



### ELAVON MASTER SERVICES AGREEMENT

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

- ☒ This signature page, the General Terms and Conditions, and Appendix 1 – Definitions;
- ☒ Schedule A – Fees;
- ☒ Schedule B – Company Application
- ☒ Schedule C – Affiliated Entities
- ☒ Schedule D – Processing Services Terms;
- ☒ Schedule E – SAFE-T Terms;

- ☐ Schedule F – Services in Canada;
  - ☐ Schedule G – Services in Puerto Rico;
  - ☐ ☒ Schedule H – Government Terms;
  - ☐ ☒ Schedule I – Electronic Check Services Terms;
- and Any other schedules and any applicable Statements of Work entered into under the Agreement.

**Agreed and accepted**

STATE OF WISCONSIN, on behalf of  
itself and each Affiliated Entity  
("Company"):

By: [Signature]  
Name: Sharon Hughes  
Title: Financial Manager  
Date: 9/29/2020

**ELAVON**

By: [Signature]  
Name: Timothy I. Miller  
Title: Senior Vice President  
Effective Date: 9/29/2020

If Company is receiving Processing Services under Schedule D to the Agreement, the Member, as designated on the Company Application (attached as Schedule B), agrees to and accepts the Agreement solely as to the terms in Schedule D, Section 1.7.

**MEMBER**

By: [Signature]  
Name: Timothy I. Miller  
Title: Senior Vice President  
Date: Global Credit and Risk



## GENERAL TERMS AND CONDITIONS

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



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

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

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

#### 4.3. Account Closing.

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

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

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

#### 4.5. Transition Assistance.

(a) Subject to Section 4.5(b) and at Company's request, Elavon will provide Company with up to 90 days of Elavon's standard assistance in transitioning Services provided under the Agreement to Company or a provider designated by Company, which transition assistance will begin on the termination date of the Services (or such earlier date following notice of termination as may be requested by Company) (the "Transition Period") and will be at no additional cost to Company. Elavon will continue to perform, and Company will continue to pay Elavon, in accordance with the Agreement during any such Transition Period. Company will pay Elavon, at Elavon's then-standard rates, for any services in addition to Elavon's standard transition assistance. Each party will fully comply with all provisions of the Agreement during any Transition Period.

(b) Elavon will not be obligated to provide transition assistance to Company under Section 4.5(a) if Elavon terminates the Agreement for cause under Sections 4.2(b), (c), or (e).

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

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

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

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

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

(c) knowingly transmit any data that contains software viruses, time bombs, worms, Trojan horses, spyware, disabling devices, malicious code, or other harmful or deleterious computer code, files or programs to or through the Services; provided, that Company will use commercially reasonable measures (at least industry standard) to screen for the foregoing.

(d) interfere with or disrupt the servers or networks connected to or providing the Services;



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

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

## 6. Fees and Taxes.

6.1. **Compensation.** Company will compensate Elavon for all fees and other amounts due for the Services and Equipment in accordance with Schedule A, any Statement of Work, and any additional application or setup forms (including enrollment forms), addenda or schedules mutually agreed upon in writing by Elavon and Company. Such amounts will be invoiced (or, if applicable and Company is receiving Processing Services, deducted from the Reserve Account), once each month for the previous month's activity, as applicable. Invoices are due within 30 days of the invoice date.

- a. Entities that previously chose to be debited instead of invoiced may continue. In such case, Elavon will calculate and debit such amounts from the DDA once each month for the previous month's activity, or such amounts will be deducted from the funds due to that entity under the Agreement.

6.2. **Research.** Company will pay Elavon at its standard rates for each research item as stated in Schedule A, including research required to respond to any third party or government subpoena, summons, levy, garnishment or required reporting on Company's account.

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

### 6.4 Other Amounts Owed.

- (a) Elavon will invoice for:

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

- (b) Except for amounts subject to a good faith dispute under Wis. Stat. s. 16.528(3)(e), Elavon will charge interest on all uncollected amounts owed to Elavon that are more than 30 days past due at a rate no greater than the maximum rate of interest permitted under Wis. Stat. s. 16.528. In addition to all other available remedies, and except in regard to good faith disputes under s. 16.528(3)(e) of the Wisconsin Statutes, Elavon may offset any outstanding invoices that are more than 90 days past due from (i) any amounts Elavon would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon may owe under this Agreement or any other agreement.

