

SCHEDULE A

TERMS AND CONDITIONS

Section A - General Provisions

1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in Section B (Glossary of Defined Terms) of this Schedule A.

2. Elavon Services and Hosted System.

(a) Hosted Gateway Services. Elavon will provide Customer the services described in this paragraph (the “Hosted Gateway Services”). The Hosted Gateway Services will support Payment Device authorization data and facilitate the transmission of authorization and settlement information related to Transactions to and from various Origination Points (e.g., property management systems (PMS), point of sale systems (POS) and/or other Payment Device data capture integrations) used by Customer as mutually agreed to between Elavon and Customer. The Hosted Gateway Services shall submit Transactions received from an Origination Point in accordance with the Agreement to the Destination Point (or Payment Services Entity) designated by Customer for authorization as mutually agreed to between Elavon and Customer, and will return to the Origination Point the authorization response message received from such Destination Point (or Payment Services Entity). A list of Payment Devices and Transaction types supported by the Hosted Gateway Services is available from Elavon upon request.

The Hosted Gateway Services include a browser-based user interface (i.e., the Service Web Site) that provides Customer with the functionality for batch management, settlement balancing, and research and reporting of Transactions. System reporting shall be available to all Authorized Users via secure password and log-on access. Customer acknowledges and agrees that the system reporting and application features and services available to Customer may vary depending on the Elavon Services used by Customer.

(b) Customer Access to and Use of Elavon Services and Hosted System. Elavon grants Customer the right to access and use the Hosted System and Elavon Services as provided in the Agreement. Specifically, subject to the terms, conditions and limitations set forth in the Agreement, Elavon grants Customer a limited, revocable, non-exclusive, non-assignable, non-transferable right in the Territory during the Term to: (i) use the Hosted Gateway Services to exchange information with the Hosted System, (ii) use the Additional Services, if any, and (iii) access and use the Service Web Site solely for Customer’s own internal business purposes in accordance with the terms and conditions of the Agreement. All such access and use of the Elavon Services and the Hosted System shall be from systems and facilities located within the Territory.

(c) Elavon Certification. In order to provide Elavon Services with respect to a certain Destination Point, Elavon must be certified with that Destination Point for the applicable Elavon Services and/or Transactions requested by Customer. Customer acknowledges and agrees that: (i) all Elavon Services may not be available for all Destination Points, and (ii) Elavon may not be certified with, or remain certified with, each Destination Point in order to provide the Elavon Services in connection with or to submit Transactions to that Destination Point. All access to and use of Elavon Services by Customer is subject to the limitations and restrictions for those Elavon Services set forth in the Agreement and the applicable Additional Services Addenda. Notwithstanding the foregoing, in the event Elavon is the Destination Point, Elavon shall remain certified to provide the Elavon Services with respect to, and to submit Transactions to, itself as the Destination Point throughout the Term.

(d) Updates to Elavon Services and Materials. Customer acknowledges and agrees that Elavon shall have the right, in its sole discretion, to provide Updates of or to the Elavon Services, the Hosted System and/or Elavon Materials from time to time during the Term.

(e) Support Services. Elavon shall provide Customer with Support Services in accordance with the terms set forth in Section C of this Schedule A. Notwithstanding anything in the Agreement to the contrary, Elavon shall not be required to provide Support Services if any of the following events occur and remain uncured for ten (10) days after Elavon has provided Customer with written notice of such occurrence: (i) Customer’s failure to pay all fees in full when due (excluding fees that Customer has disputed in good faith) or (ii) Customer’s material breach of any of the terms of the Agreement.

(f) Professional Services. Elavon may perform certain professional services as mutually agreed pursuant to a professional services agreement to be separately executed by the parties.

(g) Third Party Contractors. Customer acknowledges and understands that Elavon may use the services of third party service providers in connection with the performance of Elavon Services under the Agreement, including any Additional Services Addendum to the Agreement, without Customer’s consent. Except as otherwise provided in the Agreement, Elavon will be responsible for the performance of its obligations hereunder notwithstanding any use of or delegation of any responsibility to a third party service provider.

(h) Settlement Funds. 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 or other data in connection with such Transaction was transmitted through the Elavon Services. It is Customer's responsibility to reconcile funds received in settlement of Transactions against actual Transaction activity, including any Transaction Receipts transmitted using the Elavon Services. Further, Elavon has no responsibility for the characterization or classification of any Transaction by any Transaction Processor or Payment Services Entity for interchange or other fee purposes. 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) Customer Access to and Use of Elavon Services. Customer and its Authorized Users will not, and will ensure that their employees do not: (i) access or use the Elavon Services for any purposes other than for internal business purposes, except as authorized by Elavon; (ii) copy, re-sell, republish, download, frame or transmit in any form or by any means the Elavon Materials or Elavon 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 Elavon Materials or Elavon Services; (iii) modify, reverse engineer, disassemble or decompile the Elavon Services, Hosted System or any part thereof or any underlying software; (iv) 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 Connectivity or Elavon Services; (v) interfere with or disrupt the Connectivity, or the servers or networks connected to the Hosted System or providing the Elavon Services, or violate the regulations, policies or procedures of any associated networks; (vi) 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 Elavon Services or any associated Elavon Materials. Customer will not access or use, and it will not permit any Authorized User to access or use, the Elavon Services or any other Elavon systems or proprietary materials disclosed to Customer (or its designee) for the purpose of creating, in whole or in part, a system that is functionally competitive with the Elavon Services. Customer shall promptly notify Elavon of and shall otherwise cooperate with Elavon in preventing any unauthorized access to, or use or copying of, the Elavon Services, or any part thereof by Customer, Authorized Users or any third party. Customer is and shall remain liable for all access and use by Customer and its personnel including, without limitation, Authorized Users, of the Elavon Services, the Hosted System and any Connectivity.

