for any Losses, regardless of the form of action, arising out of the Agreement or Elavon's performance or non-performance of Services under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise), will not exceed, in the aggregate, an amount equal to the greater of (a) the sum of fees paid by Company to Elavon during the twelve months immediately preceding the event giving rise to the Losses, exclusive of fees and variable costs incurred by Elavon to process Transactions such as interchange costs, assessments, charges, and fees imposed by a third party, and (b) one hundred thousand dollars (\$100,000). The foregoing limitation will not apply to (i) Losses arising out of Elavon's breach of its confidentiality obligations in Section 9.1 or subject to Elavon's indemnification obligations in Section 13.1 (excluding in each case a Data Breach, which is subject to Section 14.3), or (ii) Losses arising out of Elavon's gross negligence, willful misconduct, or fraud.
- 14.3. **Data Breach Limitation.** Notwithstanding the limitations set forth in Section 14.2 and the disclaimers in Section 14.1, Elavon will be liable to Company for Company's documented and incurred Elavon Data Breach Losses, up to an aggregate amount not to exceed the greater of (a) the sum of fees paid by Company to Elavon during the twelve months immediately preceding the event giving rise to the Losses, exclusive of fees and variable costs incurred by Elavon to process Transactions such as interchange costs, assessments, charges, and fees imposed by a third party, and (b) one hundred thousand dollars (\$100,000). The foregoing limitation will not apply to Losses arising out of Elavon's gross negligence, willful misconduct, or fraud. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, SECTION 9.2(c) AND THIS SECTION 14.3 SET FORTH COMPANY'S EXCLUSIVE REMEDY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO DAMAGES, PENALTIES, COSTS, EXPENSES, OR LOSSES ARISING FROM A DATA BREACH.
- 15. **Purchased Equipment.** Elavon will ship to Company the Purchased Equipment described in Schedule A, any Statement of Work, additional application, setup, or order forms, or any addenda or schedules mutually agreed upon in writing by Elavon and Company for the purchase price stated thereon. Company has no right to cancel an order for Purchased Equipment. Unless otherwise agreed by the parties, Company will be responsible for all shipping costs, insurance, import and export duties and similar taxes and amounts.

16. Third-Party Vendors.

16.1. Company Service Providers and Company Resources.

- (a) Company may want to use a Service Provider to assist with Transactions. Company will cause each Service Provider and applicable Company Resource to undergo testing, approval and certification by Elavon before Company uses such Service Provider or applicable Company Resource in connection with accessing or using the Services. Company will ensure that each Service Provider or applicable Company Resource maintains certification and compatibility with the Services and that each Service Provider and applicable Company Resource is fully compliant with all Laws, Payment Network Regulations, and Security Programs. Failure of Company's systems, including Company's point-of-sale system or property management system, or any Service Provider systems to maintain certification under this section or to be compatible and function with the most recent version of the Services will excuse Elavon from all liability and all of its obligations under the Agreement to the extent that Elavon's provision of the Services is impaired by such failure.
- (b) Company is responsible for any violations of the Agreement that result from the acts or omissions of Company's Service Providers and any other person who obtains access to Transaction Information from Company or access to systems under Company's or Service Provider's control (excluding acts or omissions to the extent attributable to Elavon's breach of the Agreement, gross negligence, or willful misconduct).
- (c) Elavon is not responsible for Service Providers or for the products or services offered by Service Providers, nor is it responsible for any Transaction until Elavon receives complete data for the Transaction in the format required by Elavon.
- (d) Elavon may terminate a Service Provider's access to or ability to integrate with Elavon's products, services, and systems immediately if the termination results from:
 - (i) The Service Provider's breach of any Laws or Payment Network Regulations,
 - (ii) The requirement of any court order or Payment Network or application of Payment Network Regulations to the Services,
 - (iii) Elavon's reasonable determination that the Service Provider poses an unacceptable security risk to Elavon, Company or any Payment Network, or
 - (iv) The Service Provider's failure to maintain certification to Elavon or the expiration or termination of any agreement between Elavon and the Service Provider specific to certification to Elavon with respect to the Services.

16.2. **Liability for Direct Agreement with Third Party.** Elavon has no responsibility for, and will have no liability to Company in connection with, any hardware, software or services Company receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Company and a third party, including any Service Provider, even if Elavon collects fees or other amounts from Company with respect to such hardware, software or services (and such third party will not be considered a third party contractor of Elavon). Therefore, Company will be responsible and liable for the failure of any such hardware, software or services (including payment terminals) to comply with Laws, Payment Network Regulations, or this Agreement, or to function correctly.

16.3. **Elavon Third-Party Contractors.** Elavon may use third-party contractors in connection with the performance of its obligations under the Agreement. Elavon will be responsible for the performance of its obligations hereunder notwithstanding any use of or delegation of any responsibility to any Elavon third-party contractor. Elavon is responsible for any violations of the Agreement that result from the acts or omissions of its third-party contractors.

17. Professional Services.

17.1. Elavon will provide the Professional Services to Company as mutually agreed upon by the parties in a Statement of Work. Each executed Statement of Work will be deemed incorporated into the Agreement and will identify in reasonable detail the Professional Services that Elavon will perform, including: (a) the specific deliverables and services to be provided by Elavon; (b) any responsibilities of the parties in addition to those in the Agreement; (c) the fees and costs that Company is responsible for under the Statement of Work; and (d) any payment terms that are

different from or in addition to the payment terms in the Agreement. As between Elavon and Company, Elavon will own all improvements to the Services made by or on behalf of Company that arise out of the Professional Services.

- 17.2. Elavon will perform the Professional Services in a workmanlike manner. Company will notify Elavon of any failure to so perform within 15 days following the completion of the applicable Professional Services. Elavon's entire liability and Company's sole remedy for Elavon's failure to so perform will be for Elavon to, at its option, (a) use reasonable efforts to correct such failure, or (b) terminate the applicable Statement of Work and refund the portion of any fees received that corresponds to such failure to perform.
- 17.3. Company will (a) provide sufficient, qualified, knowledgeable personnel capable of (i) making timely decisions necessary to allow Elavon to perform the Professional Services, and (ii) participating in the project and assisting Elavon in rendering the Professional Services; (b) if applicable, provide Elavon with reasonable access to Company's facilities during Company's normal business hours and otherwise as Elavon reasonably requests to enable Elavon to perform the Professional Services; (c) provide Elavon with working space and any other services and materials which may reasonably be necessary in connection with the performance of the Professional Services; and (d) perform such other duties and tasks as Elavon reasonably requests to facilitate Elavon's performance of the Professional Services. Company acknowledges that: (x) Elavon's ability to perform the Professional Services is conditioned upon Company's timely performance of Company's obligations and (y) the performance of these Company obligations is material to Elavon's ability to commence and proceed with the Professional Services.

18. General Provisions.

- 18.1. **Entire Agreement.** The Agreement (including the Operating Guide, all appendices, schedules, attachments, exhibits, addenda and other documents incorporated by reference) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other agreements, written or oral, are superseded by the Agreement. If a conflict exists between the documents comprising the Agreement, the following order of priority will apply:
 - (a) Any schedules mutually agreed upon by the parties, with respect to the subject matter thereof;
 - (b) General Terms and Conditions and the Appendices;
 - (c) The Operating Guide;
 - (d) Any signed Statement of Work; and
 - (e) Any Documentation provided to Company in writing by Elavon.
- 18.2. **Jurisdiction and Venue; Governing Law.** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflict of laws provisions.
- 18.3. **Exclusivity.** During the Term, Company will not enter into an agreement with any other entity for services similar to those Services Company has elected to receive from Elavon under the Agreement without Elavon's written consent.
- 18.4. **Construction.** The headings used in the Agreement are inserted for convenience only and will not affect the interpretation of any provision. Each provision is to be construed as if the parties drafted it jointly. The word "day" will mean "calendar day", unless specifically stated otherwise.
- 18.5. **Assignability.** Company will not assign the Agreement, directly, by operation of law, or by Change of Control of Company, without Elavon's prior written consent. If Company nevertheless assigns the Agreement without Elavon's consent, the Agreement will be binding on both the assignee and Company. Elavon will not transfer or assign the Agreement without Company's prior written consent, except for (i) an assignment or delegation to an Affiliate of Elavon, or (ii) an assignment or delegation to any entity into or with which Elavon will merge or consolidate, or who may acquire substantially all of Elavon's stock or assets.
- 18.6. **Notices.** Unless otherwise specified, except for routine operational communications (including account modification, chargeback, and hold notices), which may be delivered personally or transmitted by electronic mail, all notices to the

other party will be deemed received upon the earlier of (a) actual receipt, (b) five business days after being deposited in the United States mail, return receipt requested, or (c) two business days after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to Company's address on the Company Application or the last address shown on Elavon's records, or to Elavon at 7300 Chapman Highway, Knoxville, Tennessee 37920, with a copy to Two Concourse Parkway, Suite 800, Atlanta, GA 30328, Attn: General Counsel, or such other addresses as Elavon may designate in writing.

- 18.7. **Bankruptcy.** Company will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Company. Company will include Elavon on the list and matrix of creditors as filed with the bankruptcy court, whether or not a claim may exist at the time of filing. Company acknowledges that the Agreement constitutes an executory contract for financial accommodations to, or for the benefit of Company, and, as such, cannot be assumed or assigned in the event of Company's bankruptcy. Company will be responsible to Elavon for any damages suffered by, and expenses incurred by, Elavon due to a Company Bankruptcy Proceeding.
- 18.8. **Telephone Recording.** For quality assurance and training purposes, Company authorizes Elavon to monitor and record customer service telephone conversations at any time, subject to Laws and applicable disclosures if required.
- 18.9. **Amendments.** Except as otherwise stated in the Agreement (including in [Section 6.2](#)), amendments to the Agreement will be in writing and signed by the parties. Notwithstanding the foregoing, Elavon may amend or modify the Agreement, to the extent such changes are required by changes in Laws or the Payment Network Regulations, upon written notice to Company. Elavon will inform Company of such a change in the Payment Network Regulations or Laws in a periodic statement or other written notice, and such change will become effective at least 30 days after the issuance of the statement or notice.
- 18.10. **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired thereby. None of the failure to exercise, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor will such amend the Agreement. All waivers requested by a party must be signed by the waiving party.
- 18.11. **Independent Contractors.** Elavon and Company will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically stated in the Agreement. The Agreement has been entered into solely for the benefit of the parties to the Agreement and is not intended to create an interest in any third party except where explicitly stated otherwise.
- 18.12. **Survival.** All of the obligations of each party that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including [Sections 3, 4.3, 4.4, 4.5, 5, 6, 8, 9, 12, 13, 14, 16, 18.2, and 18.12](#), will survive and remain binding upon and for the benefit of the parties.
- 18.13. **Counterparts; Electronic Delivery.** The Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which, taken together, will constitute one and the same agreement. Signed counterparts may be delivered by fax or electronic means (e.g., .pdf documents via e-mail), and will constitute signed originals.
- 18.14. **Force Majeure.** Neither party will be considered in default in performance of its obligations to the extent such performance is delayed by Force Majeure affecting such party's ability to perform. A "**Force Majeure**" means an act of God, natural disaster, pandemic, war, act of terrorism, civil disturbance, action by governmental entity, strike, and other cause beyond such party's reasonable control. If a Force Majeure interrupts Elavon's provision of any Services, Company will continue to pay Elavon the fees for the Services owed under the Agreement and Elavon will make all reasonable efforts to restore such Services. If the delay caused by the Force Majeure continues for a more than 14 days, then Company may, upon notice to Elavon, as its sole and exclusive remedy, abate payment to Elavon (to the extent Services are not performed) and terminate the Agreement.
- 18.15. **Business Continuity.** Elavon will maintain and adhere to business continuity plans that are commercially reasonable within the industry for the Services.
- 18.16. **Tribal Governments.** If Company qualifies as a federally recognized or acknowledged tribal government or an instrumentality thereof, then Company expressly and irrevocably provides a limited waiver of its sovereign immunity (and any defense based thereon) from any suit, action or proceeding or from any legal process (whether through service

of notice, attachment prior to judgment, attachment in aid of execution, exercise of contempt powers or otherwise) brought by Elavon relative to disputes between the Elavon and Company under the Agreement in the exclusive jurisdiction set forth in Section 18.2. Without prejudice to the limited waiver of sovereign immunity provided in the Agreement, no other waiver of Company's sovereign immunity from suit may be implied from any action or document. Company waives any requirement for Elavon to exhaust tribal court remedies that might otherwise require, as a matter of law or comity, that a dispute be heard first in the tribal court of Company. The waivers and consents described in this Section 18.16 will inure to the benefit of the parties hereto. The parties will be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief. The waivers of sovereign immunity and of the obligation to exhaust tribal court remedies and the consents to jurisdiction contained in this Section 18.16 are irrevocable and will survive termination of the Agreement. Company covenants that it has obtained and will maintain in effect all authorizations and consents necessary to grant the waiver of sovereign immunity and the obligations to exhaust tribal court remedies contained herein.