6.5. **Taxes.** Company is tax exempt entity and upon request will provide appropriate certificate of tax exemption.

6.6. **Demand Deposit Account.** Company will establish and maintain one or more DDAs to facilitate payment of the amounts as set forth above to Elavon. Company irrevocably authorizes Elavon and its Affiliates that provide Services under the Agreement to initiate ACH credit and debit entries to the DDA in order to pay the amounts that may be due by Company to Elavon under the Agreement, and Company authorizes its depository institution to grant Elavon access to any information or records regarding the DDA reasonably requested by Elavon to debit or credit the DDA and to otherwise exercise Elavon's rights under the Agreement with respect to the DDA. The foregoing authorizations will



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

7. **Modifications and Discontinuance of Services.** Elavon may modify the Services or particular components of the Services from time to time and will use commercially reasonable efforts to notify Company of any material modifications. If Elavon ceases to make a Service selected by Company generally available to its merchant customers (a "Discontinued Service"), Elavon may cease providing such Discontinued Service to Company upon 180 days' advance written notice. If discontinuing the Discontinued Service has a material impact on Company, Company may terminate the Agreement without any obligation to pay the Early Termination Fee by notifying Elavon in writing within 60 days of Company's receipt of Elavon's notice of the Discontinued Service. If Company does not terminate the Agreement within such 60-day period, the Agreement will continue in full force and effect without the Discontinued Service. Elavon will not be liable to Company or to any third party for any modification or discontinuance of the Services as described in this Section 7. Company may request transition assistance from Elavon under Section 4.5 for any Discontinued Service.

8. **Compliance with Laws and Payment Network Regulations.**

- 8.1. **General.** Elavon and Company will comply with all Laws and Payment Network Regulations applicable to the selected Services.
- 8.2. **Office of Foreign Assets Control Compliance.** Company acknowledges that Elavon is an entity governed by the Laws of the United States of America and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including the Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto.
- 8.3. **Export Laws Compliance.** Company will comply with all United States export Laws governing the export and re-export of hardware, software or technology applicable to the Services and Equipment, including United States Department of State International Traffic In Arms Regulations (ITAR), United States Foreign Corrupt Practices Act, United States Commerce Department's Export Administration Regulations, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto. Company will not, and will not request Elavon to, export, directly or indirectly, any technical data pursuant to the Agreement or any product using any such data to any country for which the United States Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
- 8.4. **Customer Identification.** To help the United States Government fight the funding of terrorism and money laundering activities, federal law requires financial institutions and their affiliates to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Company will provide certain information and identifying documents requested by Elavon to allow Elavon to identify Company.

9. **Confidentiality; Data Security and Use.**

9.1 **Confidentiality.**

- (a) **Confidential Information Generally.** Each party will protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and will not use, reproduce, distribute, disclose, or otherwise disseminate the other party's Confidential Information except in connection with the performance of its obligations or rights under the Agreement. The Receiving Party acknowledges that any breach of this Section 9.1 by the Receiving Party may result in irreparable harm to the Disclosing Party for which monetary damages may not provide a sufficient remedy. Therefore, the Disclosing Party may seek both monetary damages and equitable relief with respect to any such breach without any obligation to post bond.
- (b) **Disclosure of Confidential Information.** If the Receiving Party or its agents become legally required or compelled (by any publicly filed and noticed deposition, interrogatory, request for documents, civil subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party if permitted will provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate



remedy. If the Disclosing Party does not obtain a protective order or other remedy, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party is legally required to disclose and to use reasonable efforts to obtain assurances that confidential treatment will be accorded such Confidential Information. Neither party will be obligated to notify the other of the receipt of any non-public or confidential investigative demand, summons, or grand jury subpoena or other similar process that requires confidentiality on the part of the applicable party.

