

TERMS AND CONDITIONS

SECTION A - GENERAL PROVISIONS

1. **DEFINITIONS.** Capitalized terms not otherwise defined herein that are used in this Agreement or in any applicable appendix, schedule or exhibit attached hereto have the meanings ascribed to them in Section B of these Terms and Conditions.

2. SERVICES.

(a) **General.** Elavon will provide Customer with access to and use of the Services expressly identified on the signature page of this Agreement. Elavon reserves the right, during the Term, to update the Services and Hosted System as Elavon deems necessary or appropriate.

(b) **Support Services.** Provided that Customer complies with the terms set forth herein, including, without limitation, the payment of all Fees in full when due, Elavon shall provide Customer with support services for the Services in accordance with the terms set forth on Schedule A.

(c) **Settlement.** Except as may be expressly provided herein or in another agreement between Customer and Elavon, Elavon has no responsibility for Customer's receipt of settlement funds in connection with any Transaction, whether or not the Transaction Receipt or other data in connection with such Transaction was transmitted using the Services. It is Customer's sole responsibility to reconcile funds received in settlement of Transactions against actual Transaction activity, including any Transaction Receipts transmitted using the Services. If Customer desires Elavon to perform any settlement or other Transaction processing functions for Customer, the parties shall enter into a separate Transaction acquiring agreement that shall describe the obligations of both parties in connection with such additional services.

3. ACCESS RIGHTS.

(a) **Access Rights.** In consideration for the payment of Fees, Elavon hereby grants to Customer a limited, personal, nonexclusive, nontransferable, revocable right, during the Term, to access and use the Services from Customer Locations, including any Service Web Site for those Services, within the Territory solely for its own internal business purposes in accordance with the terms and conditions of this Agreement. All access to and use by Customer and Authorized Users of the Services is subject to the limitations and restrictions for those Services set forth in this Agreement and the applicable Documentation. Access to clear-text Cardholder Data will be provided to Customer and/or any Authorized User only upon Customer's execution of a completed Clear Card Request Form, which is available from Elavon upon request. Elavon shall have no responsibility for any Customer Data that is downloaded from the Hosted System.

(b) **Restrictions.** Customer and its Authorized Users shall not: (i) copy, re-sell, republish, download, frame or transmit in any form the Services, or any part thereof, including, without limitation, in order to act as a consultant, service bureau, outsourcing or application service provider for any third parties, or otherwise allow any third party to use or access the Services; (ii) modify, reverse engineer, disassemble or decompile the Services, or any part thereof; (iii) 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 Hosted System; (iv) interfere with or disrupt the Connectivity, or the servers or networks connected to the Hosted System or providing the Services, or violate the regulations, policies or procedures of any associated networks; or (v) remove, change or obliterate the copyright, trade secret or other proprietary protection legends or notices that appear in connection with access to and use of the Services or any associated Documentation.

(c) **Third Party Software and Services.** Customer acknowledges and agrees that certain of the products or services provided in connection with the Services may use or communicate with software or equipment developed by or operated by third parties not under the control of Elavon. Customer agrees to look solely to such third party for remedies, losses, or damages related to that third party software or equipment or third party services.

(d) **Monitoring Rights.** Customer acknowledges and agrees that the Hosted System may allow Elavon to monitor access to it and to prohibit any access or use of data or information within the Hosted System that Elavon reasonably believes is unauthorized or that may pose an unacceptable risk of material harm to Elavon, other Elavon customers or the Hosted System; provided, however, that Customer further acknowledges and agrees that Elavon has no obligation to detect or prevent, and will have no liability for failing to detect or prevent, any unauthorized access to or use of the Services using any password or user ID assigned to or by Customer.

4. RESPONSIBILITIES OF CUSTOMER.

(a) **Customer Resources.** Customer is responsible for implementing Customer's and its users' access to the Services and Service Web Site(s), including, without limitation, all Customer Connectivity Software, in accordance with the specifications and requirements provided by Elavon. Customer is responsible for the physical and technical security and safeguards for Customer Resources and Customer Software, including, without limitation, all Customer computer information systems. If Customer is hosting any Customer Resources or Customer Software with a third party hosting provider or will access the Services or transmit data to the Connectivity through a

third party hosting or service provider, Customer shall be responsible for compliance by that third party provider with the terms and conditions of this Agreement and for the acts and omissions of that third party provider. Elavon expressly disclaims any and all liability related to Customer's use of telecommunications services and related networks of Customer or a third party, including, without limitation, failure of Connectivity or any erroneous transmissions, corruption or loss of data, or inability to access the Services or Connectivity as a result of any telecommunications failure or failure of Customer Resources or Customer Software, including, without limitation, Customer Connectivity Software or due to the acts or omissions of any third party or telecommunications provider.