APPENDIX 1 – DEFINITIONS

“**ACH**” means Automated Clearing House, the funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.

“**ACH Rules**” means the NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.

“**Affiliated Entity**” means (i) an Affiliate of Company, or (ii) a person or entity operating a franchise under one or more of Company’s brands pursuant to a written franchise agreement with Company whereby the franchisee consistently displays external identification prominently identifying itself with Company’s trademarks; in each case as listed on Schedule C or an exhibit to an applicable schedule mutually agreed upon by Company and Elavon.

“**Affiliates**” means entities affiliated under the majority ownership or control of, under common ownership or control with, or which own or control, a party.

“**Authorized Users**” means Company’s employees or contractors designated by Company to access and use the Services.

“**Bankruptcy Proceeding**” means, with respect to an entity, (i) that the entity or any subsidiary of such entity will: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file or be subject to a petition seeking to take advantage of any other applicable state or federal laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such entity or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable state or federal laws; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding will be commenced against the entity or any subsidiary of such entity in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (x) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (y) the appointment of a trustee, receiver, custodian, liquidator or the like of such entity or of all or any substantial part of the assets, domestic or foreign, of such entity or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.

“**Card Brands**” means (i) Visa; (ii) Mastercard; (iii) American Express Travel Related Services Company, Inc.; (iv) Discover Network; (v) Diners Club International Ltd.; (vi) JCB International Co., Ltd.; (vii) China UnionPay Co., Ltd; and (viii) any other organization or association that hereafter contracts with Elavon to authorize, capture, and settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

“**Cardholder**” means the individual in whose name a Payment Device has been issued and any authorized user of such Payment Device.

“**Cardholder Data**” has the meaning stated in the Payment Card Industry (PCI) Data Security Standard (DSS) and Payment Application Data Security Standard (PA-DSS) Glossary of Terms, Abbreviations, and Acronyms.

“**Change of Control**” means with respect to a party, (a) a merger or consolidation of such party with or into another entity, or the merger of another party with or into such party or any other transaction or series of transactions, with the effect that the equity holders of such party immediately prior to such transaction hold 50% or less of the total voting power entitled to vote in the election of directors, managers, or trustees of the surviving entity; or (b) any person or group acquires beneficial ownership of a majority interest of the voting power or voting capital or other equity interest of such person.

“**Chargeback**” means a Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.

“**Company**” has the definition set out in the first page of the Agreement.

“**Company Application**” means the Company Application attached as Schedule B and any additional document containing information regarding Company’s business that is submitted to Elavon in connection with Company’s request for Services, including documents submitted by Company as a part of the bid process, if applicable.

“**Company Resources**” means all equipment, communications devices, databases, services, systems and other resources that Company maintains or operates in Company’s or its third party hosting provider’s locations and which enable Company to access and use the Services.

“**Confidential Information**” means all data and information, regardless of the form or media, relating to the business of the Disclosing Party of which the Receiving Party becomes aware as a consequence of, or through, the performance of its obligations under the Agreement, which has value to the Disclosing Party and is not generally known by its competitors, which is reasonably identified as confidential at the time of disclosure or which, under the circumstances surrounding disclosure, ought to be reasonably considered as confidential, including technical information, drawings, engineering data, performance specifications, cost and price information (except as provided otherwise in the Agreement), and other information, data and reports, and the terms and conditions of the Agreement. Confidential Information does not include any data or information which (i) is already known to the Receiving Party prior to disclosure by the Disclosing Party; (ii) has become generally known to the public through no wrongful act of the Receiving Party; (iii) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, a breach of an obligation of confidentiality running directly or indirectly to the other party; or (iv) is independently developed by the Receiving Party without use, directly or indirectly, of the Confidential Information received from the Disclosing Party. Cardholder Data and Transaction Information are not Confidential Information under this definition, and are addressed in Section 9.2(d).

“**Credit Card**” means a card or device bearing the symbol of any Card Brand and associated with a revolving line of credit that can be used to purchase goods and services from Company or to pay an amount due to Company.

“**Customer**” means a client of Company who elects to conduct a payment Transaction with Company through presentation of a Payment Device (including a Cardholder).

“**Data Breach**” means unauthorized access to, use, disclosure or exfiltration of any Cardholder Data or Transaction Information provided by Company and received by Elavon in connection with Company’s use of the Services under the Agreement.

“**DDA (Demand Deposit Account)**” means the commercial checking account at an ACH participating financial institution designated by Company to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, and other payments due under the Agreement.

“**Debit Card**” means a card or device bearing the symbols of one or more EFT Networks or Card Brands, which may be used to purchase goods and services from Company or to pay an amount due to Company by an electronic debit to the Cardholder’s designated deposit account. A “Debit Card” includes (i) a card or device that bears the symbol of a Card Brand and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct PIN-based, online debit Transactions.

“**Disclosing Party**” means the party providing the Confidential Information to the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).

“**Discover**” means DFS Services LLC.

“**Discover Network**” means the payment network operated and maintained by Discover.

“**Documentation**” means the Elavon standard written description for the Services, as applicable, that is delivered to Company under the Agreement, including user manuals and best practices guides, as may be amended by Elavon from time to time, but not including marketing materials, proposals, demonstrations or other promotional information.

“**Early Termination Fee**” means an amount equal to the sum of: (i) the greater of (A) the total fees paid by Company during the 12 months immediately prior to termination, and (B) the total fees that would be payable by Company during the 12 months immediately following termination (based, with respect to any per-Transaction fees, on projected monthly Transaction volume as reflected on Schedule A); and (ii) any up-front incentives afforded to Company.

“**EBT Card**” means a card used for electronic benefits transfers.

“**ECS (Electronic Check Services)**” means the service offering by Elavon pursuant to which Transactions effected via an ACH Payment Device are presented for clearing and settlement by or through an ECS Association.

“**ECS Association**” means NACHA and any regional ACH association or network, the Federal Reserve (in its processing of ACH entries or demand drafts or other legal replacements or substitutes for a paper check, including under the Check Clearing for the 21st Century Act or under applicable provisions of the Uniform Commercial Code), and any other organization or association Elavon uses in connection with the ECS that is hereafter designated as an ECS Association by Elavon from time to time.

“**EFT Networks**” means (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes Elavon or a third party designated by Company to authorize, capture, and settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

“**Effective Date**” means the date stated in Elavon’s signature block on the signature page of the Agreement.

“**Elavon**” means Elavon, Inc., a Georgia corporation. Elavon is a registered member service provider of each Member. Elavon may also be referred to as “**Servicer**” in the Agreement, the Operating Guide or other documents provided to Company in connection with the Services.

“**Elavon Data Breach**” means a Data Breach that (i) originated within data operating systems controlled by Elavon or its third-party contractors, (ii) occurred due to a breach of the Agreement by Elavon, (iii) was not attributable to any act or omission of Company or its Service Providers, and (iv) does not relate to any Company provided data in user defined fields not required by Elavon or used to perform the Services.

“**Elavon Data Breach Losses**” means (i) any fine, penalty, assessment, or charge levied by any Payment Network or regulatory authority against Company, and paid by Company, due to an Elavon Data Breach; provided that, prior to any Payment Network or regulatory authority’s finalization of any fine, penalty, assessment, or charge for which Company will seek recovery from Elavon, Company obtains for Elavon the opportunity to discuss and attempt to negotiate such fine, penalty, assessment or charge with the applicable Payment Network or regulatory authority, (ii) amounts paid by Company to third parties to reimburse them for their direct losses resulting from or attributable to an Elavon Data Breach, to the extent Company is required by Laws (including by a statutory or contractual obligation or court order) to make such payments (excluding amounts paid under clause (i) above), and (iii) Company’s direct costs incurred in providing 12 months of credit monitoring to Cardholders affected by an Elavon Data Breach involving unauthorized access to unencrypted full primary account numbers (PANs) or social security numbers.

“**Elavon Materials**” means the specifications, documentation (including Documentation), application programming interfaces (APIs) and other interfaces, nonpublic or proprietary data import routines, sample code and materials provided to Company to enable Company to perform its obligations or exercise its rights under the Agreement, including integration to the Services.

“**Electronic Gift Card (EGC)**” means a special stored value card provided by or on behalf of Company that is redeemable for merchandise, services or other Transactions.

“**Equipment**” means Purchased Equipment and other devices, equipment and hardware provided to Company under the Agreement.

“**Force Majeure**” means has the meaning stated in Section 18.14.

“**Gateway Services**” means the hosted gateway services provided by Elavon, as further described in the Operating Guide.

“**Initial Term**” has the meaning stated in Schedule A.

“**Intellectual Property Rights**” means worldwide patents, trade secrets, copyrights, trademarks, service marks, trade names, and all other intellectual property rights and proprietary rights, including all rights or causes of action for infringement or misappropriation of any of the foregoing.

“**Internal Controls Assessment**” has the meaning stated in Section 10.1.

“**Issuer**” means the financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.

“**Laws**” means all applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.

“**Mastercard**” means MasterCard International Incorporated.

“**Member**” means the sponsoring Member designated on the Company Application or on a particular schedule, as applicable. Elavon may change any Member at any time and will provide Company notice of the change.

“**NACHA**” means the National Automated Clearing House Association.

“**Operating Guide**” means Elavon’s Operating Guide (formerly the “Merchant Operating Guide” or “MOG”), located at www.mypaymentsinsider.com and www.merchantconnect.com (or such other website that Elavon may specify), that prescribes rules and procedures governing Transactions and Company’s use of the Services. Elavon may amend the Operating Guide from time to time, which amendments will be effective upon notice to Company.

“**Payment Device**” means any device or method used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device or method, including an Electronic Gift Card, check (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, “smart” card, or other device created to be used for the purpose of obtaining credit or debiting a designated account.

“**Payment Network**” means any Card Brand, EFT Network, ECS Association or automated clearing house association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device or PayPal Payment Device (as defined in the Operating Guide) or operates a network on which a Payment Device is processed.

“**Payment Network Regulations**” means the rules, operating regulations, guidelines, specifications and related or similar requirements of any Payment Network.

“**PCI-DSS**” means the Payment Card Industry Data Security Standards.

“**POS Device**” means a terminal, software or other point-of-sale device at a Company location that conforms to the requirements established from time to time by Elavon and the applicable Payment Network.