(b) Third Party Software and Services. Customer acknowledges and agrees that certain of the products or services provided by Elavon or otherwise utilized by Customer in connection with the Elavon Services may use or communicate with software or equipment developed by or operated by third parties not under the control of Elavon. Unless otherwise specifically set forth in the Agreement or any schedule or any addendum hereto, 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.

(c) Monitoring Rights. Customer acknowledges and agrees that the Elavon Services may allow Elavon to monitor access to the Elavon Services and Hosted System and to prohibit any access or use of data or information within the Elavon Services and Hosted System that Elavon reasonably believes is unauthorized, may violate applicable Laws or Payment Network Regulations 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 Elavon Services using any password or user ID assigned to or by Customer.

(d) Customer Agents and Subcontractors. Customer will at all times remain responsible for any acts or omissions of any of Customer's subcontractors or agents in performance of its obligations as if performed by Customer pursuant to the Agreement. Elavon shall be entitled to rely upon the accuracy and completeness of information and data, including Customer Data, provided by any such subcontractor or agent on Customer's behalf to the same extent that Elavon is entitled to rely on information or data provided by Customer.

(e) Conflict of Provisions. The provisions of the Agreement shall govern and prevail as to any purchase orders, statements of work or order forms executed in connection with the Agreement, whether executed before or after the Effective Date.

(f) Authority. Customer agrees that the Agreement and any other agreement, schedule, exhibit, form, addendum or other document that is intended to be binding on Customer or upon which Elavon will rely in providing the Elavon Services must be executed by an authorized signer.

4. Responsibilities of Customer.

(a) Access to Elavon Services and Connectivity. Customer is responsible for implementing and maintaining Customer's access to the Elavon Services and Connectivity, including, without limitation, with respect to 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 Connectivity. If Customer is using a third party provider to

host any of its equipment, resources or software necessary to access or interface with the Hosted System or Connectivity, or if Customer will access the Elavon Services or transmit data to the Hosted System or the Connectivity through a third party hosting provider, Customer shall be responsible for compliance by that third party hosting provider with the terms and conditions of the Agreement and for the acts and omissions of that third party hosting provider. Customer acknowledges and agrees that Elavon shall not bear and 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 Elavon Services, the Hosted System or Connectivity as a result of any telecommunications failure or failure of Customer equipment or resources or Customer Software, including, without limitation, Customer network connectivity or due to the acts or omissions of any third party hosting or telecommunications provider.

(b) On-going Certification and Compliance. Any Customer Resource or system that may access or transmit data to the Elavon Services or the Hosted System must be submitted to Elavon for testing and approval and be certified by Elavon ("Certification") before Customer may access or use the Elavon Services or the Hosted System in connection with such Customer Resource or system. Customer is responsible for ensuring that any Customer Resource or Customer system that may access or transmit data to the Hosted System and systems of third-party vendors used by Customer in connection with the Elavon Services maintains certification and compatibility with the Elavon Services and the Hosted System and complies with all applicable Laws, Payment Network Regulations, and all applicable rules and standards promulgated by the Payment Card Industry Security Standards Council ("PCI SSC"), as all may be modified or changed from time to time. Failure of Customer's systems, including, without limitation, Customer's point-of-sale system or property management system, or any third party systems to maintain Certification or to be compatible and function with the most recent Elavon Services as regulated and/or required shall excuse Elavon from any and all liability and all of its obligations under the Agreement, including, but not limited to Section C of this Schedule A, and in connection with any other services that Elavon may be providing to Customer.

(c) Set-up and Boarding. Customer will cooperate with Elavon in the Customer Boarding and the Customer Validation Process and provide to Elavon all specifications, information and data required by Elavon in the process of assimilating the information and data necessary to confirm that the Hosted System and each Customer Location and Origination Point are configured to make use of the applicable Elavon Services and to process Transactions through the Hosted System. Elavon is entitled to rely on the information provided by Customer in connection with Elavon's set-up and boarding of a Customer Location and Origination Point in the Hosted System and in Elavon's performance of the Elavon Services, including

identification and set-up of Destination Points, Payment Services Entities, Customer ID, merchant category code, and any other information that may impact the Elavon Services or the processing of Transactions by Elavon or any Payment Services Entity. Customer shall notify Elavon of any changes to any Customer Location information, including, without limitation, any Customer ID, 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 within the Hosted System. 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, the processing of Transactions or in the performance of the Elavon Services that are attributable to: (i) inaccurate or incomplete information or data provided by Customer or (ii) Elavon's reliance upon Customer's instructions with respect to Customer Boarding. Customer shall be responsible for any and all fees and expenses associated with the Customer Boarding and the Customer Validation Process, as reflected on the Enrollment Form as the Customer Boarding Fee.

(d) Information Security and Data Protection. The Elavon Services are provided for use in accordance with the operating environment specifications and requirements provided by Elavon, including, without limitation, as provided in the Documentation, the Elavon Materials, and on or in connection with the applicable Additional Services Addenda. Elavon and Customer each will implement and maintain a written comprehensive information security program that complies with the Security Requirements. Customer agrees to reasonably cooperate with measures facilitated by Elavon for ensuring ongoing Security Requirement compliance by Customer. Notwithstanding the foregoing, Customer acknowledges and agrees that, as between Elavon and Customer, Customer is responsible for the physical and technical security and safeguards for all Customer Data, software, connectivity and equipment operated, maintained or provided by Customer or to Customer by any third party not under Elavon's control in connection with the Elavon Services, including, without limitation, communications devices, databases, telecommunications and network services, and related resources. Subject to the terms of the Agreement, Elavon acknowledges that it is responsible for the security of Cardholder Data that it transmits on behalf of Customer in connection with the Elavon Services while such Cardholder Data is in Elavon's possession.