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

## 9.2. Data Security and Use.

- (a) **Security Programs Compliance.** Elavon and Company will each comply with the applicable requirements of the Security Programs.
- (b) **PCI-DSS Attestation.** Company may review Elavon's current PCI-DSS compliance status on the Payment Network websites as available. Elavon will undergo an annual assessment of its compliance with the Security Programs and the Payment Application Data Security Standards. At Company's written request, Elavon will provide to Company a written attestation of Elavon's compliance with the security requirements related to *Cardholder Data promulgated by the Payment Card Industry Security Standards Council*.
- (c) **Elavon Data Breach.** If Elavon suffers an Elavon Data Breach, then it will comply with all Laws and Payment Network Regulations with respect to such Elavon Data Breach, including providing the required reporting and forensic audits to the Payment Networks, and, unless prohibited by law enforcement or the Payment Networks, will inform Company of such Elavon Data Breach. Elavon will not pass-through or require Company to be liable to Elavon for any fees, fines, penalties, assessments, or charges levied against Elavon by the Payment Networks in connection with an Elavon Data Breach. Unless otherwise required or directed under Law, the Payment Network Regulations, or a Payment Network, Elavon will not (i) contact or inform any Customer of whose data may have been the subject of an Elavon Data Breach of the occurrence of the Elavon Data Breach, or (ii) publicly disclose that information provided by Company to Elavon was the subject in any part of an Elavon Data Breach. If Elavon is legally obligated or the Payment Network Regulations or Payment Networks require Elavon to contact Customers as part of an Elavon Data Breach, Elavon will provide notices to such Customers to those required by the legal obligation, the Payment Network Regulations, or the Payment Networks, or as approved by Company.
- (d) **Cardholder Data and Transaction Information.**
  - (i) Elavon and Company will ensure the security of Cardholder Data and Transaction Information in accordance with all Laws and Payment Network Regulations. Elavon and Company will retain Cardholder Data and Transaction Information for the duration required by Laws and the Payment Network Regulations and thereafter will destroy, in a manner that will render the information unreadable, all such information that is no longer necessary or appropriate to maintain for ordinary business purposes.
  - (ii) Company will not disclose Cardholder Data to any third party, except to a Service Provider, unless required by Laws or the Payment Network Regulations. Elavon and Company will not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose. After authorization, Company will retain only the Customer account number, name, and card expiration date if Company has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement. If there is a failure or other suspension of Elavon or Company's business operations, including any Bankruptcy Proceeding, Elavon nor Company will not sell, transfer, or disclose Cardholder



Data to third parties, and Company will (a) return this information to Elavon, or (b) provide acceptable proof of destruction of this information to Elavon.

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

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

## 10. Assessment and Audit

**10.1. Elavon Reports on Internal Controls.** Elavon will engage independent, qualified, external auditors (the "Elavon Auditors") to assess the internal controls and information security measures in place related to the Services ("Internal Controls Assessment"). The Internal Controls Assessment will conform with Laws, applicable Card Brand Regulations and industry standards, including generally accepted auditing standards such as the Statement on Standards for Attestation Engagements No. 18, "Attestation Standards: Clarification and Recodification" issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (the "SSAE 18"). The frequency of the Internal Controls Assessment will be consistent with industry standards. Upon Company's written request, but not more frequently than once every 12 months, Elavon will provide a copy of its most recent SSAE 18 SOC 1 report, which will be deemed Elavon's Confidential Information.

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

**11. Proprietary Rights.** As between Elavon and Company, Elavon retains all right, title and interest in and to the Services, Elavon Materials, Updates, Customizations, and all Intellectual Property Rights in any of the foregoing. Company will not acquire any ownership interest or license rights (except such rights as are expressly stated in the Agreement (including the Operating Guide)) in or to the Services, Elavon Materials, Updates, Customizations, or Intellectual Property Rights in any of the foregoing. If any right, title or interest in and to any Customizations is deemed to vest in Company, Company hereby assigns and agrees to assign to Elavon all worldwide right, title, and interest in and to such Customizations, including all



Intellectual Property Rights therein. All rights not otherwise stated in the Agreement are reserved to Elavon. The rights granted to Company under the Agreement are non-exclusive and nothing in the Agreement will limit the ability of Elavon to market, sell, offer for sale, license or otherwise exploit the Services, Elavon Materials, Updates, Customizations or Intellectual Property Rights in any of the foregoing to any third parties or to appoint or authorize any other person or entity to do the same.