“**Processing Services**” means Services other than Gateway Services, SAFE-T Services, and Professional Services.

“**Professional Services**” means the work Elavon performs for Company in connection with the installation or implementation of the Services, as more fully described in a Statement of Work.

“**Purchased Equipment**” means the devices, equipment and hardware purchased by Company from Elavon under the terms of the Agreement.

“**Receiving Party**” means the party receiving Confidential Information from the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).

“**Renewal Term**” has the meaning stated in [Schedule A](#).

“**Reserve Account**” means the ledger account established by Elavon on its books and records reflecting a contingent payment obligation from Elavon to Company.

“**SAFE-T Services**” means the integrated security services provided by Elavon, as further described in [Schedule E](#).

“**Security Programs**” means the PCI-DSS, including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of Mastercard, the Data Security DISC Program and the PCI-DSS regulations of Discover Network, and the security programs of any other Payment Network, and any modifications to, or replacements of, such programs that may occur from time to time.

“**Service Provider**” means any entity that stores, processes, transmits or accesses Cardholder Data or Transaction Information on behalf of Company or that provides software to Company for transaction processing, storage, or transmission, except to the extent such services are performed by the entity in its capacity as a third-party contractor of Elavon performing Elavon’s obligations under the Agreement. Elavon third-party contractors are not Service Providers.

“**Services**” means the services Elavon provides to Company pursuant to the Agreement.

“**Statement of Work**” means a statement of work for Professional Services that references the Agreement and is executed by the parties.

“**Term**” means the Initial Term and any Renewal Term.

“**Transaction**” means any action between Company and a Cardholder or Payment Network that results in transmission of Cardholder Data or Transaction Information (e.g. payment, purchase, refund, return, chargeback, authorization request, settlement submission, transaction inquiry, decryption, conversion to and from tokens).

“**Transaction Information**” means any data or information resulting from a Transaction. Transaction Information includes payment processing-related transactional information that may be collected or stored by Elavon, including the price paid for products or services, date, time, approval, unique transaction number, store identifier, and Customer bank information relating to a Transaction.

“**Updates**” means all updates, revisions, patches, fixes, new releases, and other improvements or changes to any Services provided to Company under the Agreement.

“**United States**” means the United States of America.

“**Visa**” means Visa U.S.A., Inc.

SCHEDULE A

FEES

[Separately provided]



SCHEDULE B

COMPANY APPLICATION

[Separately provided]



SCHEDULE C

AFFILIATED ENTITIES

Check one:

- Company named on page 1 only, and all locations will operate under Tax ID Number 946000389.
- Company named on page 1, with Tax ID Number _____ and the following Affiliates or franchisees (a separate Form W-9 or Form W-8BEN, as applicable, must be submitted for each entity identified below):

Name	Tax ID Number
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

COMPANY, on behalf of itself and each of the Affiliated Entities identified above: ELAVON, INC.

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

(Schedule C "Effective Date")

SCHEDULE D

PROCESSING SERVICES TERMS

This Schedule D sets out additional terms (and modifications to terms in the General Terms and Conditions) that are applicable if Company is receiving certain Processing Services.

1. **Processing Services.** This Section 1 of Schedule D applies if Company is receiving Processing Services.
 - 1.1. **Company Compliance.** Company will not submit Transactions for processing to Elavon for any businesses, materially different products, or methods of selling other than those stated in the Company Application without Elavon's prior written consent.
 - 1.2. **Reserve Account.**
 - (a) **Establishment.** If a Reserve Event occurs, Elavon may establish a Reserve Account in the Reserve Amount to provide security and a source of funds to pay Elavon for all amounts that Company may owe under this Agreement. Elavon will have sole control of the Reserve Account, and, upon Company's delivery of funds to Elavon for creating credits in the Reserve Account (or Elavon's crediting the Reserve Account with amounts that otherwise would have been paid to Company), Company will have no further property interest in such funds (or rights to payment) other than with respect to a contingent right to payment from Elavon as described in this Agreement upon the termination of the Reserve Account.
 - (b) **Reserve Amount.** The "**Reserve Amount**" is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period plus average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [number of days delayed delivery multiplied by the average day's processing volume] plus [the amount of fines, assessments, or charges imposed or reasonably expected to be imposed by the Payment Networks, if any]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the product is shipped to the Cardholder (if the goods are being shipped) or the date the Cardholder receives the product or service. Further, for purposes of this calculation, Elavon will determine the applicable period considering factors such as Company's Transaction volume and seasonality.
 - (c) **Reserve Event.** The following will constitute "**Reserve Events**":
 - (i) Fraudulent activity in any monthly period that equals or exceeds 1% of Company's average monthly volume over the preceding 12-month period;
 - (ii) Chargebacks in any monthly period that equal or exceed 1% of the total dollar value of incoming items to Elavon;
 - (iii) Elavon's reasonable belief that Company, if not approved by Elavon to engage in delayed delivery transactions, has accepted deposits but has not delivered the goods or services;
 - (iv) The commencement of a Bankruptcy Proceeding by or against Company;
 - (v) Termination of the Agreement for any reason or the occurrence of an event listed in Section 4.2 of the Agreement giving Elavon the right to terminate the Agreement;
 - (vi) Nonpayment of amounts owed by Company to Elavon;
 - (vii) Fines, assessments, or charges imposed or reasonably expected to be imposed by the Payment Networks;
 - (viii) The occurrence of a material adverse change in Company's financial condition;
 - (ix) Assignment of the Agreement by Company in violation of Section 18.5 of the Agreement; and

- (x) Revocation, termination, expiration or non-renewal of any guaranty, indemnity agreement, letter of credit or any other Alternate Security provided in connection with the Agreement, if applicable.
- (d) **Funding.** Elavon may fund the Reserve Account up to the Reserve Amount by any of the following means:
 - (i) Elavon may require Company to transfer funds to Elavon for credit to the Reserve Account;
 - (ii) Elavon may debit the DDA and provide a corresponding credit to the Reserve Account; or
 - (iii) Elavon may credit to the Reserve Account amounts it would otherwise be obligated to credit to Company.
- (e) **Use of Funds in Reserve Account.** Elavon may apply credits in the Reserve Account against any outstanding amounts Company owes under the Agreement. Additionally, Elavon may debit the Reserve Account to exercise its rights under the Agreement, including its rights of set-off and recoupment to collect any amounts due to Elavon.
- (f) **Termination of Reserve Account.** Credits in the Reserve Account that have not been applied against amounts due to Elavon will remain in the Reserve Account until Company has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, and any other payments due under the Agreement. Notwithstanding the foregoing, if Elavon determines that the Reserve Event that gave rise to the establishment of the Reserve Account has been sufficiently cured, then Elavon may terminate the Reserve Account or release credits from the Reserve Account, or both, based on Elavon's reasonable determination for the continuing potential risk of loss to Elavon.
- (g) **Alternate Security.** In lieu of or in addition to establishing and crediting a Reserve Account, Elavon may accept an alternative form of security ("**Alternate Security**") for the purpose of providing a source of funds to pay Elavon for all amounts owed by Company. Elavon may at any time reevaluate Alternate Security it previously accepted and require funding of a Reserve Account so that the amount of credits in a Reserve Account, taken together with amounts represented by any Alternate Security Elavon accepts, equals the Reserve Amount.

1.3. **Recoupment and Set-off.**

- (a) Elavon has the right of recoupment and set-off, and may offset any outstanding or uncollected amounts owed to it hereunder from:
 - (i) Any amounts it would otherwise be obligated to deposit into the DDA;
 - (ii) The Reserve Account by reducing the credits thereto; and
 - (iii) Any other amounts it may owe Company under the Agreement.
- (b) Company acknowledges that in the event of a Bankruptcy Proceeding, in order for Company to provide adequate protection under Bankruptcy Code Section 362 to Elavon hereunder, Elavon may require the creation of a Reserve Account and will have the right to offset against the Reserve Account for all obligations Company may owe to Elavon, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.

- 1.4. **MATCH™ and Consortium Merchant Negative File.** Company acknowledges that Elavon may be required to report Company's business name and the name of Company's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Company specifically consents to Elavon's fulfillment of the obligations related to the listing of Company and Company information in such databases, and Company waives all claims and liabilities Company may have as a result of such reporting.

- 1.5. **Remedies Cumulative.** The rights conferred upon Elavon in this Schedule D, Section 1 are not intended to be exclusive of each other or of any other rights and remedies of Elavon under the Agreement, at law or in equity. Rather, each and every right of Elavon under the Agreement, at law or in equity, is cumulative and concurrent and in addition to every other right.
- 1.6. **Termination.** In addition to Elavon's termination rights in Section 4 of the Agreement, Elavon may terminate the Agreement:
- (a) If, after providing 30 days' written notice, either of the following conditions remain:
 - (i) Excessive Activity; or
 - (ii) The acceptance of Card Not Present or Convenience Fee Transactions without proper disclosure to Elavon in the Agreement (including in the Company Application) or an amendment to the Agreement.
 - (b) Immediately if any of the following occur:
 - (i) The levy, garnishment or attachment of the Alternate Security, the DDA, the Reserve Account, or any of Company's property in Elavon's possession;
 - (ii) Any change, not approved by Elavon, that constitutes a material change in the types of goods or services Company sells or in the methods by which Company sells them, or any change that results in Company's violation of Elavon's underwriting policy; or
 - (iii) Revocation, termination, expiration or non-renewal of any guaranty, indemnity agreement, letter of credit or other Alternate Security executed in connection with the Agreement.
- 1.7. **Member Responsibilities.** Member will facilitate ACH Transactions and comply with all ACH Rules as applicable to Member in providing Services under this Agreement. Member will have no liability to Company under this Agreement. Member is an entity governed by the Laws of the United States of America and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including the Laws promulgated by OFAC or any successor thereto.
- 1.8. **Company Information.**
- (a) **Authority.** Company authorizes Elavon to make, upon receipt of the Company Application and from time to time, any business credit or other inquiries it considers reasonably necessary to review the Company Application or continue to provide Services under the Agreement. Company also authorizes any person or credit reporting agency to compile information to answer those business credit inquiries and to furnish that information to Elavon.
 - (b) **Financial Information.** At Elavon's request, Company will provide Elavon financial statements (audited if available) prepared by an independent certified public accountant selected by Company. Within 120 days after the end of each fiscal year, Company will furnish Elavon, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited if available. Company also will provide Elavon such interim financial statements and other information as Elavon may request from time to time. Notwithstanding the requirements in this section, Company will not be obligated to provide financial statements or similar information required by this section if Company files its financial statements with the Securities and Exchange Commission so long as Company remains registered and obligated to file financial statements (including annual reports on Form 10-K and quarterly reports on Form 10-Q) pursuant to the Securities Exchange Act of 1934, as amended.
- 1.9. **Company Data Incident.**
- (a) **Notice and Investigation.** Company acknowledges that Cardholder Data and bank account information it obtains in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Company will notify Elavon within 24 hours (and if notice is given orally, it must be confirmed in writing within the same 24 hour period) if Company knows or suspects that Cardholder Data, Customer information, or Transaction Information has been accessed or used without

(City of Palo Alto, CA) Elavon - Master Services Agreement with Sch. D (6.17.23) dtd 05.30.24 FINAL authorization from Company or systems within Company's control (a "**Data Incident**"). The notice should be delivered by electronic mail to adcqueries-na@elavon.com and must include:

- (i) A detailed written statement about the Data Incident including the contributing circumstances,
- (ii) The form, number and range of compromised account information,
- (iii) Specific account numbers compromised, and
- (iv) Details about the ensuing investigation and Company's security personnel who may be contacted in connection with the Data Incident.