(b) Data. Customer shall be responsible for maintaining sufficient copies of information and data with respect to Transactions and a copy of all Customer Data in order to reconstruct any information or data lost in the transmission of data to or from the Hosted System due to any malfunction of Customer's or Elavon's systems, including, without limitation, the Services or Connectivity. Customer acknowledges that the ability of the Services to convert data into formats that can be used by the Software, other Elavon service offerings, any Payment Services Entity or any Destination Point is based on the integrity of the Customer Data in its systems, and neither the Software nor the Services verifies accuracy of information or format of any Customer Data received by it. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES CONSIST OF CONVERSION SOFTWARE AND RELY ON THE DATA AND DIRECTIONS PROVIDED BY CUSTOMER AND ITS AUTHORIZED USERS. ELAVON DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY DATA OR OTHER INFORMATION PROVIDED OR MADE AVAILABLE BY CUSTOMER 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 SOFTWARE OR THE SERVICES.

(c) Approvals and Consents. Customer has all necessary right, title and interest in and to Customer Data to provide such information to Elavon for use and retention by Elavon as contemplated under this Agreement. Customer grants to Elavon a non-exclusive, royalty-free right to access and use all Customer Data as necessary or appropriate for Elavon to provide the Services and as otherwise permitted under this Agreement, including, without limitation, releasing such Customer Data to third parties as directed by Customer (including release to Payment Services Entities) or in connection with Elavon's performance of the Services. Elavon shall have the right to rely on instructions and approvals submitted by Customer regarding access to and use of all Customer Data.

(d) Set-Up and Boarding. Customer shall provide to Elavon all specifications, information and data required by Elavon and shall cooperate with Elavon in the process of assimilating the

information and data necessary to confirm that the Hosted System and Customer's system and Customer Resources are configured to process the Transactions of Customer. Elavon is entitled to rely on the information provided by Customer in connection with Elavon's set-up and boarding of Customer in the Hosted System and in Elavon's performance of the Services, including identification of Payment Services Entities, merchant identification numbers, merchant category code and any other information that may impact the Services. Customer shall notify Elavon of any changes to such Customer information in writing at least ten (10) days prior to the effective date of such changes and shall identify in the notice the date as of which Elavon should implement the change. Elavon shall use commercially reasonable efforts to implement any such changes in accordance with Customer's reasonable instructions. In no event shall Elavon be liable for any errors in the handling of Customer Data or in the performance of the Services that are attributable to inaccurate or incomplete information or data provided by Customer.

(e) Compliance with Documentation. Customer is responsible for complying with, and ensuring that its Authorized Users comply with, the terms and conditions of this Agreement, the Documentation and such additional terms and conditions applicable to the Services as may be posted from time to time for access by Customer on the Service Web Site. Customer is responsible for ensuring that the access granted to each Authorized User is limited to only the minimum access necessary for that Authorized User to perform his or her job functions on behalf of Customer. Customer is responsible for compliance with this Agreement by each of its Authorized Users and is solely responsible for all acts or omissions of its Authorized Users.

(f) Security of Passwords/ Access. Customer is solely responsible for keeping all passwords and user IDs assigned to it and its Authorized Users secret and confidential. Customer agrees that it is solely responsible for any communications or other uses that are made using its user passwords and user IDs, as well as for any obligation which may result from such use. Customer is responsible for changing the user IDs and passwords of its Authorized Users if those user IDs or passwords have been stolen or might otherwise be misused and for disabling any such user IDs and passwords promptly upon the termination of employment of any Authorized User. Customer shall notify Elavon in the most expedient time possible and without unreasonable delay of any unauthorized use of any password or user ID or any other breach of security that is suspected by Customer.