(e) Administration; Authorized Users. Customer shall designate an Administrator in writing signed by an authorized signer. The Administrator shall create passwords and user IDs for Authorized Users, and Customer shall be responsible for the distribution and security of such passwords and user IDs. Customer is responsible for ensuring the access granted to each Authorized User to the Elavon Services or the Hosted System is limited to only the access and information necessary

for the Authorized User to perform his or her job functions on behalf of Customer. Customer shall ensure that all Authorized Users will be trained and qualified to access and use the Elavon Services in accordance with the terms of the Agreement and the Documentation. Customer is responsible for compliance with the terms of the Agreement by each of its Authorized Users and is solely responsible for all acts or omissions of the 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, including, without limitation, as may be required to comply with the Documentation and applicable Security Requirements. Customer agrees it is solely responsible for any communications or other uses of the Elavon Services that are made using its or its Authorized Users' 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 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. Customer shall notify Elavon immediately of any unauthorized use of any password or user ID or any other breach of security that is suspected by Customer, including any violation of Security Requirements.

5. Suspension of Service. In the event of a Suspension Triggering Event, without limiting any other remedies available to Elavon at law or in equity, Elavon reserves the right to suspend: (a) Customer's and any Authorized Users' access to the Hosted System and/or (b) Customer's or any Authorized Users' access to and use of the Elavon Services, in each case under the circumstances provided in this subsection. Such suspension may be immediate and without prior notice if any of the following events occur: (i) Customer's breach of any applicable Laws or Payment Network Regulations; (ii) if required by any court order, Payment Services Entity, Payment Network or any Destination Point, provided, however, that, in the event any court order or notice from any Payment Services Entity, Payment Network or Destination Point does not require immediate suspension of Customer or an Authorized User, Elavon may delay such suspension for the time period permitted under the court order or in the notice by the Payment Services Entity, Payment Network or Destination Point, provided further that Customer will indemnify and hold harmless Elavon from any fines, penalties, levies, assessments or other costs associated with Elavon continuing to provide Connectivity or access to or use of the Hosted System or the Elavon Services following such court order or notice; or (iii) if Elavon determines, in its reasonable discretion, that the provision of Connectivity to or the use of or access to the Hosted System or the Elavon Services by Customer or any Authorized User 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. Without limiting any other remedies available to Elavon at law or in equity, Elavon reserves the right to immediately suspend: (A) the provision of Connectivity to Customer or any Authorized User or (B) Customer's or any Authorized User's access to and use of the Hosted System or the Elavon Services if either of the following events occur and remain uncured for ten (10) days after Elavon has provided Customer with written notice of such occurrence: (x) failure by Customer to pay all fees to Elavon in full when due (excluding fees that Customer has disputed in good faith) or (y) material breach by Customer of any of the terms of the Agreement. "Suspension Triggering Event" shall mean any event described in this paragraph giving rise to a suspension right.

6. Fees and Payment.

(a) **Fees.** Customer shall pay Elavon the fees set forth on the Enrollment Form for Elavon Services under the Agreement, including the monthly minimum fee, if any. Notwithstanding any provision in the Agreement to the contrary, Elavon shall have the right to increase the fees set forth on the Enrollment Form or any schedule or addendum to the Agreement to pass through to Customer any increases in or any new fees imposed by a Destination Point or other Payment Services Entity, Payment Network or other third party. Elavon further reserves the right to pass through to Customer all fees, fines, penalties, or assessments imposed by any Destination Point or other Payment Services Entity, Payment Network or other third party as a result of the activities, acts or omissions of Customer. Any modification to fees identified as "pass-through" fees on the Enrollment Form or any other schedule or addendum that may later be added to the Agreement will reflect the actual costs to Elavon set by the third party for such fees.

(b) **Payment Terms.** All Elavon fees shall be billed in advance, unless fees are being calculated on a per Transaction basis. All fees shall be due and payable in accordance with the payment terms provided on the Enrollment Form and are non-refundable. Except as expressly provided on the Enrollment Form, all amounts due and payable shall be made in U.S. dollars. If Customer fails to pay any undisputed 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, interest 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 of undisputed fees, including reasonable attorneys' fees.

(c) **Additional Fees.** Customer shall pay Elavon the fees set forth in each Additional Services Addendum for its use of the applicable Additional Services (collectively, the

“Additional Fees”). Additional terms and conditions related to Additional Fees may be set forth in the applicable Additional Services Addendum, a pricing exhibit thereto, or the Enrollment Form.

(d) DDA and ACH Authorization; Collection of Fees.

Customer will establish and maintain with an ACH participating financial institution one or more demand deposit accounts (“DDA(s)”) to facilitate payment of fees to Elavon. Unless otherwise indicated in the Agreement, Elavon may debit any fees Customer owes to Elavon via ACH or similar direct transfer from Customer’s DDA within thirty (30) days of the occurrence of the Transaction or other event that caused such fees to be payable to Elavon, and Elavon shall submit a statement showing the amounts owed and debited within thirty (30) days of debiting any DDA. Customer irrevocably authorizes Elavon to initiate ACH credit and debit entries to the DDA in order to pay fees and any other amounts that may be due by Customer to Elavon under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Customer’s payment 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 authorizations established hereunder will apply to the new account and Customer shall 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 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.

(e) Taxes. The fees listed under the 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 Elavon Services, Customer is obligated to pay those taxes and duties as required under applicable Laws 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.

(f) Payment to Customer’s Employees, Agents, Independent Contractors, Sales Representatives and Other Personnel. Customer acknowledges and agrees that Customer is solely liable for the payment of salaries, hourly wages or other compensation to any of Customer’s employees, agents, independent contractors, sales representatives or such other personnel engaged by Customer, and that Elavon shall have no obligation for any such payment.

7. Term and Termination.

(a) Term. Unless otherwise terminated as set forth herein, the Agreement will remain in effect for the term set forth on the Enrollment Form (the “Initial Term”). Following

the Initial Term, the Agreement will automatically renew for successive one (1) year terms (each a “Renewal Term” and together with the Initial Term, the “Term”) unless a party provides written notice to the other party of its intent not to renew the Agreement at least ninety (90) days prior to the expiration of the then current term.

(b) Termination by Customer.