Company will fully cooperate with the Payment Networks and Elavon in the forensic investigation of the Data Incident. Within 72 hours of becoming aware of the Data Incident, Company will engage the services of a data security firm acceptable to the Payment Networks and to Elavon to assess the vulnerability of the compromised data and related systems. Company will provide weekly written status reports to Elavon until the forensic audit is complete. Company will promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks or Elavon may request. In addition, Company will provide all audit reports to Elavon, and such audits must be completed to the satisfaction of the Payment Networks and of Elavon. If Company fails to supply the forensic audits or other information required by the Payment Networks or by Elavon, Company will allow Elavon to perform or have performed such audits at Company's expense.

- (b) **Preservation of Records.** If there is a Data Incident, Company will take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Company will cooperate with Elavon to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon with (and obtaining any necessary waivers for) all relevant information to verify Company's ability to prevent future data incidents in a manner consistent with the Agreement.
- (c) **Liability for Data Incident.** Without waiving any of Elavon's rights and remedies, Company is liable to the extent provided in the Payment Network Regulations for all fraudulent transactions related to any Data Incident and all costs Elavon incurs as a result of such Data Incident.

2. **Payment Navigator Services.** This Section 2 of Schedule D applies if Company is receiving Payment Navigator Services.

2.1. **Additional provisions.**

- (a) **Section 13.2. Indemnification By Company.** In addition to Company's indemnification obligations in Section 13.2, Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against all Losses in connection with Claims arising from alleged infringement of patent, copyright or other intellectual property right, or misappropriation of trade secrets, of any third party by Payment Navigator as modified or altered by Company, its partners, employees, agents or contractors, or the use of any data submitted by Company.
- (b) **Section 18.3. Exclusivity.** This section is amended by adding to the end of Section 18.3 of the Agreement:

"Notwithstanding the foregoing, this exclusivity provision will not apply to any Company point-of-sale location that does not interface or interact with the Payment Navigator Services. The parties intend that this Section only applies to Company's Affiliated Entities that interface with the Payment Navigator Services."

3. **Additional Definitions**

"**Alternate Security**" has the meaning stated in Schedule D, Section 1.2(g).

"**Card Not Present**" means the processing environment where the Payment Device is not physically presented to Company by the Cardholder as the form of payment at the time of the Transaction.

“**Convenience Fee**” means a fee charged by Company for an added convenience to the Cardholder for the use of a Payment Device in a Transaction in accordance with the Payment Network Regulations.

“**Excessive Activity**” means the occurrence, during any monthly period, of Chargebacks or Retrieval Requests in excess of 1% of the gross dollar amount of Company’s Transactions or returns in excess of 2.5% of the gross dollar amount of Company’s Transactions.

“**Reserve Amount**” means the amount established pursuant to the calculation stated in Schedule D, 1.2(b).

“**Reserve Event**” means the events designated in Schedule D, Section 1.2(c).

“**Retrieval Request**” means a request initiated by a Cardholder or Issuer that requires Company to produce a legible copy of the Cardholder’s signed Transaction Receipt within a specified period of time.

“**Transaction Receipt**” means the paper or electronic record evidencing the purchase of goods or services from, or payment to, a Company by a Cardholder using a Payment Device.

SCHEDULE A - SCHEDULE OF FEES

If this schedule is inclusive of credit card pricing on any fees or service, written approval of final pricing included herein must be attached for legal review. Primary documentation should be a P&L model including the final pricing, reviewed and approved by the Pricing and Profitability team. If Professional Services pricing is included, a separate Statement of Work and Professional Services Agreement must be included. Various forms of written approval will be accepted, but must be approved by appropriate parties within the applicable professional services groups as outlined in the pricing guidelines for these products.

ASSUMPTIONS / Company PROFILE

Legal Entity Name	City of Palo Alto
Business Segment	Government
Category Description	Government Services-Not Elsewhere Classified
MCC	6299
Multiple MCC's?	Yes
Locations	31

	Volume	Average Ticket	Transaction Count
VISA	\$5,322,380	238	19,249
MasterCard	\$17,351,034	258	48,409
Discover	\$697,445	162	4,301
Union Pay			
American Express	\$11,037,460	431	25,864
JCB & Diners			
PIN-Debit			
Checks			
EBT			
Total	\$82,809,272		271,742

Projected Monthly Transaction Volume	Average Ticket
22,645	\$364.71

TERM

Initial Term of: Year(s) Year(s) Renewal Term
(Do not leave field blank)

PROFESSING SERVICES AVAILABLE TO COMPANIES GENERALLY

CARD PROCESSING FEES

Pass-Through

Pricing in this section applies to the following MID's: 8028494386,8035402206, 8035441446, 8035425654, 8035441438, 8028572116, 8028943111, 8040392824, 8028494279, 8028494378, 8028280884, 8031869309, 8031869424, 8031869374, 8031869465, 8028289444, 8031730016, 8028942287, 8028281543, 8032414030, 8031869341, 8036180157, 8036420654, 8035441461, 8035747471, 8035438806, 8035404493, 8040519111

All Visa, MasterCard, Discover, Union Pay, and debit network authorization and Interchange fees, assessments, dues and other fees and charges are passed to Company at cost. Services Transaction processing fees include:

	Auth\$	Settle \$	Settle %
Visa	\$0.0000	\$0.0800	0.10%
MasterCard	\$0.0000	\$0.0800	0.10%
Discover	\$0.0000	\$0.0800	0.10%
Union Pay	\$0.0000	\$0.0800	0.10%
PIN-Debit	\$0.0000	\$0.0800	0.10%

Pass-Through

Pricing in this section applies to the following MID's: 8028572082,803022464, 8030022647,8029570382, 8028571993, 8028571944,8028571951, 8028721382

All Visa, MasterCard, Discover, Union Pay, and debit network authorization and Interchange fees, assessments, dues and other fees and charges are passed to Company at cost. Services Transaction processing fees include:

	Auth\$	Settle \$	Settle %
Visa	\$0.0000	\$0.0000	0.10%
MasterCard	\$0.0000	\$0.0000	0.10%
Discover	\$0.0000	\$0.0000	0.10%
Union Pay	\$0.0000	\$0.0000	0.10%
PIN-Debit	\$0.0000	\$0.0000	0.10%

AMERICAN EXPRESS PUBLIC SECTOR (Third Party Service Processing)

CREDIT CARD SURCHARGING

AUTHORIZATION FEES - Service

Telecom Method	IP/SIP
Additional Fee for Telecom	\$0.00
Visa	Per Authorization Fee
MasterCard	N/A
Discover	N/A
Union Pay	N/A
PIN Debit	N/A
American Express	N/A
Diners	N/A
JCB	N/A
EBT	N/A
Other Card Type	N/A
Frame Relay	N/A
Dial Back In for Frame Relay	N/A
Voice (VRL) Authorization	\$0.7500
Voice Authorization with Address Verification	\$0.9000
Operator Asses Authorization	\$1.2500
Bank Referral Authorization	\$4.0000

OTHER TRANSACTION FEES

	Per Transaction Fee
Bill Payment (PIN-Less Debit)	N/A
PIN Debit Flat Rate (per settled transaction) (Debit Network Switch Fee is billed separately - per authorization)	N/A
AVS Fee (per occurrence)	
ACH Fee (per occurrence)	
ACH Returned Item Fee	\$25.0000 (per occurrence)
Fed Wire Settlement (per occurrence, where available)	
Call wire requires CPU Approval	
Checkback Fee (per occurrence)	\$25.0000
Monthly Minimum (per location)	N/A
Other Fee	N/A
3Debit - Level 3 Solutions	N/A
Setup Fee	N/A
Other Setup Fee	N/A
Monthly Fee	N/A
Per Transaction Fee	N/A
Other Fee	N/A

REPORTING

CANADIAN CARD PROCESSING FEES

CANADIAN OTHER TRANSACTION FEES

CANADIAN REPORTING

FOREIGN NETWORK

PROFESSIONAL SERVICES

Professional Services Engaged?

Professional Service fees are captured in a Statement of Work (SOW).

EQUIPMENT/SOFTWARE

Currency *Please be sure to use the correct currency.*

Purchase or Rental

Equipment Type	Purchase or Rental	Price /Unit (US\$)	Monthly Fee(US\$)	Application
see attachment				

Notes: 1) Company will pay a unit swap and for the shipping and handling of any replacement equipment. The fee varies according to the type of terminal. 2) See additional pricing sheet as needed. 3) Rental equipment may be new or used and is dependent on inventory available at time of order. 4) All used equipment is inspected and refurbished upon return before being re-deployed. 5) Rentals are month to month and may be terminated at any time by Company.

DCC & MCC

ACCOUNT IMPLEMENTATION & MAINTENANCE FEES

ELECTRONIC GIFT CARDS

ELECTRONIC GIFT CARDS (CANADA)

PAYCENTRIC BILL PAY SERVICES

ACULYNK (INTERNET PIN-BASED DEBIT CARDS SERVICES)

PAYMENT NAVIGATOR SERVICES

MEDEPAY SERVICES

CONVERGE SERVICES

PETROLEUM SERVICES

ELECTRONIC CHECK SERVICE, SERVICE LEVEL AND PROCESSING FEES

NON-PROCESSING SERVICES AVAILABLE TO COMPANIES GENERALLY

HOSTED GATEWAY SERVICES

FRAUD SERVICES

SAFE-T SERVICES

SAFE-T SOLO™

Safe-T Solo™			Per Month/Per MID
	Safe-T Solo Discounted Program Fee		\$15
	Safe-T Solo Standard Program Fee		\$84.99

All Level 4 Companies (or other Public Sector agencies qualified to opt-in) that validate PCI DSS compliance on an annual basis (with initial validation to occur no later than 90 days after account approval) are eligible for the Safe-T Solo Discounted Program Fee, which includes a Discounted PCI Program Fee. Company acknowledges that if Company has not validated PCI DSS compliance within 90 days of account approval, or in subsequent years on or before the anniversary date of account approval, Company will no longer be eligible for the Discounted Safe-T Solo Program Fee and will be required to pay the full, undiscounted monthly Safe-T Solo Standard Program Fee noted above until Elavon is provided with validation of Company's PCI DSS compliance.

SAFE-T LINK™

SAFE-T SERVICE WEBSITE FEES - If user is selected on line 1013 (Service Web Site), please complete the Service Web Fees section.