5. SUSPENSION OF SERVICE. Without limiting any other remedies available to Elavon at law or in equity, Elavon reserves the right to immediately suspend the provision of Connectivity to Customer and/or Customer's (and/or any or all of its Authorized Users') right to access and use of the Services, without notice, if any of the following events occur:

(i) failure of Customer to pay all Fees in full when due; (ii) any breach of the terms of this Agreement by Customer or an Authorized User; (iii) if required by any Payment Services Entity, Payment Network or any Destination Point (including any Customer acquirer or processor); or (iv) if Elavon determines, in its reasonable discretion, that the provision of Connectivity to Customer or any Authorized User or the use or access by Customer or any Authorized User to the Services poses an unacceptable security risk to Elavon, any Payment Services Entity, any Payment Network, any other Elavon customers or any Destination Point, or jeopardizes the confidentiality, security or integrity of the Hosted System.

6. FEES AND PAYMENT.

(a) *Fees.* Customer agrees to pay Elavon the Fees as detailed in the enrollment forms and such other fees as may be agreed by the parties from time to time, without set off or deduction for any reason. All Fees shall be due and payable in accordance with the payment terms provided on the enrollment forms and are non-refundable. Except as expressly provided on the enrollment forms, all amounts due and payable shall be made in U.S. dollars.

(b) *Payment Terms.* All Fees shall be billed in advance, unless Fees are being calculated on a per Transaction basis, and are due and payable in accordance with the payment terms provided herein or as may be further described on the enrollment forms. If Customer fails to pay any Fees in full when due and payable, then, in addition to all other rights and remedies at law or otherwise, Elavon shall have the right to charge Customer, and Customer shall have the obligation to pay, late payment charges equal to one percent (1.0%) per month on the unpaid amount for the period starting with the date payment was due and ending on the date when the full payment is received by Elavon. In addition, Elavon will be entitled to recover from Customer all reasonable costs incurred to obtain full payment, including reasonable attorneys' fees.

(c) *DDA and ACH Authorization; Invoices.* Customer will establish and maintain with an ACH participating financial institution one or more demand deposit accounts (DDAs) to facilitate payment of Fees for Services. Customer will maintain sufficient funds in the DDA to accommodate all Fees due under the Agreement. Customer irrevocably authorizes Elavon to initiate ACH debit entries to the DDA for any products or services requested by Customer in order to collect payments from Customer due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Customer's obligations to Elavon have been paid in full. Elavon has the right to rely on written instructions submitted by Customer requesting changes to the DDA. In the event Customer changes the DDA, the ACH debit authorization established hereunder will apply to the new account and Customer shall provide Elavon such information regarding the new DDA as they deem necessary to effect

payments from the DDA as provided under the Agreement. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from Customer to reflect in its system any change to Customer's DDA. In the event Elavon has agreed to invoice Customer for any Fees, all such Fees are due and payable to Elavon within the net number of days as detailed and presented on each invoice issued by Elavon in conjunction with each Service.

(d) *Taxes.* The Fees listed under this Agreement do not include sales, use, excise, property, value added, gross receipts, or any other taxes or import or export duties. In the event foreign, federal, state or local taxes or duties are assessed on the Services, Customer is obligated to pay those taxes and duties as required under applicable law and shall reimburse Elavon for any such taxes or duties, except for taxes based on the income of Elavon. If Customer is a tax-exempt entity, Customer will provide Elavon with an appropriate certificate of tax exemption.

7. TERMINATION.

(a) *Termination by Customer.*

(i) Customer shall have the right to terminate this Agreement upon written notice to Elavon in the event Elavon materially breaches this Agreement and the material breach is incapable of cure or remains uncured for a period of thirty (30) days after receipt by Elavon of a written notice of breach from Customer specifying the nature of the breach.

(ii) Customer shall have the right to terminate this Agreement without cause with ninety (90) days' prior written notice to Elavon and subject to payment of the early termination fee set forth in Section 7(d).

(b) *Termination by Elavon.* Without limiting the rights of Elavon to suspend provision of Services as provided herein, Elavon shall have the right to terminate this Agreement, upon written notice to Customer, in the event of any of the following:

(i) Customer is in monetary default of this Agreement for a period of fifteen (15) days after receipt of written notice of such default from Elavon; or

(ii) Customer materially breaches this Agreement and the breach is incapable of cure or remains uncured for a period of thirty (30) days after receipt by Customer of a written notice of breach from Elavon specifying the nature of the breach; or

(iii) Elavon determines, in its reasonable discretion, that it is commercially impractical to continue performing the Services under this Agreement, including, without limitation, in light of a material adverse change in applicable laws, Payment Network Regulations or the requirements of any Payment Services Entity or Destination Point; or

(iv) Any Payment Network or Payment Services Entity requires that Elavon terminate one or more Services; or

(v) In the event of a Change of Control of Customer.