## 12. Representations and Disclaimers

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

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

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

- (a) **Organization and Information.** Company is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Company conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Company Application, the bid process, and enrollment forms, as applicable, and in the assumptions in Schedule A or any other document submitted to Elavon is true and complete and properly reflects the business, financial condition and ownership of Company in all material respects.
- (b) **Authority and Power.** Company has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Company and each Affiliated Entity to all provisions of the Agreement as if each Affiliated Entity had executed the Agreement, and such person is authorized to execute any document and to take any action on behalf of Company that Elavon requires to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Company is subject.
- (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Company's knowledge, threatened, which if decided adversely would impair Company's ability to carry on its business substantially as now conducted or which would materially and adversely affect Company's financial condition or operations.
- (d) **Business Use.** Company is obtaining and using the Services from Elavon to facilitate lawful business Transactions between Company and its Customers, and using the DDA only for lawful business purposes.

### 12.3 Disclaimer of Warranties. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE AGREEMENT, THE SERVICES AND ELAVON MATERIALS ARE PROVIDED "AS IS," AND ELAVON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, ELAVON MATERIALS, EQUIPMENT, SOFTWARE, DOCUMENTATION, AND COMPANY'S USE OF THIRD PARTY SERVICES, EQUIPMENT, SOFTWARE, OR DATA IN CONNECTION WITH THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, SATISFACTORY QUALITY, TITLE, SECURITY, NONINFRINGEMENT, UNINTERRUPTED OR ERROR-FREE USE, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE.

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





delete, damage or disable the Services or Company's or any third party's software, firmware, computer system or devices.

### 13. Indemnification

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

13.2. **By Company.** See Schedule H.

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

#### 13.4. Procedure.

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

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

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

#### 13.5. Infringement Claims.

- (a) Subject to Elavon's defense obligations as provided in this Section 13, indemnification for any Infringement Claim will be limited to the payment of the final award of damages assessed against Company resulting from such Infringement Claim in a final judgment by a court of competent jurisdiction, including awarded costs, or any amount in settlement or compromise authorized by Elavon in writing.
- (b) If any part of the Services or the use of the Services becomes, or in Elavon's opinion is likely to become, the subject of an Infringement Claim, and as a result of such Infringement Claim Company's use of the Services may be enjoined or interfered with, then Elavon will, at its option and expense, either, and in addition to defending Company and paying the final amount of damages as provided for in this section, (i) obtain a license for Company to continue using the alleged infringing components of the Services; (ii) modify the alleged infringing components of the Services to avoid the infringement in a manner that still permits the Services to perform in all material respects in accordance with the Agreement; or (iii) replace the alleged infringing components of the Services with compatible, functionally equivalent, and non-infringing components. Elavon will use commercially reasonable efforts to accomplish the remedies identified in this section in a manner that minimizes the disruption to Company's business operations. If Elavon is not able to accomplish the above remedies within a commercially reasonable time frame and on commercially reasonable terms, Elavon may



terminate the Agreement upon written notice to Company. Upon such termination, Elavon will promptly refund any fees paid for Services not performed as of the date of termination.