CONVENIENCE FEE AND GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES (GPISF)

Convenience Fee

Convenience Fee Flat Amount		(MasterCard, Discover & ACH Programs Only)
Convenience Fee % Amount		
Implementation Fee (if applicable)		

Government/ Public Institution Service Fee (GPISF)

SELECT ALL THAT APPLY, BUT ONLY IF COMPANY ELECTS GPISF ASSESSMENTS

No Merchant-Managed Service Fee

Yes Merchant-Managed Service Fee with Elavon POS Devices/Service Terminals

Yes Elavon-Managed Service Fee

Card Acceptance (Check all that apply)

Yes	Point of Sale	Yes	Internet
Yes	IVR	Yes	Other

GPISF Services Program (Check all that apply, but only if Company Elects GPISF assessments)

Yes MasterCard Government and Education Payment Program

Yes Visa Government and Education Payment Program

Transaction Types:

Yes	Retail Estate Property Tax	No	Other Education Expenses
Yes	Government Fees	Yes	Other Tax
Yes	State Income Tax	No	Fairness
Yes	Retail Estate Property Tax	No	Other Education Expenses

PAYMENT TYPES FOR GPISF ASSESSMENT (NOT ALL PAYMENT TYPES ARE SUPPORTED FOR ALL PROGRAMS) CHECK ALL THAT APPLY, BUT ONLY IF COMPANY ELECTS GPISF ASSESSMENT:

Credit (SELECT ALL THAT APPLY)

Yes Visa - Eligible MCCs: 8211, 8220, 8244, 8249, 9211, 9222, 9311, 9399

Yes MasterCard - Eligible MCCs: 8211, 8220, 8299, 9211, 9222, 9223, 9311, 9399, 9402

Yes American Express - Eligible MCCs: 8211, 8220, 8244, 8249, 9211, 9222, 9311, 9399

Yes Discover (Available if Elavon Acquired)

Signature Debit (SELECT ALL THAT APPLY)

Yes Visa - Eligible MCCs: 8211, 8220, 8244, 8249, 9211, 9222, 9311, 9399

Yes MasterCard - Eligible MCCs: 8211, 8220, 8299, 9211, 9222, 9223, 9311, 9399, 9402

Yes Discover (Available if Elavon Acquired)

ACH (via Electronic Check Services) (Schedule 1 required)

ELAVON PRODUCT SUPPORTING GPISF ASSESSMENT TO BE USED BY COMPANY (SELECT ALL THAT APPLY):

Billor Direct Services (Select on option Below, But only if Company Elects Billor Direct Services) (Additional Enrollment Form Required):

Yes Bill Payment Portal (BPP)

Yes Enterprise Billing Solutions (EBS)

Yes Service Fee Terminal

Yes Company Proprietary Solution or Value -Added Services

Yes Safe-T Service (Additional Enrollment Form Required)

Other:

GPISF PRICING

Credit Card Service Fee: % 2.75%

Signature Debit Service Fee: % 2.75%

Or \$

Or

ACH (Via Electronic Check Services):

Implementation Fee (if Applicable):

The fees specified in this Schedule A shall remain in effect for the duration of the Initial Term of the Agreement provided however, that Elavon shall be entitled to increase the fees as provided in the Schedule A at any time upon ninety (90) days advance written notice to Company upon the occurrence of any one of the following (such a "Fee Adjustment Event"): (i) an increase in Company's aggregate card transaction expense greater than eight (8) basis points during any twelve (12) month period as a result of any one of the following events: (a) fee increases in interchange and assessments; (b) increased or new fees imposed by a third party; or (c) changes in Company's card type, mix, or processing method; or (ii) increase in Company's aggregate card transaction expense greater than twenty (20) basis points during the Initial Term of the Agreement or any successive Renewal Terms as a result of any one event or combination of the following events: (a) fee increases in interchange and assessments; (b) increased or new fees imposed by a third party; and/or (c) changes in Company's card type, mix, or processing method.

GENERAL PCI PROGRAM

Channel: Direct

Company Manager:	No
PCI Compliance Level:	Level 2
Start Date:	January 1st, 2024
MID Type:	Multi-MID Practice - Same Owner Same Address
MIDS:	
Billing Type:	Months

20,000 to 1 million Visa and/or Mastercard e-commerce transactions processed per year.

PCI PROGRAM (Basic or Plus)	IP	NON-IP
Discounted PCI Program Fee (Basic):	515.00	
Standard PCI Program Fee (Basic):	574.99	

PCI Compliance, PCI SafeT Program Fees, Level 3 and 4 Companies must comply with the requirements of the Payment Card Industry Data Security Standard ("PCI DSS"). Elavon's monthly (PCI Safe-T) Program Standard Fee is disclosed in the Fee section of this Application. For clarity, if Company has selected a Safe-T solution, the fee for PCI DSS compliance is included within the (PCI Safe-T) Program Standard Fee.

For ninety (90) days following account approval, Company will be charged the (PCI Safe-T) Program Discounted Fee disclosed in the Fee section of this Application. If Company validates its initial PCI DSS compliance within ninety (90) days after account approval, it will continue to be eligible for the (PCI Safe-T) Program Discounted Fee for the 12 months starting with the month in which it provides validation (e.g., if Company validates compliance in March, it will pay the discounted fee from March through February of the following year).

If Company does not validate its initial PCI DSS Compliance within ninety (90) days following account approval, then Company will be required to pay the full, undiscounted (PCI Safe-T) Program Standard Fee until Company validates its annual PCI DSS compliance.

For any time after the ninety (90) days following account approval, if Company validates PCI DSS by the 25th day of a month, Company will be eligible for the (PCI Safe-T) Program Discounted Fee for the 12 months starting with the month of validation (e.g., if Company validates compliance by the 25th of March, it will pay the discounted fee from March through February of the following year). Following the end of each annual PCI DSS compliance validation period, Company will have to the 25th of the following month to validate compliance or Company will be required to pay the full, undiscounted monthly (PCI Safe-T) Program Standard Fee until Company again validates compliance.

Company Acknowledgement

Signature: _____

Printed Name: _____

Title: _____

Date: _____



SCHEDULE E
SAFE-T TERMS

This Schedule E sets out additional terms that are applicable if Company is receiving Safe-T Services. Safe-T Services apply to card-present Transactions (the processing environment where the Payment Device is physically presented to the Company by the Cardholder as the form of payment at the time of Transaction), and mail order/telephone order Transactions (only when information is hand-keyed into the POS Device). Safe-T Services do not apply for electronic commerce Transactions.

Schedule E consists of this cover page, the Safe-T Terms and Conditions, and each other applicable Exhibit as indicated below:

Exhibit A (Fees)

Safe-T Services (check desired options):

- Safe-T Solo**, Elavon’s non-integrated security solution (if this box is checked, only the Safe-T Terms and Conditions and Exhibit A will apply to Company in connection with this Schedule E).
- Safe-T Link**, Elavon’s semi-integrated security solution (if this box is checked, in addition to the Safe-T Terms and Conditions and Exhibit A, Exhibit C (Simplify License) will apply to Company).
- Safe-T Link with P2PE Protect** (if this box is checked, in addition to the Safe-T Terms and Conditions and Exhibit A, Exhibit C (Simplify License) will apply to Company. In addition, Company will comply with all the terms of the Point-to-Point Encryption Product Implementation Manual, a copy of which is available at https://www.mypaymentsinsider.com/api/file/c/Safe-T_PIM).

Equipment (check one of the following options):

- Company will use only POS Devices and related equipment purchased from Elavon on or after the effective date of this Schedule (if this box is checked, Exhibit B will apply to Company in connection with this Schedule E).
- Company will use only POS Devices and related equipment purchased from a third party, or purchased from Elavon prior to the effective date of this Schedule (if this box is checked, Company and Elavon must enter into an associated Statement of Work).
- Company will use both POS Devices and related equipment purchased from Elavon on or after the effective date of this Schedule and POS Devices and related equipment provided by third parties (or purchased from Elavon prior to the effective date of this Schedule) (if this box is checked, Exhibits C and E will apply and Company and Elavon must enter into an associated Statement of Work).
- (United States only) Company will rent POS Devices and related equipment from Elavon (if this box is checked, applicable rental terms in the Equipment chapter of the Operating Guide will apply).
- (Canada only) Company will use, but not purchase, POS Devices and related equipment from Elavon (if this box is checked, “Provisions Applicable to Equipment Received as Part of Elavon’s Services” in the Canada chapter of the Operating Guide will apply).

Service Web Site (check if applicable):

- Service Web Site Terms and Conditions (if Company is receiving Gateway Services from Elavon, Company will receive access to the Service Web Site under the applicable terms set forth in the Operating Guide and not under the terms of Exhibit D to this Schedule E. If Company is receiving Processing Services but not Gateway Services from Elavon and Company elects to receive the Service Web Site from Elavon, then this box should be checked and Exhibit D under this Schedule E, rather than the applicable terms of the Operating Guide, will apply to Company’s receipt of the Service Web Site.)

Professional Services: If Company will receive professional services pursuant to this Schedule E, check the box below.

- Professional Services Terms (if this box is checked an associated Statement of Work will apply to Company in connection with this Schedule E).



SAFE-T TERMS AND CONDITIONS

1. **FEES.** Company will pay Elavon the fees set forth on Exhibit A to this Schedule E (the “Safe-T Services Fees”).
2. **DESCRIPTION OF SAFE-T SERVICES.** Subject to the terms and conditions of this Schedule E and the Agreement, Elavon will provide Company the following Safe-T Services:
 - (a) **ENCRYPTION SERVICES**, which will consist of decryption of full primary Credit Card or Debit Card account numbers (“PANs”) properly encrypted by Company using Elavon-approved software and Equipment and Elavon-injected encryption keys, all in accordance with the terms and conditions of this Schedule E and the Agreement (such services, the “Encryption Services”). Transactions submitted via the POS Device with Elavon-approved software will not be transmitted by the POS Device to Elavon if the Application or POS Device, as applicable, fails to encrypt the PANs.
 - (b) **TOKENIZATION SERVICES**, which will consist of a tokenization feature pursuant to which Elavon will provide Company with randomized surrogate identifiers (each, a “Token”) in substitution for PANs (such services, the “Tokenization Services”). More specifically, when Company transmits to Elavon a PAN associated with a Transaction, Elavon will:
 - (i) generate a Token;
 - (ii) associate the Token with the PAN; and
 - (iii) send the Token, instead of the PAN, back to Company in the Transaction authorization response message.

Company may submit the Token, rather than the associated PAN to Elavon to process additional Transactions to the Credit Card or Debit Card associated with such Token across all Company locations. The PAN associated with each Token generated by Elavon can be retrieved by Elavon, on Company’s written request, until the date that is three years after the expiration or termination of the Agreement (the “Token Validity Period”), provided that the retrieval of PANs after the expiration or termination of the Agreement will be subject to additional terms and conditions and at an additional cost to Company. Company acknowledges that the Tokens will be formatted in Elavon’s reasonable discretion and may not be compatible with other Company Resources.
3. **COMPANY RESPONSIBILITIES.**
 - (a) Company will cause the appropriate Equipment, including POS Devices and any Equipment provided by or on behalf of Elavon from time to time, to be readily available for use at all Company locations that are the recipients or users of the Safe-T Services. For purposes of this Schedule E, the term “POS Device” refers only to payment terminals and does not refer to any other point-of-sale devices or software.
 - (b) Company acknowledges that Elavon does not store Credit Card or Debit Card expiration dates. In order to use a Token to process a Transaction, Company must provide the Token (in lieu of a PAN) together with the expiration date for the original Credit Card or Debit Card.
 - (c) For Safe-T Solo, Company must cooperate with Elavon to promptly take any action necessary to enable the Safe-T Services on Company’s Equipment, including promptly downloading, installing and implementing any software or updates thereto in accordance with Elavon’s instructions.
4. **DE-TOKENIZATION.** For Safe-T Link, Company may request a reversal of the Tokenization process as follows:
 - (a) To reverse the Tokenization process on an individual Token basis, Company may access an Elavon web portal and, with appropriate authentication credentials, retrieve the PAN associated with any Token.
 - (b) To reverse the Tokenization process on a bulk basis (i.e., in excess of 100 Tokens at a time), an officer of Company must make a request in writing to Elavon and provide Elavon with the Tokens for which Company wishes to reverse the Tokenization process. Elavon will provide Company’s requesting officer with an encrypted file containing the PANs associated with such Tokens within 30 days of receiving the request. Company acknowledges and agrees that additional terms and conditions may apply to reversal of Tokenization on a bulk basis.
5. **P2PE PROTECT.** For Safe-T Link with P2PE Protect, Elavon will maintain the solution’s P2PE validation status, will update the Point to Point Product Encryption Manual with any necessary additions for Company to maintain compliance, and will maintain applicable Equipment in Elavon’s or its service provider’s possession (and deploy such equipment) in accordance with PCI P2PE guidelines.
6. **SAFE-T REIMBURSEMENT.** If Company suffers unauthorized third party access to personal information of individuals (which personal information must include the individual’s unencrypted PAN) as a result of the failure of the Safe-T Services



Elavon – Master Services Agreement – Schedule E (Safe-T Terms) (v.4.13.24)

to perform in accordance with this Schedule E, Elavon will reimburse Company (on a Company-wide, not a per-MID basis) for (a) Company's documented costs incurred for a forensic investigation conducted in accordance with subsection (ii) to identify the source of the Data Incident, and (b) any fines and assessments levied or collected by a Payment Network in connection with a Data Incident, up to an aggregate amount not to exceed \$50,000 (if Company uses Safe-T Link) or \$250,000 (if Company uses Safe-T Solo) (the "Safe-T Reimbursement"). For Level 4 companies, the Safe-T Reimbursement will be in lieu of (and not in addition to) any reimbursement allowed under Elavon's PCI Compliance Program. In order to be eligible to receive the Safe-T Reimbursement, Company must certify to Elavon in writing that:

- (i) Company was, at the time of the unauthorized access, in full compliance with the requirements applicable to the Safe-T Services under this Schedule E;
- (ii) such unauthorized third party access due to the failure of the Safe-T Services has been confirmed through a forensic investigation conducted by an independent third party auditor reasonably acceptable to Elavon; and
- (iii) Company did not, at the time of the unauthorized access, possess or store (directly or indirectly, including through any third party service provider) any PANs or other information subject to the requirements of the Payment Card Industry Data Security Standards Council in any form other than in the form of Tokens in compliance with the Tokenization Services.