(c) Effect of Termination. In the event of termination or expiration of this Agreement:

(i) All permissions granted to Customer to access the Services or Service Web Site will terminate, and Elavon shall have the right to discontinue the provision of Services and disable Connectivity and all access to the Services, any Service Web Site(s) and the Hosted System, including all user IDs and passwords;

(ii) Upon Customer's request not later than ten (10) days following termination, all Customer Data in Elavon's possession (except data contained in Elavon's backup files or required to be maintained under applicable law or otherwise permitted to be retained by Elavon hereunder) shall be forwarded to Customer, in the then-current format maintained by Elavon; and

(iii) Customer shall immediately pay Elavon for all Fees due up to the effective date of termination or expiration.

(d) Early termination fee. If Customer terminates this Agreement before the end of the Initial Term or any Renewal Term pursuant to section 7(a)(ii), Customer shall pay Elavon, as liquidated damages, an early termination fee as set forth below. In the event fees are being billed on a subscription basis (as set forth on the enrollment forms), Customer shall be obligated to pay an early termination fee in an amount equal to: (i) the Fees paid to Elavon over the previous twelve (12) months if twelve (12) or more months remain in the then current term or (ii) the Fees for the remainder of the then current term if less than twelve (12) remain in the then current term. In the event fees are being billed on a per transaction basis (as set forth on the enrollment form), Customer shall be obligated to pay an early termination fee equal to the average of the Transaction volume over the previous six (6) month period at the per transaction rate as set forth on the enrollment forms for the remainder of the then current term. Customer shall pay Elavon the early termination fee within thirty (30) days of Customer's written notice of termination to Elavon. Customer agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Customer's early termination.

8. OWNERSHIP AND RESERVATION OF RIGHTS.

(a) Rights of Elavon. Elavon retains all right, title and interest, including, without limitation, all Intellectual Property Rights, in the Services, Software, Hosted System, Elavon Materials, Documentation, Elavon Confidential Information and all Updates and Customizations. All rights not expressly granted herein are reserved by Elavon. In the event any right, title or interest in and to any Customizations is deemed to vest in Customer, Customer hereby assigns and agrees to assign to Elavon all worldwide right, title, and interest in, to and under such Customizations, including, all Intellectual Property Rights therein.

(b) Data. As between Customer and Elavon, except as may be provided herein or in another agreement between Customer and

Elavon, Customer shall own all information related to Customer Data, including, without limitation, information about Customer's Cardholders and Transactions that is provided by Customer or its agent to Elavon and Elavon agents, subcontractors and employees in the performance of this Agreement ("Cardholder Data"). Customer acknowledges and agrees that Elavon may use and retain, but not distribute or disclose publicly, Customer Data and Cardholder Data for fraud detection and prevention, compliance and similar purposes. Customer further acknowledges and agrees that Elavon may use, retain, distribute and disclose derivative data based originally on Customer Data or Cardholder Data that has been compiled and aggregated with other data ("Aggregated Data"), so long as such Aggregated Data does not identify Customer as the source of such data or include protected information concerning Customer's customers or other persons. Aggregated Data shall not constitute Customer Data, Cardholder Data or Customer's Confidential Information under this Agreement provided that Elavon will not use Aggregated Data in any manner prohibited by law.

9. CONFIDENTIALITY. "Confidential Information" means confidential and proprietary business or technical information of Elavon, regardless of the form or media, that is reasonably identified as confidential or proprietary at the time of disclosure or which under the circumstances surrounding disclosure ought to be reasonably considered as confidential or proprietary, including, without limitation, Software, Documentation, all pricing and other financial information for the Services, compilations, databases, implementation methods, techniques, algorithms, rules, and methodology and technical specifications and technical information, drawings, engineering data, performance specifications, cost and price information, and data and reports. Customer agrees to protect Elavon'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 shall not use, reproduce, distribute, disclose, or otherwise disseminate Elavon's Confidential Information. The obligations of non-disclosure provided hereunder shall continue during the Term and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter. Confidential Information does not include any data or information which is already known to Customer prior to disclosure by Elavon, or which (i) has become generally known to the public through no wrongful act of Customer; (ii) has been rightfully received by Customer from a third party without restriction on disclosure and without, to the knowledge of Customer, a breach of an obligation of confidentiality running directly or indirectly to the other party;