- (i) Customer shall have the right to terminate the Agreement upon written notice to Elavon in the event Elavon materially breaches the 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) During the Initial Term, Customer shall have the right to terminate the Agreement without cause with ninety (90) days’ prior written notice to Elavon and subject to payment of an Early Termination Fee as set forth in Section A(7)(f) of this Schedule A.
- (iii) During any Renewal Term, Customer shall have the right to terminate the Agreement without cause with ninety (90) days’ prior written notice to Elavon.

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

- (i) Customer is in monetary default of the Agreement for a period of fifteen (15) days after receipt of written notice of such default from Elavon; or
- (ii) Customer otherwise materially breaches the 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.

(d) Immediate Termination by Elavon. Notwithstanding any cure period described herein, Elavon shall further have the right to immediately terminate the Agreement or Customer’s use of the Elavon Services hereunder, without further liability on the part of Elavon, upon written notice to Customer in the event of any of the following: (i) Elavon determines, in its reasonable discretion, that it is commercially impractical to continue performing the Elavon Services in connection with the Agreement, including, without limitation, in light of a change in applicable Laws, Payment Network Regulations or the requirements of any Payment Services Entity; (ii) any Payment Network or Payment Services Entity prohibits Elavon from providing, or prohibits Customer from using, the Elavon Services related to that Payment Network or Payment Services Entity or otherwise requires that Elavon terminate one or more Elavon Services; (iii) in the event of a Change of Control of Customer; (iv) Customer is subject to a bankruptcy

proceeding; (v) Customer engages in activities that violate or cause Elavon to violate Payment Network Regulations or which cause Elavon to violate its agreement with any Payment Services Entity; or (vi) Elavon determines, in its reasonable discretion, that Customer has engaged in activities that are fraudulent, that violate applicable Laws or Payment Network Regulations, or that cause Elavon to violate applicable Laws or Payment Network Regulations, or that damage the goodwill of Elavon or any of the Payment Networks.

(e) Effect of Termination or Expiration. In the event of termination or expiration of the Agreement, all permissions granted to Customer to use the Elavon Services hereunder will immediately cease, and Elavon shall have the right to disable Connectivity and all access by Customer and Authorized Users to the Elavon Services, any Service Web Site(s) and the Hosted System, including all user IDs and passwords. Upon Customer's request, except as may otherwise be set forth in the Agreement or an Additional Services Addendum agreed to by the parties hereto, all Customer Data in Elavon's possession (except data contained in Elavon's backup files or required to be maintained under applicable Laws or otherwise permitted to be retained by Elavon hereunder) shall be forwarded to Customer, in the then-current format maintained by Elavon. Upon Elavon's request, all Elavon's Confidential Information in Customer's possession (except such information as is required to be maintained under applicable Laws) shall be forwarded to Elavon or destroyed, and, if destroyed, Customer shall certify to Elavon in writing that such information was destroyed. Customer shall promptly pay Elavon for all fees due to Elavon up to the effective date of termination or expiration. In the event Customer continues accessing the Hosted System or using the Elavon Services following the expiration of the Term or the termination of the Agreement or a schedule, Customer will be subject to all of its duties and obligations under the Agreement consistent with such access or use, including, but not limited to, Customer's obligation to comply with applicable Laws and Payment Network Regulations and pay the fees and other amounts due to Elavon for such access and use, until Elavon or Customer terminates such access and use.

(f) Early Termination Fee. If Customer provides notice of termination of the Agreement before the end of the Initial Term pursuant to Section A(7)(b)(ii) of this Schedule A, Customer shall pay Elavon an Early Termination Fee within fifteen (15) days of such notice of termination. Customer agrees that: (i) the Early Termination Fee is not a penalty, but rather is a reasonable estimate of damages to be sustained by Elavon upon the termination of the Agreement prior to the end of the Initial Term, and (ii) Elavon's actual damages are difficult or impossible to ascertain prior to termination.

8. Ownership and Reservation of Rights.

(a) Retained Rights of Elavon. Customer acknowledges and agrees that, as between Customer and Elavon, Elavon retains all right, title and interest in and to the Elavon Services, Elavon Materials, Hosted System, Documentation, Elavon's

Confidential Information, Updates, Customizations and all Intellectual Property Rights in any of the foregoing. Customer has not acquired any ownership interest or license rights (except such rights as are expressly set forth in the Agreement (including Section A(2)(b) above)) in or to the Elavon Services, Elavon Materials, Hosted System, Documentation, Elavon's Confidential Information, Updates, Customizations or Intellectual Property Rights in any of the foregoing, in whole or in part, and will not acquire any such interest or rights by reason of the Agreement. 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. All rights not otherwise provided herein or in an applicable Additional Services Addendum are reserved to Elavon. Customer acknowledges and agrees that the rights granted to Customer under the Agreement are non-exclusive and nothing in the Agreement shall limit in any manner the ability of Elavon to market, sell, offer for sale, license or otherwise exploit the Elavon Services, Elavon Materials, Hosted System, Documentation, Elavon's Confidential Information, Updates, Customizations or Intellectual Property Rights in any of the foregoing to any third parties, directly or indirectly, or to appoint or authorize any other person or entity to do the same.

(b) Customer Data; Retention and Delivery.

(i) Elavon shall not bear and 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 transmission, corruption or loss of data, or inability to access the Elavon Services, the Hosted System or Connectivity as a result of the failure of the telecommunications systems, equipment, resources or software of Customer or any third party. Without limiting the foregoing, Elavon shall not be responsible for the reconstruction of any information or data lost in transmission to or from the Hosted System due to any malfunction of Customer's or Customer's third-party service provider's systems. Customer acknowledges that the ability of the Elavon Services to convert Customer Data into formats that can be used by the Elavon Software, other Elavon service offerings, any Destination Point or any other Payment Services Entity is based on the integrity of Customer Data in its systems, and Elavon is not responsible for ensuring or verifying the accuracy of the content or format of any Customer Data received by it. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ELAVON SERVICES 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 DATA OR RESULTS OBTAINED THROUGH CUSTOMER'S USE OF THE SOFTWARE OR THE ELAVON SERVICES, EXCEPT TO THE EXTENT CAUSED BY ELAVON'S BREACH OF THE AGREEMENT.