Any Safe-T Reimbursement paid to Company hereunder is separate from and will not be applied toward the overall aggregate liability cap set forth in Section 14.2 of the General Terms and Conditions or toward the liability cap for Elavon Data Breach Losses set forth in Section 14.3 of the General Terms and Conditions.



Elavon – Master Services Agreement – Schedule E (Safe-T Terms) (v.4.13.24)

EXHIBIT A TO SCHEDULE E

Fees

[Note: Elavon sales to contact pricing team for custom pricing schedule for Safe-T]

- Fees are set forth on Schedule A to Agreement
- Fees are separately provided under this Schedule E (Attachment follows)



EXHIBIT B TO SCHEDULE E

Equipment Schedule

If Company elects to purchase Equipment from Elavon in connection with Safe-T Link, this Exhibit B will be a part of this Schedule E.

1. Equipment and Pricing.

- a) Purchased Equipment. Company has elected to purchase the Purchased Equipment set forth in Exhibit A to this Schedule E from Elavon. The fees payable by Company for the Purchased Equipment are set forth on Exhibit A to this Schedule E.
- b) Shipping. The fees payable by Company for shipment of the Purchased Equipment to the location or locations designated by Company are set forth in Exhibit A to this Schedule E; provided, however, if the shipping fees are not set forth in Exhibit A to this Schedule E, then all actual costs and expenses of shipping will be paid by Company. Provided that the Purchased Equipment is shipped using Elavon's freight account, Elavon will bear the risk of loss of such Purchased Equipment until the time of delivery to Company; if the Company directs Elavon to use any other shipping method, Company expressly acknowledges and agrees that all risk of loss for the Purchased Equipment will pass to Company when the Purchased Equipment is tendered by Elavon or on Elavon's behalf to the carrier for shipment to Company.

2. Terminal Software and Encryption Keys. Elavon will install the encryption keys and any applicable licensed software onto Company's POS Devices as specified in Exhibit A to this Schedule E prior to delivery of such POS Devices to Company, and Company will pay the applicable fees detailed in Exhibit A to this Schedule E for any encryption keys or licensed software that Company has elected to receive.

3. Warranty Terms.

Elavon's limited warranty with respect to POS Devices is set forth in the Equipment chapter of the Operating Guide.

If Company has selected additional warranty options for POS Devices purchased from Elavon, as indicated on Exhibit A to this Schedule E, the following terms will apply, as applicable, limited only to such POS Devices purchased from Elavon (and specifically excluding any other peripheral equipment purchased from Elavon and all equipment purchased from a third party):

Premium Advanced Exchange Program:

The Premium Advanced Exchange Program provides the following services during the applicable warranty period, which will commence on the date of shipment of the POS Device to Company:

- i. If a POS Device requires service, on Company's request, Elavon will ship a like-model, refurbished POS Device to Company for delivery the next business day (provided Company's request is received prior to 6 p.m. Eastern time) at no additional cost to Company. The refurbished POS Device will be configured and tested prior to shipment to Company.
- ii. Company will be provided with a call tag to enable Elavon to retrieve or cause the retrieval of Company's POS Device requiring service. Company must use the call tag promptly upon receipt. If Elavon does not receive the POS Device requiring service within 30 days of the issuance of the call tag, Company may be charged the cost of a new replacement POS Device.
- iii. Elavon will retrieve or cause the retrieval of the POS Device requiring service at no additional cost to Company.
- iv. Elavon will bill Company, and Company will be responsible for paying Elavon, for the costs of repairing POS Devices retrieved by Elavon unless such repairs are covered by the OEM warranty.

With regard to the Premium Advanced Exchange Program: (a) Company must initiate the exchange process with Elavon, and (b) Elavon will bear the risk of loss of the refurbished POS Device sent to Company and the POS Device requiring service while such POS Devices are in the possession of Elavon or its freight carrier, and Company will bear the risk of loss at all other times.

Premium Repair Warranty Program:



Elavon – Master Services Agreement – Schedule E (Safe-T Terms) (v.4.13.24)

The Premium Repair Warranty Program provides the following services during the warranty period, which will commence on the date of shipment of the POS Device to Company:

- i. All repair fees, service, and parts related to any repair of the POS Device, other than with respect to repairs attributable to misuse or abuse of the POS Device or cosmetic damage not affecting the performance of the POS Device.
- ii. Cleaning and testing of repaired POS Devices.

With regard to the Premium Repair Warranty Program: (a) Company must obtain an RMA Number from Elavon in order to initiate the warranty process, and (b) Elavon will bear the risk of loss of the repaired POS Device while such POS Device is in the possession of Elavon or its freight carrier, and Company will bear the risk of loss at all other times.

For the avoidance of doubt, any and all warranties provided under this Schedule E, including this Exhibit B, will not extend to any equipment, software or hardware purchased from any third party.

4. Miscellaneous Terms/Disclaimer. This Exhibit B is supplemental to and forms a part of this Schedule E, the terms of which are fully applicable hereto.

IN THE EVENT OF ANY DEFECT, MALFUNCTION, ERROR, OR DAMAGE TO ANY PURCHASED EQUIPMENT PROVIDED HEREUNDER, ELAVON'S SOLE OBLIGATION WILL BE THE PROVISION OF WARRANTY SERVICE PURSUANT TO THE WARRANTY OPTION (IF ANY) SELECTED BY COMPANY ON EXHIBIT A TO THIS SCHEDULE E, AND COMPANY'S SOLE REMEDIES WITH RESPECT TO ELAVON WILL BE THE RECEIPT OF WARRANTY SERVICE FROM ELAVON OR ITS DESIGNEE PURSUANT TO SUCH WARRANTY OPTION OR UNDER THE MANUFACTURER'S WARRANTY. ELAVON WILL HAVE NO LIABILITY TO COMPANY FOR COSTS, LOSSES, OR DAMAGES OF ANY KIND OR NATURE, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR OTHERWISE, WITH RESPECT TO ANY SUCH DEFECT, MALFUNCTION, ERROR, OR DAMAGE.



EXHIBIT C TO SCHEDULE E

Simplify and Bridge Software License

If Company elects Safe-T Link, this Exhibit C will be a part of this Schedule E.

Section A – Terms and Conditions

1. **Definitions.** Capitalized terms used in this Exhibit C (the “Simplify License”) and not otherwise defined herein will have the meanings ascribed to them in the glossary set forth in Section B of this Simplify License or, if not defined in such glossary, as defined in the Agreement.
2. **License Grant and Permitted Use.**
 - a) Elavon hereby grants to Company a limited, personal, non-exclusive, non-sublicensable (except as specifically set forth herein), and non-assignable (except in connection with a permitted assignment of the Agreement) license in the U.S. and, if the Agreement includes Schedule E, in Canada, during the Term to use and allow Authorized Users to use the Simplify Software as installed on Company’s POS Devices owned or otherwise controlled by Company and to install, use, and allow Authorized Users to use any subsequent Releases of such Simplify Software provided to Company from time to time, solely for Company’s internal business purposes to process data in accordance with the Documentation. This Simplify License permits Company to use the Simplify Software only on the total number of POS Devices set forth in Exhibit A to this Schedule E. Company is not permitted to use the Simplify Software to service any other POS Devices unless permitted by Elavon in writing. Company is not authorized to make copies of the Simplify Software.
 - b) Elavon hereby grants to Company a limited, personal, non-exclusive, non-sublicensable (except as specifically set forth herein) and non-assignable (except in connection with a permitted assignment of the Agreement) license during the Term to use and to allow Authorized Users to use the Documentation solely in connection with access to and use of the Simplify Software pursuant to this Simplify License. Company will have the right to make a reasonable number of copies of the Documentation, at no additional charge, solely for Company’s own internal business purposes in connection with access to and use of the Simplify Software under this Simplify License; provided, however, that all proprietary markings of Elavon must be affixed and retained by Company on any such copies.
 - c) Except as provided in this Simplify License, Company will not: (i) copy, re-sell, reproduce, transfer, rent, lease, pledge, sublicense, distribute or republish in any form or by any means or allow another to use or access the Licensed Materials, or any portion thereof, including, without limitation, to provide outsourcing, service bureau, hosting services or training to third parties; (ii) alter, modify or otherwise prepare derivative works of the Licensed Materials; (iii) reverse engineer, disassemble or decompile the Simplify Software, or any part thereof; (iv) remove, change or obliterate the copyright, trade secret or other proprietary protection legends or notices which appear on or in the Licensed Materials; or (v) combine any Licensed Materials with any unauthorized third party software. Company will not access or use, and it will not permit any Authorized Users to access or use, the Licensed Materials or proprietary materials disclosed to Company for the purpose of creating, in whole or in part, a system that is functionally competitive with the Simplify Software. Company will promptly notify Elavon of and will otherwise cooperate with Elavon in preventing any unauthorized access to, use of, or copying of, the Licensed Materials by Authorized Users or any other third party.
 - d) Company may sublicense the foregoing license to its Affiliated Entities, provided that Company will be responsible for the acts and omissions of such Affiliated Entities as if the same were performed by Company.
 - e) All rights not expressly granted to Company under this Simplify License are reserved by Elavon.
3. **Delivery and Installation.**
 - a) All installation of the Simplify Software, other than installation of Releases (as described below) must be conducted by or at the direction of Elavon. If Company purchases POS Devices from Elavon in conjunction with or subsequent to the Agreement Effective Date, the Simplify Software will be installed on such terminals prior to shipment to Company. If Company requests installation of the Simplify Software on POS Devices purchased prior to the Agreement Effective Date or not obtained from Elavon, Elavon and Company must enter into a Statement of Work or other agreement governing the delivery of such terminals to Elavon or Elavon’s designee for installation of the Simplify Software.
 - b) Delivery of the Simplify Software by Elavon will be deemed to have occurred when a POS Device with the Simplify Software installed is tendered by Elavon or on Elavon’s behalf to a carrier for shipment to Company. Elavon will deliver one copy of the Documentation to Company in a format determined by Elavon.
4. **Simplify Software Support Services; Releases.**