or (iii) is independently developed by Customer without use, directly or indirectly, of the Confidential Information received from Elavon. Customer shall have the right to disclose information which is required to be disclosed pursuant to court order or by law or regulation; provided, however, that in the event disclosure is required by law, regulation or court order, Customer will: (x) notify Elavon of the obligation to make such disclosure promptly and sufficiently in advance of the time required to disclose to allow Elavon the opportunity to seek a protective order, (y) cooperate with Elavon at Elavon's expense in seeking the protective order, and (z) make disclosure only to the extent required to comply with the law, regulation or court order.

10. COMPLIANCE WITH LAWS. Each party will comply with federal, state and local laws, government regulations and orders material to that party's performance of its obligations under this Agreement. Customer further represents and warrants that it is in compliance with the Security Requirements with respect to all Cardholder Information and other data or information provided to Elavon or to Elavon's agents in connection with this Agreement, and Customer will remain in compliance with such Security Requirements during the Term. Customer will use the Services of Elavon only for lawful purposes in compliance with all applicable laws, rules and regulations and the terms and conditions of this Agreement. Customer warrants that Customer is in compliance with the Payment Network Regulations applicable to Customer in the performance of its business, and that Customer will remain in compliance with such Payment Network Regulations during the Term. Customer agrees to comply with the terms and conditions of the U.S. Commerce Department's Export Administration Regulations and shall not enable any access to the Services by Customer or any Authorized Users or export, re-export, directly or indirectly, any Software, Documentation or Confidential Information of Elavon, or component thereof, in violation of any applicable United States laws or regulations.

11. DISCLAIMER OF WARRANTIES.

THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS IN THEIR PRESENT STATE AND CONDITION. ELAVON DOES NOT MAKE AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, ACCURACY, TITLE, SECURITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE. ELAVON MAKES NO WARRANTY OR REPRESENTATION: (I) THAT THE SERVICES, HOSTED SYSTEM, SOFTWARE OR CONNECTIVITY WILL BE CONTINUOUS, UNINTERRUPTED, ERROR-FREE OR WILL MEET CUSTOMER'S EXPECTATIONS

OR (II) REGARDING THE AMOUNT OF TIME NEEDED TO COMPLETE PROCESSING OF DATA, AS THE SERVICES DEPEND UPON MANY FACTORS OUTSIDE ELAVON'S CONTROL.

CUSTOMER ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM AND IS SUBJECT TO INTERRUPTION AND DISRUPTION. TRANSMISSION OF INFORMATION AND DATA VIA THE INTERNET IS OUT OF ELAVON'S CONTROL. ELAVON IS NOT RESPONSIBLE FOR ANY INTERCEPTION OR CORRUPTION OF INFORMATION OR DATA DURING ANY TRANSMISSION OVER THE INTERNET OR OUTSIDE THE ELAVON CONNECTIVITY ANY RELATED TELECOMMUNICATIONS NETWORK OR AT ANY CUSTOMER NETWORK ACCESS POINT.

No oral or written information given by Elavon, its agents, or employees shall create any warranty or representation not set forth in this Agreement.

12. LIMITATION OF LIABILITY.

IN NO EVENT WILL ELAVON BE LIABLE TO CUSTOMER FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, LOST REVENUE, LOSS OF DATA, OR GOODWILL ARISING OUT OF THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE SERVICES, HOSTED SYSTEM, CONNECTIVITY, DOCUMENTATION OR SOFTWARE (INCLUDING ANY THIRD PARTY SOFTWARE) OR USE THEREOF BY CUSTOMER, UNDER ANY THEORY OF LAW OR EQUITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE) EVEN IF ELAVON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ELAVON BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES.

IN NO EVENT SHALL ELAVON'S AGGREGATE LIABILITY FOR ANY DAMAGES (DIRECT OR OTHERWISE) OR PENALTIES OR LOSS, CONCERNING THE PERFORMANCE OR NON-PERFORMANCE OF SERVICES OR OTHERWISE ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY THEORY OF LAW OR EQUITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE) EXCEED THE FEES PAID TO ELAVON BY CUSTOMER FOR THE PORTION OF THE SERVICES GIVING RISE TO SUCH CLAIM DURING THE THREE (3) MONTHS IMMEDIATELY

PRECEDING THE CLAIM, ANY CLAIM FOR SUCH DAMAGES OR PENALTIES BEING HEREBY WAIVED BY CUSTOMER.