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

#### 14. Limitation of Liability.

- 14.1. **Excluded Damages.** Neither party or its agents, officers, directors, or employees will be liable to the other party for indirect, exemplary, punitive, special, or consequential damages in connection with the Agreement under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise).
  - 14.2. **General Limitation.** Company acknowledges that fees for the Services are very small in relation to the funds conditionally credited to Company for Transactions, and, consequently, Elavon's willingness to provide these Services is based on the liability limitations contained in the Agreement. Therefore, except for Elavon's breach of its confidentiality obligations in Section 9.1 and Elavon's indemnification obligations in Section 13 (excluding in each case a Data Breach, which is subject to Section 14.3), Elavon's aggregate liability for any Losses, regardless of the form of action, arising out of the Agreement or Elavon's performance or non-performance of Services under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise), will not exceed the greater of (a) the sum of fees paid by Company to Elavon during the six months immediately preceding the event giving rise to the Losses, exclusive of fees and variable costs incurred by Elavon to process Transactions such as interchange costs, assessments, charges, and fees imposed by a third party, and (b) three hundred fifty thousand dollars (\$350,000).
  - 14.3. **Data Breach Limitation.** Notwithstanding the limitations set forth in Section 14.2 and the disclaimers in Section 14.1, Elavon will be liable to Company for Company's documented and incurred Elavon Data Breach Losses, up to an aggregate amount not to exceed six months' average fees paid to Elavon by Company pursuant to the Agreement, exclusive of fees and variable costs incurred by Elavon to process Transactions such as interchange costs, assessments, charges, and fees imposed by a third party. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, SECTION 9.2(c) AND THIS SECTION 14.3 SET FORTH COMPANY'S EXCLUSIVE REMEDY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO DAMAGES, PENALTIES, COSTS, EXPENSES, OR LOSSES ARISING FROM A DATA BREACH.
15. **Purchased Equipment.** Elavon will ship to Company the Purchased Equipment described in Schedule A, any Statement of Work, additional application, setup, or order forms, or any addenda or schedules mutually agreed upon in writing by Elavon and Company for the purchase price stated thereon. Company has no right to cancel an order for Purchased Equipment Unless otherwise agreed by the parties, Company will be responsible for all shipping costs, insurance, import and export duties and similar taxes and amounts.

#### 16. Third-Party Vendors.

##### 16.1. Company Service Providers and Company Resources.

- (a) Company may want to use a Service Provider to assist with Transactions. Company will cause each Service Provider and applicable Company Resource to undergo testing, approval and certification by Elavon before Company uses such Service Provider or applicable Company Resource in connection with accessing or using the Services. Company will ensure that each Service Provider or applicable Company Resource maintains certification and compatibility with the Services and that each Service Provider and applicable Company Resource is fully compliant with all Laws, Payment Network Regulations, and Security Programs. Failure of Company's systems, including Company's point-of-sale system or property management system, or any Service Provider systems to maintain certification under this section or to be compatible and function with the most recent version of the Services will excuse Elavon from all liability and all of its obligations under the Agreement to the extent that Elavon's provision of the Services is impaired by such failure.



- (b) Company is responsible for any violations of the Agreement that result from the acts or omissions of Company's Service Providers and any other person who, with or without Company's consent or cooperation, obtains access to Transaction Information from Company or access to systems under Company's or Service Provider's control (excluding acts or omissions to the extent attributable to Elavon's breach of the Agreement, gross negligence, or willful misconduct).
  - (c) Elavon is not responsible for Service Providers or for the products or services offered by Service Providers, nor is it responsible for any Transaction until Elavon receives complete data for the Transaction in the format required by Elavon.
  - (d) Elavon may terminate a Service Provider's access to or ability to integrate with Elavon's products, services, and systems immediately without prior notice if the termination results from:
    - (i) The Service Provider's breach of any Laws or Payment Network Regulations,
    - (ii) The requirement of any court order or Payment Network or application of Payment Network Regulations to the Services,
    - (iii) Elavon's reasonable determination that the Service Provider poses an unacceptable security risk to Elavon, Company or any Payment Network, or
    - (iv) The Service Provider's failure to maintain certification to Elavon or the expiration or termination of any agreement between Elavon and the Service Provider specific to certification to Elavon with respect to the Services.
- 16.2. **Liability for Direct Agreement with Third Party.** Elavon has no responsibility for, and will have no liability to Company in connection with, any hardware, software or services Company receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Company and a third party, including any Service Provider, even if Elavon collects fees or other amounts from Company with respect to such hardware, software or services (and such third party will not be considered a third party contractor of Elavon).
- 16.3. **Elavon Third-Party Contractors.** Elavon may use third-party contractors in connection with the performance of its obligations under the Agreement. Elavon will be responsible for the performance of its obligations hereunder notwithstanding any use of or delegation of any responsibility to any Elavon third-party contractor. Elavon is responsible for any violations of the Agreement that result from the acts or omissions of its third-party contractors.