- a) Simplify Software Support Services. Elavon will provide Company with the following support services:
- i) Providing Company with solutions to any known material problem relating to each installation of the Simplify Software in a timely manner as such solutions become known to Elavon;
 - ii) Using commercially reasonable efforts to supply timely corrections for problems reported to Elavon by Company that Elavon can reproduce in a currently supported version of the Simplify Software;
 - iii) Furnishing a reasonable level of telephone support, as determined by Elavon, in the form of counsel and advice on use and maintenance of the Simplify Software; and
 - iv) Providing Company with new Releases of the Simplify Software as provided herein.
- b) New Releases. Elavon will provide new Releases of the Simplify Software to Company in a manner consistent with the provision of new Application Releases, if applicable. Elavon will not be responsible for any updates, upgrades or changes to Company's computer systems that may be necessary in conjunction with delivery, installation or use of any new Release of the Simplify Software.
- c) Supported Releases. Elavon will provide Simplify Software Support Services to Company only for (i) the then-current Release of the Simplify Software, if Company is using the On-Guard 3DES encryption solution, or (ii) the then-current Release and, for no more than 14 days following the delivery of the then-current Release, the immediately prior Release of the Simplify Software, if Company licenses an Application from Verifone, Inc. (collectively, a "Supported Release"); provided that Company complies with the terms and conditions of this Simplify License and the Documentation, including, without limitation, payment obligations.
- d) Unsupported Releases. If Company uses any Release other than a Supported Release (an "Unsupported Release"), except for providing telephone support under Section 4(a)(iii) above for the Unsupported Release, Elavon will have no obligation to provide any other Simplify Software Support Services for such Unsupported Release. Elavon, in its sole discretion, may elect to provide Simplify Software Support Services for Unsupported Releases at an additional charge to be mutually determined by the parties in writing. Whether or not Elavon elects to provide Simplify Software Support Services for an Unsupported Release, Elavon will have no responsibility or liability for the compliance or non-compliance of any such Unsupported Release with industry standards, Laws or Payment Network Regulations.
5. Responsibilities of Company.
- a) Company Data. Company acknowledges the Simplify Software does not verify accuracy of information or format of any data or information input by Company.
 - b) Company Telecommunications. Company will be responsible for ensuring that its telecommunications connectivity, and any such connectivity provided by any third party on behalf of Company, is properly certified and maintained and complies with applicable industry rules and regulations, including Payment Network Regulations.
 - c) Company Systems and Equipment. Company will be responsible for ensuring that the systems and equipment, including, without limitation, any POS Devices and any systems or equipment of third-party vendors used by Company, remain certified and compatible with the most recent Release of the Simplify Software. Elavon will not be responsible for any updates, upgrades, or changes to Company's systems or equipment, including, without limitation, the POS Device or any third-party systems or equipment, that may be necessary in conjunction with delivery, installation or use of the Simplify Software. Failure of the Company's systems or equipment, including, without limitation, the POS Device, or any third-party systems, to remain certified or to be compatible and function with a Supported Release of the Simplify Software as regulated or required will excuse Elavon from any and all liability under this Simplify License and in connection with any other services that Elavon may be providing to Company for the failure of the Simplify Software to perform in accordance with the Documentation. If Company has obtained Purchased Equipment from Elavon, Elavon will ensure that each new Release of the Simplify Software is compatible with the Purchased Equipment until the end-of-life date established by the terminal manufacturer for such Purchased Equipment. If any Purchased Equipment reaches its end-of-life date and Company has obtained replacement POS Devices that are compatible with the Simplify Software, Company and Elavon may enter into a Statement of Work providing for the installation of the Simplify Software on such replacement terminals. Company will not be obligated to pay a new license fee in conjunction with such installation, although Company may be obligated to pay fees for Professional Services in conjunction with such installation, as agreed by the parties.
 - d) ELAVON DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY DATA OR OTHER INFORMATION PROVIDED OR MADE AVAILABLE BY COMPANY OR ITS AUTHORIZED USERS, AND ELAVON WILL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN THE DATA OR RESULTS FROM USING THE LICENSED MATERIALS, EXCEPT TO



THE EXTENT DIRECTLY CAUSED BY A FAILURE OF THE LICENSED MATERIALS TO PERFORM IN ACCORDANCE WITH THE DOCUMENTATION.

- e) Compliance by Company's Authorized Users. Company is responsible for compliance by each of its Authorized Users with the terms and conditions of this Simplify License and is responsible and liable for all access and use by Authorized Users and acts or omissions of Authorized Users under this Simplify License.
6. Ownership and Reservation of Rights. Elavon retains all right, title and interest in and to the Licensed Materials and all Intellectual Property Rights related thereto. No rights in the Licensed Materials are granted to Company other than those limited license rights expressly set forth in this Simplify License.

Section B – Glossary for Simplify License

Licensed Materials means one installed copy of the executable code (i.e. object code) of the Simplify Software per authorized Company POS Device and a copy of the Documentation reasonably necessary for a user to operate the Simplify Software and any permitted copies of the foregoing.

Release means additional or replacement code or Documentation made generally available by Elavon that alters the capabilities or functionality of the Licensed Materials. Release does not include new or additional modules of Licensed Materials, which must be licensed separately from Elavon.

Revision means any product temporary fix, error corrections, work-around, or other maintenance correction made available by Elavon to its customers, as designated by a change in the number to the right of the second decimal point in the version number (e.g., from 1.1.1 to 1.1.2).

Simplify Software means the installed version of the software application referred to and marketed as the Simplify software, including any Releases made available by Elavon to Company under this Simplify License.

Simplify Software Support Services means the support services provided by Elavon to Company, as set forth in Section 4(a) of this Simplify License.

Supported Release has the meaning given to it in Section 4(d) of this Simplify License.

Unsupported Release has the meaning given to it in Section 4(e) of this Simplify License.

Warranty Period means the period beginning on the Agreement Effective Date and ending on the earlier of 90 days from the Agreement Effective Date or the date of Company's first use in a production environment of a POS Device on which the Simplify Software is installed.

Section C – Elavon Bridge License

1. Applicability. If Company has elected or is technically required to receive the Elavon Bridge software to facilitate the Gateway Services, the terms and conditions of this Section C will apply.
2. License Grant and Permitted Use.
 - a) Elavon hereby grants to Company a limited, personal, non-exclusive, non-sublicensable (except as provided herein), and non-transferable (except in connection with a permitted assignment of the Agreement) license for the Term to use the Elavon Bridge as installed on Company's hardware solely to facilitate the Gateway Services (the "Bridge License").
 - b) Except as set forth above, Company will not (i) reproduce, market, distribute (electronically or otherwise), sell, assign, pledge, lease, deliver, license, sublicense, outsource, rent or otherwise transfer the Elavon Bridge to any third party or use the Elavon Bridge for service bureau, time-sharing, or other third-party use or to provide hosting or remote processing services to a third party; (ii) alter, modify or otherwise prepare derivative works of the Elavon Bridge; (iii) reverse engineer, disassemble or decompile the Elavon Bridge, or any part thereof; (iv) remove, change or obliterate the copyright, trade secret or other proprietary protection legends or notices which appear on or in the Elavon Bridge; or (v) combine any Elavon Bridge with any unauthorized third party software. Company will not access or use, and it will not permit any Authorized Users to access or use, the Elavon Bridge or proprietary materials disclosed to Company for the purpose of creating, in whole or in part, a system that is functionally competitive with the Elavon Bridge. Company will promptly notify Elavon of and will otherwise cooperate with Elavon in preventing any unauthorized access to, use of, or copying of, the Elavon Bridge by Authorized Users or any other third party. Elavon and its designated agents may monitor and audit Company's use of the Elavon Bridge for purposes of verifying compliance with this Schedule.



- c) Company may sublicense the foregoing license to its Affiliated Entities (if applicable), provided that Company will be responsible for the acts and omissions of such Affiliated Entities as if the same were performed by Company.
 - d) All rights not expressly granted to Company under this Bridge License are reserved by Elavon.
3. **Installation.** All installation of the Elavon Bridge must be conducted by or at the direction of Elavon. Either Company will install the Elavon Bridge or Elavon will remotely install the Elavon Bridge on Company's hardware after consultation with Company as to the timing of such installation. Company will allow Elavon all access to Company's hardware and related systems necessary to install the Elavon Bridge and any new releases.
4. **Bridge Support Services; Feedback.**
- a) **Bridge Support Services.** Elavon will provide Company with the following support services (the "Bridge Support Services"):
 - v) Providing Company with solutions to any known material problem relating to each installation of the Elavon Bridge in a timely manner as such solutions become known to Elavon;
 - vi) Using commercially reasonable efforts to supply timely corrections for problems reported to Elavon by Company that Elavon can reproduce in a currently supported version of the Elavon Bridge;
 - vii) Furnishing a reasonable level of telephone support, as determined by Elavon, in the form of counsel and advice on use and maintenance of the Elavon Bridge;
 - viii) Providing Company with new releases of the Elavon Bridge (so long as Company complies with the terms set forth in this Bridge License).
 - b) **Limited Warranty.** The Bridge Support Services will be performed in a professional and workmanlike manner. Elavon will have and maintain sufficient resources to perform the Bridge Support Services in accordance with this Bridge License.
 - c) **Feedback.** Company has no obligation to provide Elavon any suggestions, comments, or other feedback regarding the Elavon Bridge (collectively, "Feedback"). If Company nonetheless provides Feedback to Elavon, Company agrees that Elavon may freely use, disclose, reproduce, license, distribute, and otherwise commercialize the Feedback in any products, technology, services, specifications or other documentation of Elavon or its Affiliates. Feedback will not constitute Confidential Information, even if it would otherwise qualify as such pursuant to the Agreement.
5. **Responsibilities of Company.**
- a) **Company Systems and Equipment.** Company will be responsible for ensuring that the systems and equipment, including any POS Devices and any systems or equipment of third-party vendors used by Company, remain certified and compatible with the most recent release of the Elavon Bridge. Elavon will not be responsible for any updates, upgrades, or changes to Company's systems or equipment, including the POS Device or any third-party systems or equipment, that may be necessary in conjunction with delivery, installation or use of the Elavon Bridge. Failure of the Company's systems or equipment, including POS Device, or any third-party systems, to remain certified or to be compatible and function with the most recent release of the Elavon Bridge as regulated or required will excuse Elavon from all liability under this Bridge License and in connection with any other services that Elavon may be providing to Company for the failure of the Elavon Bridge to perform in accordance with its specifications.
 - b) ELAVON DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY DATA OR OTHER INFORMATION PROVIDED OR MADE AVAILABLE BY COMPANY OR ITS AUTHORIZED USERS, AND ELAVON WILL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN THE DATA OR RESULTS FROM USING THE ELAVON BRIDGE, EXCEPT TO THE EXTENT DIRECTLY CAUSED BY A FAILURE OF THE ELAVON BRIDGE TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS.
 - c) **Compliance by Company's Authorized Users.** Company is responsible for compliance by each of its Authorized Users with the terms and conditions of this Bridge License and is responsible and liable for all access and use by Authorized Users and acts or omissions of Authorized Users under this Bridge License.



EXHIBIT D TO SCHEDULE E

Service Web Site Terms and Conditions

If Company elects to use the Service Web Site (as defined below) in connection with Safe-T Link for certain Transaction management functionality, this Exhibit D (“Service Web Site Terms and Conditions”) will be a part of this Schedule E and access to the Service Web Site will be deemed to constitute a part of the Safe-T Services.

This Exhibit D only applies to Company if Company is receiving Processing Services from Elavon. If Company is not receiving Processing Services from Elavon, the Service Web Site terms in the Operating Guide, and not the Service Web Site Terms and Conditions set forth below, will govern Company’s access to the Service Web Site.