EACH OF THE PARTIES AGREES THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT ARE FAIR AND REASONABLE IN THE COMMERCIAL CIRCUMSTANCES OF THIS AGREEMENT AND THAT IT WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR THE OTHER PARTY'S AGREEMENT TO THESE LIMITATIONS OF LIABILITY IN THE MANNER, AND TO THE EXTENT, PROVIDED UNDER THIS AGREEMENT. THIS SECTION SHALL APPLY EVEN IN THE EVENT OF A BREACH OF A CONDITION OR ESSENTIAL TERM OF THIS AGREEMENT AND IF OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. ANY CLAIM BY CUSTOMER MUST BE INITIATED WITHIN TWO (2) YEARS AFTER THE CAUSE OF ACTION GIVING RISE TO THAT CLAIM ARISES.

13. INDEMNIFICATION. Customer agrees to indemnify, defend and hold harmless Elavon, its parents, subsidiaries, and affiliates, and their officers, directors, employees, agents, successors and assigns (collectively, "Elavon Indemnified Parties") from and against all liability to third parties and reimburse the Elavon Indemnified Parties for all costs and expenses (including, without limitation, all settlements, judgments, fines, damages, reasonable legal fees, court costs, expert fees, etc.) by reason of any claim, demand, penalty or judicial or administrative proceeding or investigation to the extent arising from or in connection with: (i) breach by Customer of its covenants or obligations under this Agreement; (ii) Customer's violation of applicable federal, state, local or municipal laws, rules, regulations, ordinances, or orders, in connection with the provision of Data to Elavon hereunder or Customer's use of the Services; or (iii) any access to or use of the Services, including, without limitation, the Service Web Site or the Hosted System in a manner that is unauthorized or otherwise inconsistent with the rights and responsibilities granted under this Agreement. Customer 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. Elavon may join in the defense, with its own counsel, at its own expense.

14. FORCE MAJEURE. Except for payment of Fees due by Customer, no party shall be responsible for, or be considered to be in breach hereunder, nor shall any party be responsible for failure or delay in receiving such Services, if caused by an act of God or public enemy, war, government acts or regulations, fire, flood, embargo, quarantine, epidemic, labor stoppages, unusually severe weather, malicious acts of third parties (including, without

limitation, the introduction of computer viruses), interruption of telecommunications service, or other cause beyond its reasonable control. If a force majeure event interrupts Elavon's provision of any Services, Customer shall continue to pay Elavon's fees and Elavon shall make all reasonable efforts to restore such Services. If the force majeure event continues for a period of more than fourteen (14) days, then Customer may, upon notice to Elavon, as its sole and exclusive remedy, abate payment to Elavon to the extent Services are not performed, and terminate this Agreement.

15. NOTICES. Any written notice to the other party under the Agreement will be deemed received upon the earlier of: (i) actual receipt, or (ii) five (5) business days after being deposited in the United States mail, or (iii) one (1) business day after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to the Customer's last address shown on the records of Elavon, or to Elavon at 9359 East Nichols Avenue, Englewood, CO 90112, Attention: Operations or such other address as Elavon may provide to Customer in writing.

16. GOVERNING LAW. This Agreement is governed by and construed in accordance with the laws of the State of Georgia, without reference to principles of conflicts of law. The sole and exclusive jurisdiction and venue for any dispute or actions arising between the parties out of this Agreement or access or use of the Services by Customer (other than collection actions by Elavon relating to amounts owed by Customer under the Agreement) shall be the state and federal courts located in Fulton County, Georgia. The parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, that court. EACH PARTY EXPRESSLY WAIVES ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE.

17. ASSIGNMENT; INUREMENT. The Agreement may be assigned by Elavon, but may not be assigned by Customer, directly or by operation of law, without the prior written consent of Elavon. If Customer, nevertheless, assigns the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as Customer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

18. RELATIONSHIP OF PARTIES. Both parties agree that they are independent entities. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. The Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.