- (ii) Customer is responsible for ensuring it 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 the Agreement. Customer grants to Elavon a non-exclusive, royalty-free right and license to access and use all Customer Data as necessary or appropriate for Elavon to provide the Elavon Services and as otherwise permitted under the Agreement, including, without limitation, releasing such Customer Data to third parties as directed by Customer (including release to Destination Points and any other Payment Services Entities) or in connection with Elavon's performance of the Elavon Services. Customer acknowledges and agrees that Elavon may use, retain, distribute and disclose derivative data based originally on Customer Data that has been compiled and aggregated with other data (the "Aggregated Data"), so long as such Aggregated Data does not identify Customer as the source of such data. "Aggregated Data" shall not constitute Customer Data or Customer's Confidential Information under the Agreement provided that Elavon will not use Aggregated Data in any manner prohibited by applicable Laws.
- (iii) Elavon shall have the right to rely on instructions and approvals submitted by Customer regarding access to and use of all Customer Data. Customer may view and retain certain Customer Data stored by Elavon in accordance with the functionality of the applicable Elavon Services and the terms and conditions of the Agreement. The Hosted Gateway Services enable Customer (and its Authorized Users) to view and transmit certain Customer Data via the Service Web Site. In the event that Customer wishes to access or receive copies of Customer Data that is not accessible or downloadable via the Service Web Site, Customer may request that Elavon provide such Customer Data and Elavon will work with Customer to provide such Customer Data on mutually agreed upon terms; provided, however, that access to clear-text Cardholder Data will be provided to Customer only upon Customer's execution of a completed Clear Card Request Form, which is available from Elavon upon request. Subject to Elavon's obligations under the Agreement, Elavon shall have no responsibility for any

Customer Data that Customer accesses or downloads from the Hosted System or for maintaining backups of Customer Data accessed, downloaded, or provided to Customer. Customer shall be responsible for maintaining such backup information and data (e.g., Transaction Receipts and detailed reporting) as Customer deems necessary in order to permit Customer to reconstruct any information or data lost due to any malfunction of Customer's or Elavon's systems, including, without limitation, the Elavon Services, the Hosted System or Connectivity.

- (iv) In connection with viewing and transmission of Customer Data pursuant to the Agreement, the Elavon Services or the Hosted System may permit Authorized Users to send and receive Customer Data to and from third parties. Elavon does not regulate or track the viewing, transmittal or receipt of any data to or by such third parties and shall not be liable or responsible for: (I) the viewing or use of Customer Data by a third party who has accessed or received such data: (A) from Customer or any Authorized User, or (B) using any user ID assigned to Customer, or (II) any transmission of Customer Data outside of the Hosted System by Customer, an Authorized User or any third party using any user ID assigned to Customer or any Authorized User. By transmitting any data to any third party or providing any third party with access to data, Customer warrants that it has the right and authority to transmit or provide access to that data to each such third party.
- (v) In the event that, following the expiration of the Term or the termination of the Agreement or any schedule or addendum hereto, Customer desires to access Customer Data stored by Elavon in accordance with the functionality of the applicable Elavon Services, Customer shall 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.

9. Confidentiality.

(a) **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 Elavon Services, compilations, databases, implementation methods, techniques, algorithms, rules, methodology, technical specifications, technical information, drawings, engineering data, performance specifications, cost and price information and data and reports.

(b) **Confidentiality Obligations.** 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 Laws, for such period of time thereafter as the information shall retain its status as a trade secret under applicable Laws, and no less than three (3) years thereafter. Confidential Information does not include any data or information which was, at the time of receipt, already known by Customer without restrictions as to use or disclosure, 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 applicable Laws; provided, however, that in the event disclosure is required by court order or applicable Laws, 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 court order or applicable Laws.

(c) **Relief.** Elavon may suffer irreparable harm if the confidentiality obligations set forth in this Section are not specifically enforced and Elavon may not have an adequate remedy at law in the event of an actual or threatened violation

by Customer of its obligations under this Section. Customer therefore agrees that Elavon may be entitled (in addition to other available remedies) to an injunction restraining any actual, threatened or further breaches of Customer's obligations under this Section or any other appropriate equitable order or decree.

10. Compliance with Laws and Payment Network Regulations.

(a) **Compliance with Laws and Payment Network Regulations.** Each of Elavon and Customer covenants and agrees that (i) it does, and for the Term of the Agreement will continue to comply in all respects with all Laws and Payment Network Regulations applicable to the performance of its obligations and exercise of its rights under the Agreement, and (ii) neither party will, through the performance of any obligation or exercise of any right hereunder, cause the other party to violate any applicable Laws or Payment Network Regulations. Without limiting the generality of the foregoing, Customer will comply with all United States Laws governing the export and re-export of hardware, software, Documentation or any technology, or any component thereof, applicable to any of the Elavon Services, including, without limitation, the U.S. Export Administration Regulations and regulations administered by OFAC. Customer shall not market, demonstrate, resell, or export, directly or indirectly, or enable access to or use of the Elavon Services or any information relating thereto from the United States to any country subject to embargo or sanctions by the United States government or not approved by Elavon or for which the United States government or any agency thereof requires an export license or approval without first obtaining the same at the cost of the party requiring such export license or approval. Customer further covenants and agrees that it is in compliance with the Security Requirements with respect to all Cardholder Data and other data or information provided to Elavon or to Elavon's agents in connection with the Agreement, and Customer will remain in compliance with such Security Requirements during the Term.

(b) **Fines, Penalties, and Assessments.** Customer shall be responsible for and pay any fine, penalty or assessment by any Payment Network as a result of the acts of Customer in violation of Payment Network Regulations whether such amount is assessed directly against Customer, against any Payment Services Entity or against Elavon.