1. Definitions.

Administrator means the Company employee designated by Company to establish user groups for access to the Service Web Site by Authorized Users of Company and to issue and manage user IDs and passwords of Authorized Users.

Service Web Site means the browser-based user interface operated by Elavon and located at the URL designated by Elavon (as such URL may be updated from time to time), which provides Company with batch management, settlement balancing, and Transaction research and reporting functionality.

2. **Company Access and Use of the Service Web Site.** Subject to and in accordance with the terms, conditions and limitations set forth in the Agreement, including this Schedule E and this Exhibit D, Elavon grants Company a limited, revocable, non-exclusive, non-assignable (except as permitted under Section 18.5 of the General Terms and Conditions), non-transferable right during the Term of the Agreement to access and use the Service Web Site solely for Company’s own internal business purposes. Company will designate an Administrator in writing. The Administrator will create passwords and user IDs for Authorized Users. For clarity, Section 5 of the Agreement applies to the Service Web Site .

3. **Monitoring.** Company acknowledges and agrees that Elavon may be able to monitor access to and use of the Service Web Site and to prohibit any access or use of data or information within the Service Web Site that Elavon reasonably believes is unauthorized, may violate applicable Law or Payment Network Regulations or that may pose an unacceptable risk of material harm to Elavon, other Elavon customers or Elavon’s systems. Elavon has no obligation to detect or prevent, and will not be liable for failing to detect or prevent, any unauthorized access to or use of the Service Web Site using any password or user ID assigned to or by Company.

4. Transaction Data.

- (a) Elavon will not be liable for Company’s use of Company’s or a third party’s telecommunications services and related networks, or for any connectivity failure, erroneous transmission, corruption or loss of data, or inability to access the Service Web Site resulting from Company’s or a third party’s telecommunications systems, equipment, resources, or software. Without limiting the foregoing, Elavon will not be responsible for the reconstruction of any information or data lost in transmission to or from the Service Web Site due to any malfunction of Company’s or Company’s third-party service provider’s systems. Elavon is not responsible for ensuring or verifying the accuracy of the content or format of any Transaction Information it receives. COMPANY ACKNOWLEDGES AND AGREES THAT THE SERVICE WEB SITE RELIES ON THE DATA AND DIRECTIONS PROVIDED BY COMPANY AND ITS AUTHORIZED USERS. ELAVON DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY DATA OR OTHER INFORMATION PROVIDED OR MADE AVAILABLE BY COMPANY OR ITS AUTHORIZED USERS, AND ELAVON WILL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN DATA OR RESULTS OBTAINED THROUGH COMPANY’S USE OF THE SERVICE WEB SITE, EXCEPT TO THE EXTENT CAUSED BY ELAVON’S BREACH OF THESE SERVICE WEB SITE TERMS AND CONDITIONS.

- (b) Elavon may rely on instructions and approvals submitted by Company regarding access to and use of Transaction Information. Company (and its Authorized Users) may view and transmit certain Transaction Information via Service Web Site. If Company wants to access or receive copies of Transaction Information that is not accessible or downloadable via the Service Web Site, Company may request that Elavon provide such Transaction Information, and Elavon will work with Company to provide such Transaction Information on mutually agreed upon terms, but Elavon will provide access to clear-text data only upon Company’s execution of a completed clear card request form, which is available from Elavon upon request. Following the expiration or termination of the Agreement, if Company wants to access or receive copies of Transaction Information stored by Elavon, Company will be required to: (i) enter into a data access agreement to be separately executed by the parties and (ii) pay any fees imposed by Elavon in connection with such access.

SCHEDULE H

GOVERNMENT TERMS

The terms in this Schedule H are applicable only in the event Company (i) has selected the checkbox on the signature page of the Agreement indicating that these terms apply, and (ii) qualifies as a “government entity” or “government institution” under applicable local, state or federal law. Except as expressly modified pursuant to this schedule, all terms and conditions of the Agreement, including all other schedules and addenda to the Agreement, remain in full force and effect and will govern the relationship between Elavon and Company.

1. Services for government entities and institutions. The Agreement is modified as follows for government entities and institutions:

1.1. Section 4.2. Company will have the following termination right added to the Agreement as 4.2(f):

“(f) Company may terminate the Agreement on 60 days’ prior written notice to Elavon if sufficient legislative appropriation is not available.”

1.2. Section 4.4, Early Termination Fee, is deleted and replaced with “Intentionally Omitted.”

1.3. Section 9.2(b) is revised as follows:

“(b) **PCI –DSS Attestation.** Company may review Elavon’s current PCI-DSS compliance status on the Payment Network website <https://www.visa.com/splisting/searchGrsp.do>, as available. Elavon will undergo an annual assessment of its compliance with the Security Programs and, if applicable to the Services provided under the Agreement, the Payment Application Data Security Standards.

1.4. Section 10.1 is revised as follows:

“**10.1. Elavon Reports on Internal Controls.** Elavon will engage independent, qualified, external auditors (the “Elavon Auditors”) to assess the internal controls and information security measures in place related to the Services (“Internal Controls Assessment”). The Internal Controls Assessment will conform with Laws, applicable Card Brand Regulations and industry standards, including generally accepted auditing standards such as the Statement on Standards for Attestation Engagements No. 18. “Attestation Standards: Clarification and Recodification” issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (the “SSAE 18”). The frequency of the Internal Controls Assessment will be consistent with industry standards. Upon Company’s written request and 30 days advance notice, Elavon make its SSAE 18 SOC 1 and SOC 2 reports available for Company review on Elavon’s premises or through internet conferencing software (e.g. Cisco Webex or Microsoft Teams). Company’s review shall take place during Elavon’s normal business hours and not more frequently than once every 12 months. Company is not allowed to retain, record, or make copies of Elavon’s SOC 1 or SOC 2 reports, which constitute Elavon’s Confidential Information.”

1.5. Section 13.1 is revised as follows:

“**13.1 Elavon Responsibilities.** In addition to Elavon’s obligations in Section 13.5, Elavon will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising out of (a) Elavon’s breach of the Agreement; (b) Elavon’s or its third party contractors’ gross negligence or willful misconduct; (c) Elavon’s or its third party contractors’ violation of applicable Laws or Payment Network Regulations; (d) Elavon’s alleged infringement or other violation of a U.S. or Canada patent, copyright or trademark of a third party by the Services in the form delivered or Company’s use thereof; or (e) any personal injury or real or tangible personal property damage to the extent caused by Elavon or its third party contractors.”

1.6. Section 13.2 is revised as follows:

“13.2 Company Responsibilities. As between Company and Elavon, Company will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of (a) any sale of goods or services resulting in a Transaction processed under the Agreement; (b) Company’s breach of the Agreement; (c) all use of any user ID and password other than by Elavon or Elavon’s third-party contractors; (d) Company’s or its Service Providers’ gross negligence or willful misconduct; (e) Company’s or its Service Providers’ violation of Laws or Payment Network Regulations; or (f) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers. Company will not make any claims against Elavon for any liabilities, claims losses, costs, expenses and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages.”

1.7. Sections 13.3 is deleted.

1.8. Section 13.4 is revised as follows:

13.4. Procedure.

(a) If an Infringement Claim (as defined in Section 13.5) is subject to Elavon’s obligations in Section 13.5 of the Agreement, Company will:

- (i) Provide Elavon prompt notice of the Infringement Claim (provided that any delay in notification will not relieve Elavon of its obligations under Section 13.5 except to the extent that the delay materially impairs its ability to fully defend the Infringement Claim);
- (ii) Subject to Section 13.4(b), give Elavon the right to exercise exclusive control over the preparation and defense of the Infringement Claim; and
- (iii) Provide such assistance in connection with the defense and settlement of the Infringement Claim as Elavon may reasonably request, at Elavon’s expense. Elavon will not enter into any settlement that imposes any liability or obligation on Company, or contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without Company’s prior written consent.

(b) Company may join in the defense, with its own counsel, at its own expense.

1.9. Section 13.5 is revised as follows:

“13.5. Infringement Claims.

(a) Elavon will defend Company and its employees, officers, and agents in connection with claims, actions, demands or proceedings (made or threatened) brought by a third party, and will pay the final award of damages assessed against Company, its employees, officers or agents in a final judgment by a court of competent jurisdiction, including awarded costs, or any amount in settlement or compromise authorized by Elavon in writing, arising out of Elavon’s alleged infringement or other violation of a U.S. or Canada patent, copyright or trademark of a third party by the Services (but not Equipment) in the form delivered or Company’s use thereof (an “Infringement Claim”).

(b) If any part of the Services or the use of the Services becomes, or in Elavon’s opinion is likely to become, the subject of an Infringement Claim, and as a result of such Infringement Claim Company’s use of the Services may be enjoined or interfered with, then Elavon will, at its option and expense, either, and in addition to defending Company and paying the final amount of damages as provided for in this section, (i) obtain a license for Company to continue using the alleged infringing component(s) of the Services; (ii) modify the alleged infringing component(s) of the

Services to avoid the infringement in a manner that still permits the Services to perform in all material respects in accordance with the Agreement; or (iii) replace the alleged infringing component(s) of the Services with compatible, functionally equivalent, and non-infringing component(s). Elavon will use commercially reasonable efforts to accomplish the remedies identified in this section in a manner that minimizes the disruption to Company's business operations. If Elavon is not able to accomplish the above remedies within a commercially reasonable time frame and on commercially reasonable terms, Elavon may terminate the Agreement upon written notice to Company. Upon such termination, Elavon will promptly refund any fees paid for Services not performed as of the date of termination.

(c) Elavon will have no liability for any Infringement Claim to the extent caused by (i) access to or use of the Services other than as specified under the Agreement and the related Documentation, (ii) combination or use of the Services with non-Elavon products or services (whether or not provided to Company by Elavon), (iii) any hardware, devices, software, services or other resources not provided by Elavon, (iv) failure or refusal by Company to install, implement or use any Update or correction provided by Elavon, (v) modification or alteration of the Services by anyone other than Elavon without Elavon's prior written consent, (vi) Company's goods or services, or (vii) the negligence, gross negligence or willful misconduct of, or breach of the Agreement by, Company.

(d) THIS SECTION 13.5 SETS FORTH THE EXCLUSIVE REMEDY OF COMPANY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO ANY INFRINGEMENT CLAIMS."

1.10. Section 18.2, Jurisdiction and Venue; Governing Laws, is deleted and replaced with "Intentionally Omitted."

1.11. Section 18.3, Exclusivity, is deleted and replaced with "Intentionally Omitted."

1.12. Section 1.7(b) of Schedule D, Financial Information, is revised as follows:

"1.7(b) Financial Information. At Elavon's request, Company will provide Elavon audited financial statements prepared by an independent certified public accountant selected by Company, or if Company is audited by a governmental authority, then Company will provide financial statements from such governmental authority. Within 120 days after the end of each fiscal year (or in the case of a government entity, when available), Company will furnish Elavon, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited as provided above. Company will also provide Elavon such interim financial statements and other information as Elavon may request from time to time."

2. Elavon Fee Collection Models

2.1. Direct Debit Fee Collection Model. If Company elects the Direct Debit fee collection model on Schedule B, then Section 6.1 of the Agreement will remain unchanged and in full force and effect.

2.2. Invoice Fee Collection Model. If Company elects and is approved for the invoice fee collection model on Schedule B, then the second sentence of Section 6.1 of the Agreement is deleted and replaced with the following:

"Such fees will be calculated once each month for the previous month's activity. Elavon will send Company an invoice reflecting the fees due, which Company will pay within 30 days of the invoice date. In addition to all other available remedies, Elavon may offset any outstanding or uncollected amounts that are more than 90 days past due from (i) any amounts it would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon may owe Company under the Agreement."