19. MISCELLANEOUS. All of the obligations of each party hereto incurred prior to any termination of this Agreement or that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including,

without limitation, Sections 3(c), 6, 7(d), 8 – 19 (inclusive) shall survive the expiration or termination of this Agreement and remain binding upon and for the benefit of the parties hereto. If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalid or unenforceable provision shall be deemed to be curtailed or revised to the extent necessary to make such provision valid and enforceable and all other provisions of the Agreement shall remain enforceable and unaffected thereby so long as the curtailment or revision of the invalid or unenforceable provision does not result in a material change to an essential term or condition of this Agreement. None of the failure, 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 shall such amend the Agreement. All waivers requested by a party must be signed by the waiving party to be effective. This Agreement shall not be varied by any oral agreement or representation or by other than an instrument in writing of subsequent date hereto, executed by both parties by their duly authorized representatives. The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original. Captions in the Agreement and in the attached Appendices and Schedules are for convenience only and do not constitute a limitation of the terms in the Agreement. Singular terms shall include the plural and vice versa, unless the context otherwise requires. The word “day” shall mean “calendar day,” unless specifically stated otherwise. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

SECTION B - GLOSSARY

“**ACH**” means Automated Clearing House.

“**ACH Network**” means the funds transfer system governed by the ACH Rules. The ACH Network allows participating depository 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.

“**Administrator**” means the Customer employee designated by Customer to establish user groups for access to the Services by Authorized Users of Customer and to issue and manage user IDs and passwords of Authorized Users.

“**Aggregated Data**” shall have the meaning set forth in Section 8(b) of this Agreement.

“**Authorized Users**” means an individual user whom Customer expressly authorizes to access and use the Services and to whom Customer’s Administrator issues a password and user ID in accordance with and pursuant to the terms and conditions of this Agreement.

“**Cardholder**” means (i) the individual in whose name a Payment Device has been issued; or (ii) any individual who possesses or uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or who purports to be an authorized user of the Payment Device.

“**Cardholder Data**” shall have the meaning set forth in Section 8(b) of this Agreement.

“**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 trustee of the surviving entity; or (b) any person or group acquires beneficial ownership of a majority in interest of the voting power or voting capital or other equity interest of such person.

“**Connectivity**” means Elavon-controlled, non-public telecommunications connectivity and network services for transmitting Customer Data between the Origination Point and the Hosted System.

“**Credit Card**” means a card or device associated with a revolving line of credit that may be used to purchase goods and services from Customer or to pay an amount due to Customer. A “Credit Card” includes any of the following cards or devices that are associated with a line of credit extended to the person to whom the card or device is issued: (i) a Visa card or other card or device bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card or device bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); (iii) a Discover Network card or other card or device bearing the symbol(s) of Discover Network; or (iv) any card or device bearing the symbol of any other Credit Card Association.

“**Credit Card Associations**” means (i) Visa.; (ii) MasterCard; (iii) American Express; (iv) Discover Network; (v) Diners Club; (vi) JCB; and (vii) any other organization or association that hereafter contracts with any Payment Services Entity to authorize, capture, and/or settle Transactions effected with Credit Cards or signature-based Debit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

“**Customer Connectivity Software**” means any software provided by or on behalf of Customer, whether integrated at

Customer's or a third party hosting or service provider's operating environment, and the associated interfaces and data collection routines implemented by or on behalf of Customer to access and use of the Services, including, without limitation, plug-ins, agents, and operating system components.

"Customer Data" means all information or items proprietary to Customer of which Elavon obtains knowledge or access as a result of the relationship established pursuant to this Agreement, including Cardholder Data.

"Customer Location" means a designated location from which Customer accesses the Services or Origination Point, as applicable.

"Customer Resources" means all equipment, communications devices, databases, services and other resources that Customer maintains and/or operates in Customer's or its third party hosting provider's locations and which enable Customer to access and use the Services.

"Customer Software" means any and all software, owned by or to which Customer has licensed rights from third parties that Customer may use to access the Services and transmit Customer Data to the Hosted System, including, without limitation, any data import routines, APIs and Customer Connectivity Software.

"Customizations" means any works of authorship, work product, and any invention, process, method, development, design, schematic or technical information, whether patentable or not, including, without limitation, documentation, software or enhancements, improvements, alterations, or derivatives of the Software or the Services developed by Elavon, either alone or jointly with others, in connection with the provision of Services.

"Debit Card" means a card or device bearing the symbol(s) of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from Customer or to pay an amount due to Customer 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 Credit Card Association 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.

"Destination Point" means the location of a Payment Services Entity to which Elavon is certified to submit Transactions that is designated by Customer for receipt of Customer Data and/or other information from Elavon through the Services.