11. Disclaimer of Warranties.

(a) **Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, THE ELAVON SERVICES, ELAVON MATERIALS, HOSTED SYSTEM AND CONNECTIVITY ARE PROVIDED "AS IS" AND ELAVON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF

MERCHANTABILITY, ACCURACY, SATISFACTORY QUALITY, TITLE, SECURITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE WITH RESPECT TO THE ELAVON SERVICES, ELAVON MATERIALS, HOSTED SYSTEM OR CONNECTIVITY PROVIDED HEREUNDER OR UNDER ANY SCHEDULE OR ADDENDUM. Elavon disclaims any responsibility for the accuracy of any data or other information delivered to Customer that is produced with or from data provided by Customer or a Destination Point. Elavon does not ensure uninterrupted or error-free services. In addition, Elavon shall not be liable for any disruptions to the Elavon Services or Connectivity caused by actions, inactions, equipment malfunctions, or telecommunications or power losses of or at a Customer Location, Origination Point or Destination Point.

(b) Internet Security Disclaimer. **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 ANY RELATED TELECOMMUNICATIONS NETWORK OR AT ANY CUSTOMER LOCATION OR CUSTOMER NETWORK ACCESS POINT.**

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

12. Limitation of Liability.

(a) **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 THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ELAVON 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.**

(b) **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, 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 THE 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 ELAVON 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.**

(c) **EACH OF THE PARTIES AGREES THAT THE LIMITATIONS OF LIABILITY SET OUT IN THE AGREEMENT ARE FAIR AND REASONABLE IN THE COMMERCIAL CIRCUMSTANCES OF THE AGREEMENT AND THAT ELAVON WOULD NOT HAVE ENTERED INTO THE AGREEMENT BUT FOR CUSTOMER'S AGREEMENT TO THESE LIMITATIONS OF LIABILITY IN THE MANNER, AND TO THE EXTENT, PROVIDED UNDER THE AGREEMENT. THIS SECTION SHALL APPLY EVEN IN THE EVENT OF A BREACH OF A CONDITION OR ESSENTIAL TERM OF THE AGREEMENT AND IF OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.**

(d) Any claim by Customer must be initiated within two (2) years after the cause of action giving rise to that claim arises.

13. Customer Audit. Upon ten (10) business days' prior written notice from Elavon, Customer shall allow Elavon and/or its agents and any Payment Services Entity having jurisdiction over Elavon to conduct financial and procedural audits and to inspect and audit Customer's records relating to Customer's performance under the Agreement provided that (i) any such audit is conducted during business hours in a manner designed not to unreasonably interfere with Customer's ordinary business operations, and (ii) audits by Elavon shall not occur more frequently than once every twelve (12) months, unless a prior audit has revealed that Customer was not in compliance with the Agreement or if audits are required more frequently in accordance with applicable Laws or Payment Network Regulations. Elavon shall bear the cost of such inspection and audit unless Elavon reasonably determines based on such audit that Customer is not in compliance with the Agreement, in which case such cost shall be borne by Customer. Customer will maintain complete and accurate records of its performance under the Agreement.

14. Indemnification. Customer shall indemnify, hold harmless, and at Elavon's option, defend Elavon, its parent,

subsidiaries, and affiliated entities, and their respective officers, directors, employees, representatives and agents (“Elavon Indemnified Parties”) from and against any liabilities, damages, losses, fines, judgments, costs, and expenses (including, without limitation, all settlements, reasonable attorney’s fees and legal fees, expert fees and court costs) (collectively, “Losses”) and reimburse the Elavon Indemnified Parties for Losses to the extent arising out of or resulting from any third party claims, suits, proceedings, investigations, actions or demands relating to or arising out of: (i) breach by Customer of any of the terms of the Agreement, including, without limitation, any representations, warranties or obligations under the Agreement or any act or omission of those for whom Customer is responsible; (ii) the negligence or willful misconduct of Customer, its employees, representatives or agents in performance of the Agreement; (iii) violation of applicable Laws or Payment Network Regulations; or (iv) any death, bodily injury or real or personal property damage to the extent caused by Customer, Customer’s representatives or agents or its or their respective officers, directors or employees. Customer will not enter into any settlement that imposes any liability or obligation on any of the Elavon Indemnified Parties, or that contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without Elavon’s prior written consent. Elavon may join in the defense, with its own counsel, at its own expense.

15. Force Majeure. Except for payment by Customer of fees due to Elavon, 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 fulfilling its obligations under the Agreement, if caused by an act of God or public enemy, war, government acts or Laws, fire, flood, embargo, quarantine, epidemic, labor stoppages, unusually severe weather, malicious acts of third parties, interruption of telecommunications service or other cause beyond the party’s reasonable control. If a force majeure event interrupts Elavon’s provision of any Elavon Services, Customer shall continue to pay Elavon the fees for the Elavon Services owed under the Agreement and Elavon shall make all reasonable efforts to restore such Elavon 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 Elavon Services are not performed and/or terminate the Agreement.

16. Notices. Except as otherwise specified in the Agreement, any notice or communication required or permitted under the Agreement must be sent to Customer at the address specified on the Enrollment Form and to Elavon, with a copy to Elavon’s legal department, at the addresses specified below, or to a party’s substitute address provided to the other party in writing, and shall be deemed received on the earlier of: (a) actual receipt, or (b) five (5) business days after being deposited in the United States mail, or (c) one (1) business day after being deposited for overnight delivery with any nationally recognized commercial overnight mail service.

Elavon, Inc.

Attn: Head of Gateway Sales
10700 76th Court
Largo, FL 33777

With a copy to:

Elavon, Inc.

Attn: General Counsel
Two Concourse Parkway, Suite 800
Atlanta, GA 30328

17. Publicity. Elavon shall have the right to use Customer’s name, trademarks or trade names in oral or written communications to third parties, including any sales or marketing publication or advertisement, describing Customer as a customer of Elavon with respect to the Elavon Services. Except as provided herein, neither party may use the trademark or trade names of the other party, including but not limited to in press releases, without the advance written approval of the other party.

18. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia, excluding (a) its conflicts of laws principles; (b) the United Nations Convention on Contracts for the International Sale of Goods; (c) the 1974 Convention on the Limitation Period in the International Sale of Goods; and (d) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980. Jurisdiction and venue for any claim or cause of action arising under the Agreement shall be solely and exclusively in the United States District Court for the Northern District of Georgia, and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, that court. If subject matter jurisdiction does not exist in the United States District Court for the Northern District of Georgia, then the sole and exclusive forum and venue for any such action shall be the courts of the State of Georgia located in Fulton County and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, such court. In the event of a dispute, and prior to filing any litigation, the parties agree to escalate discussions to at least senior management level and to discuss in good faith the possible utilization of alternative dispute resolution procedures, including, but not limited to, non-binding mediation. **EACH PARTY EXPRESSLY WAIVES ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE.**

19. Assignment; Inurement. Elavon shall have the right to transfer or assign its rights or obligations under the Agreement. Customer shall not have the right to transfer or assign its rights or obligations under the Agreement to any other individual or entity without the prior written consent of Elavon or its assigns, which consent shall not be unreasonably withheld; provided that Customer may transfer or assign its rights and obligations under the Agreement to an affiliate or subsidiary as part of a business reorganization if Customer provides prior written notice to Elavon of such transfer or

assignment. Any attempted assignment or transfer in contravention of this Section shall be null and void. Subject to the foregoing, the Agreement, and the obligations and benefits herein contained, shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

20. Relationship of the Parties. Both parties agree that they are independent entities. Nothing in the Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Each party is responsible for the supervision, management and direction of its own employees. The Agreement is intended for the benefit of the parties hereto and is not intended to create an interest in any third party, and no third parties shall have any rights or be entitled to any benefits under the Agreement, except as expressly provided herein.

21. Communication with Customer. By providing a mobile phone number and/or e-mail address, Customer agrees that Elavon may provide Customer with information about Elavon's services including, without limitation, information about new products and/or services by telephone and/or electronic mail. Customer agrees that Elavon may make such communications via any telephone number (including cellular or mobile telephone numbers), electronic mail account or address and/or facsimile number provided by Customer or a Customer employee or agent to Elavon. Customer is not required to provide its mobile phone number and/or e-mail address in connection with the Agreement and if Customer does, it may elect in the future not to receive such communications from Elavon by contacting Elavon at optout@elavon.com.

22. Entire Agreement. The Agreement constitutes the complete and entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral, implied or written agreements, representations and understandings with respect thereto. The Agreement shall take precedence over any inconsistent provisions contained in any purchase order, proposal, or other document issued by Customer. All schedules and exhibits are expressly incorporated in their entirety herein and made a part of the Agreement. In the event of a conflict between the terms and conditions of this Schedule A and the terms and conditions of any other schedule, exhibit, or Additional Services Addendum to the Agreement, the terms of such schedule, exhibit, or Additional Services Addendum shall control with respect solely to the subject-matter thereof.

23. Miscellaneous. All of the obligations of each party hereto incurred prior to any termination of the Agreement or that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including, without limitation, Sections A(6) – A(23) (inclusive) shall survive the expiration or termination of the 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 the 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. The 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 facsimile or electronic means (e.g., pdf documents via electronic mail), and such a signed facsimile or electronic document or copy shall constitute a signed original. Captions in the Agreement, including any exhibits and schedules thereto, 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.

24. Exclusivity. During the Term of the Agreement, Customer will not enter into an agreement with any other entity that provides services similar to those provided by Elavon as contemplated by the Agreement without Elavon's written consent.

Section B – Glossary of Defined Terms

“ACH” means Automated Clearing House.

“Additional Fees” has the meaning given to it in Section A(6)(c) of this Schedule A.

“Additional Services” means hardware, software, products, or services provided by Elavon to Customer pursuant to an Additional Services Addendum to the Agreement.

“Additional Services Addendum” means the one or more addenda mutually executed by the parties in accordance with the terms of the Agreement that describes hardware, software, products, or services in addition to the Hosted Gateway Services provided by Elavon to Customer in connection with the Agreement.

“Administrator” means the Customer employee designated by Customer to establish user groups for access to the Elavon

Services by Authorized Users of Customer and to issue and manage user IDs and passwords of Authorized Users.

“Agreement” has the meaning given to it on the Enrollment Form.

“Aggregated Data” has the meaning given to it in Section A(8)(b)(ii) of this Schedule A.

“Authorized Users” means the Customer’s employees or other authorized personnel expressly authorized to access and use the Elavon Services and/or the Hosted System.

“BCP” has the meaning given to it in Section C(3) of this Schedule A.

“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” means unique information about the Cardholder contained on the face or magnetic stripe of a payment card (e.g. the card number, card expiration date in combination with the card number, cardholder name in combination with the card number, track data/magnetic stripe, verification numbers CVV2, CVC2, CID and PIN Block) and Transaction data.

“Certification” has the meaning given to it in Section A(4)(b) of this Schedule A.

“Change of Control” means, with respect to a party (i) 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 fifty percent (50%) or less of the total voting power entitled to vote in the election of directors, managers, or trustees of the surviving entity; or (ii) an acquisition by any person or group of beneficial ownership of a majority in interest of the voting power or voting capital or other equity interest of such person.

“Confidential Information” has the meaning given to it in Section A(9)(a) of this Schedule A.

“Connectivity” means the Elavon-controlled, non-public network connectivity and interfaces for transmitting 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, Inc. (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., Inc.; (ii) MasterCard International, Inc.; (iii) American Express Travel Related Services Company; (iv) Discover Financial Services; (v) Diners Club International; (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 issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

“Customer” has the meaning given to it on the Enrollment Form.

“Customer Boarding” means Elavon’s process of gathering and assimilating the information required from Customer to confirm Elavon has the required data necessary to board Customer and to provide the applicable Elavon Services with respect to Customer.

“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 the Elavon Services, including, without limitation, plug-ins, agents and operating system components.

“Customer Data” means all information or items proprietary to Customer provided to Elavon in order for Elavon to provide the Elavon Services with respect to Customer, including, without limitation, information Cardholder Data and Transaction information that is provided by Customer to Elavon in connection with the performance under the Agreement.

“Customer ID” means the unique identification number assigned to Customer by a Payment Services Entity or another third party, which identification number may be used to identify Transactions of such Customer.

“Customer Location” means a designated location at which a Customer uses the Elavon Services.

“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 Elavon 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 Elavon Services and transmit Customer Data to the Hosted System, including, without limitation, any data import routines, APIs and Customer Connectivity Software.

"Customer Validation Process" means the process of gathering and assimilating the essential information required to ensure that Customer has the required data and configuration necessary for Customer to process all subscribed transactions to and from the applicable Transaction Processor, including, without limitation, implementation by Customer of the applicable Security Requirements to allow use of the Elavon Services.

"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 Elavon Services or the Hosted System developed by Elavon, either alone or jointly with others, in connection with the Agreement.

"Day" has the meaning given to it in Section A(23) of this Schedule A.

"DDA(s)" has the meaning given to it in Section A(6)(d) of this Schedule A.

"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 a Customer or to pay an amount due to a 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 designated by Customer with respect to which Customer has requested Elavon to provide the Elavon Services and/or to which Customer has requested Elavon submit Transactions.

"Documentation" means Elavon standard written services description for the Elavon Services, as applicable, that is delivered to Customer under the 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.

"Early Termination Fee" means an amount equal to the sum of (i) the greater of (A) the total fees paid by Customer during the twelve (12) months immediately prior to termination, and (B) the total fees that would be payable by Customer during the twelve (12) months immediately following termination (based, with respect to any per-Transaction fees, on Projected Monthly Transaction Volume), as reflected on the Enrollment Form for the Elavon Services, and (ii) any up-front incentives afforded to Customer.

"Effective Date" means the effective date set forth on the Enrollment Form.

"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" means Elavon, Inc.

"Elavon Indemnified Parties" has the meaning given to it in Section A(14) of this Schedule A.

"Elavon Materials" means the specifications, Documentation, interfaces, APIs, nonpublic or proprietary marketing collateral, data import routines, sample code and materials provided to Customer to enable Customer to perform its obligations or exercise its rights under the Agreement, including integration to the Elavon Services.

"Elavon Services" means, individually and collectively, the services provided by Elavon to Customer pursuant to the Agreement, including the Hosted Gateway Services, the Support Services, and any Additional Services.

"Enrollment Form" means the enrollment form pursuant to which Customer elects to receive certain Elavon Services pursuant to the terms and conditions of the Agreement, subject to Elavon's approval and acceptance of the Enrollment Form.

"Hosted Gateway Services" means the services described in Section A(2)(a) of this Schedule A. For the avoidance of doubt, the Support Services and Additional Services (if any) do not constitute Hosted Gateway Services.

“Hosted System” means the Elavon proprietary switch technology, operating systems and software platform operated by Elavon for the Elavon Services.

“Initial Term” has the meaning given to it in Section A(7)(a) of this Schedule A.

“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.

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

“Losses” has the meaning given to it in Section A(14) of this Schedule A.

“Origination Point” means either: (i) the Customer central origination location that transmits data between Customer and the Hosted System or (ii) if Customer is integrated with the Elavon Services directly, the point-of-sale (POS), property management system (PMS), terminal central location, equipment or system from which Customer transmits data to and/or receives data from the Hosted System.

“Payment Device” means a 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.

“Payment Network” means any Credit Card Association or network, EFT Network, electronic check or automated clearing house association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device or operates a network on which a Payment Device is processed.

“Payment Network Regulations” means individually and collectively, as the context may dictate, all rules, operating regulations, guidelines, specifications and related or similar requirements of any Payment Network, 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 Transactions and to which Elavon is certified to submit transactions, including but not limited to, Transaction Processors, Payment Networks, third party service providers, program managers and other third parties associated with Payment Device acceptance or other programs of Customer.

“PCI SSC” has the meaning given to it in Section A(4)(b) of this Schedule A.

“Projected Monthly Transaction Volume” means the projected monthly Transaction volume specified on the Enrollment Form for the Elavon Services.

“Renewal Term” has the meaning given to it in Section A(7)(a) of this Schedule A.

“Security Requirements” means the applicable access control and data security requirements promulgated by Elavon, any Payment Network or by the PCI SSC, 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 Hosted Gateway Services (as that URL may be updated from time to time) and that constitutes a part of the Elavon Services.

“Support Services” means Elavon support services made available to Customer in support of the Hosted Gateway Services and the Service Web Site in accordance with the terms provided in Section C of this Schedule A.

“Suspension Triggering Event” has the meaning given to it in Section A(5) of this Schedule A.

“Term” has the meaning given to it in Section A(7)(a) of this Schedule A.

“Territory” means the United States and Canada.

“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 Customer that results in activity on the Cardholder’s account (e.g., a payment, purchase, refund or return).

“Transaction Processor” means service bureaus and other persons that provide transaction processing services, including authorization and/or settlement services, to Customer. The authorization services may support processing of credit, debit, check or other types of transaction services as may be available through the Elavon Services. In order to provide Elavon Services with respect to a Transaction Processor

designated by Customer for a Customer Location, Elavon must be certified with the selected Transaction Processor for the applicable Elavon Services.

“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 updates, revisions, patches, fixes, new releases and other improvements or changes to any Elavon Services, the Hosted System and/or Elavon Materials provided to Customer under the Agreement.

Section C - Support Services

1. General Services Description. 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 Section C, subject to the terms and conditions below.

2. Support Services. Elavon shall operate a technical support call center twenty four (24) hours per day, seven (7) days per week, three hundred sixty five (365) days per year (24x7x365).

3. 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 Elavon 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.