"Documentation" means Elavon standard written services description for the Services, as applicable, that is delivered to Customer under this Agreement, including user manuals and

best practices guides, as may be amended by Elavon from time to time, but shall not include marketing materials, proposals, demonstrations and other promotional information.

"ECS Association" means Visa (in its operation of the Visa POS Check Service), 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 used by any Payment Services Entity in connection with ECS that is hereafter designated as an ECS Association by a Payment Services Entity from time to time.

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

"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 a Payment Services Entity to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

"Elavon Materials" means the specifications, APIs, interfaces, data import routines, sample code and materials provided to Customer (or their respective designees) in order to develop the interfaces and configure access from the Origination Point or Customer Location to the Hosted System and/or Connectivity.

"Fees" means the services fees set forth in the enrollment forms.

"Hosted System" means the Elavon's proprietary technology, computer equipment, operating system(s) and Software provided by Elavon for the Services.

"Intellectual Property Rights" means, collectively, 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.

"NACHA - The Electronic Payments Association" means the national association that establishes standards, rules, and

procedures governing the ACH Network, including the ACH Rules.

“Origination Point” means the point-of-sale (POS)/property management system (PMS) terminal central location, or system from which Customer Data is transmitted to the Hosted System in connection with this Agreement.

“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 a check (whether converted into electronic form or used as a source document for an electronic fund transfer), benefit card, stored value card, “smart” card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Customers.

“Payment Network” means any Credit Card Association, EFT Network, ECS Association, governmental agency or authority, and any other entity or association that issues, sponsors or operates a network or system for processing transactions involving a Payment Device.

“Payment Network Regulations” means individually and collectively, as the context may dictate, all rules and operating regulations of the EFT Networks, Credit Card Associations and ECS Associations, and all rules, operating regulations, and guidelines for Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.

“Payment Services Entity” means any third party (which may include Elavon if Customer has engaged Elavon to provide Payment Device or Transaction processing services) that Customer has designated as a Destination Point for receipt of Customer Data or other information that has been provided to Elavon by Customer in connection with Customer’s use of the Services, including but not limited to, payment processors, Payment Networks, third party service providers, program managers and other third parties associated with Payment Device acceptance or programs of Customer.

“Security Requirements” means the applicable access control and data security requirements promulgated by Elavon, any Payment Network or by the Payment Card Industry Security Standards Council, in each case as may be amended or supplemented from time to time.

“Service Web Site” means the Internet web site(s) operated by Elavon and located at the URL designated by Elavon for Customer to access the Services (as that URL may be updated from time to time) and that constitutes a part of the Services.

“Services” means the services performed by Elavon under this Agreement as identified on the signature page of this Agreement.

“Software” means the proprietary Elavon owned software platform for the Services, including without limitation, the application programming interfaces (APIs), modules, routines, and toolkits, used for the and all Updates, but excluding any Third Party Software.

“Support Services” means Elavon support services made available to Customer in support of the Services in accordance with the terms provided in Schedule A.

“Territory” means the United States of America.

“Third Party Software” means any software products owned or licensed by a third party.

“Transaction” means any action between a Cardholder using a Payment Device and a Customer that results in activity on the Cardholder’s account (e.g., payment, purchase, refund, or return).

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

“Updates” means all revisions, patches, fixes, new releases, and other improvements to the Services, Hosted System, Software and the other Services provided to Customer under this Agreement.

SCHEDULE A**SUPPORT SERVICES****General Services Description**

Scope of Agreement. During the Term of the Agreement and so long as Customer is not in breach of any obligations under the Agreement and Elavon receives payment of Fees in accordance with the terms of the Agreement, Elavon shall use commercially reasonable efforts to provide the Support Services for the Hosted Payment Gateway Solution as set forth in this Schedule A, subject to the terms and conditions below.

SUPPORT SERVICES

Elavon shall operate a technical support call center 24 hours per day, seven (7) days per week, 365 days per year (24x7x365).

BUSINESS CONTINUITY AND DISASTER RECOVERY.

Elavon is required, pursuant to federal banking regulations, to establish, maintain, and test an effective and comprehensive business continuity plan ("BCP"). Elavon maintains a BCP that is commercially reasonable within the industry for services similar to the Services. Elavon will continue to adhere to its BCP and will modify its BCP from time to time to meet the objectives and requirements of Elavon's business.