## 17. Professional Services.

- 17.1. Elavon will provide the Professional Services to Company as mutually agreed upon by the parties in a Statement of Work. Each executed Statement of Work will be deemed incorporated into the Agreement and will identify in reasonable detail the Professional Services that Elavon will perform, including, (a) the specific deliverables and services to be provided by Elavon; (b) any responsibilities of the parties in addition to those in the Agreement; (c) the fees and costs that Company is responsible for under the Statement of Work; and (d) any payment terms that are different from or in addition to the payment terms in the Agreement. As between Elavon and Company, Elavon will own all improvements to the Services made by or on behalf of Company that arise out of the Professional Services.
- 17.2. Elavon will perform the Professional Services in a workmanlike manner. Company will notify Elavon of any failure to so perform within 10 days following the completion of the applicable Professional Services. Elavon's entire liability and Company's sole remedy for Elavon's failure to so perform will be for Elavon to, at its option, (a) use reasonable efforts to correct such failure, or (b) terminate the applicable Statement of Work and refund the portion of any fees received that corresponds to such failure to perform.
- 17.3. Company will (a) provide sufficient, qualified, knowledgeable personnel capable of (i) making timely decisions necessary to allow Elavon to perform the Professional Services, and (ii) participating in the project and assisting Elavon in rendering the Professional Services; (b) if applicable, provide Elavon with reasonable access to Company's facilities during Company's normal business hours and otherwise as Elavon reasonably requests to enable Elavon to perform the Professional Services; (c) provide Elavon with working space and any other services and materials which may reasonably be necessary in connection with the performance of the Professional Services; and (d) perform such other duties and tasks as Elavon reasonably requests to facilitate Elavon's performance of the Professional Services. Company acknowledges that: (x) Elavon's ability to perform the Professional Services is conditioned upon



Company's timely performance of Company's obligations and (y) the performance of these Company obligations is material to Elavon's ability to commence and proceed with the Professional Services.

## 18. General Provisions.

- 18.1. **Entire Agreement.** The Agreement (including the Operating Guide, all appendices, schedules, attachments, exhibits, addenda and other documents incorporated by reference) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other agreements, written or oral, are superseded by the Agreement. If a conflict exists between the documents comprising the Agreement, the following order of priority will apply:
- (a) Any schedules mutually agreed upon by the parties, with respect to the subject matter thereof;
  - (b) General Terms and Conditions and the Appendices;
  - (c) The Operating Guide;
  - (d) Any signed *Statement of Work*; and
  - (e) Any Documentation provided to Company in writing by Elavon
- 18.2. **Jurisdiction and Venue; Governing Law.** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the laws of the state of Wisconsin, without giving effect to its choice-of-law rules. All performances and Transactions under the Agreement will be deemed to have occurred in the state of Wisconsin, and Company's entry into and performance of the Agreement will be deemed to be the transaction of business within the state of Wisconsin. Each party hereby submits to the exclusive jurisdiction (other than for collection actions by Elavon relating to amounts owed by Company under the Agreement) of the courts of the state of Wisconsin (Dane County) or the United States District Court for the Western District of Wisconsin and waives any objection to venue with respect to the actions brought in those courts.
- 18.3. **Exclusivity.** During the Term, Company will not enter into an agreement with any other entity for services similar to those Services Company has elected to receive from Elavon under the Agreement without Elavon's written consent.
- 18.4. **Construction.** The headings used in the Agreement are inserted for convenience only and will not affect the interpretation of any provision. Each provision is to be construed as if the parties drafted it jointly. The word "day" will mean "calendar day", unless specifically stated otherwise.
- 18.5. **Assignability.** Company will not assign the Agreement, directly, by operation of law, or by Change of Control of Company, without Elavon's prior written consent. If Company nevertheless assigns the Agreement without Elavon's consent, the Agreement will be binding on both the assignee and Company. Elavon will not transfer or assign the Agreement without Company's prior written consent, except for (i) an assignment or delegation to an Affiliate of Elavon, or (ii) an assignment or delegation to any entity into or with which Elavon will merge or consolidate, or who may acquire substantially all of Elavon's stock or assets
- 18.6. **Notices.** Any written legal notice to the other party will be deemed received upon the earlier of (a) actual receipt, (b) five business days after being deposited in the United States mail, return receipt requested, or (c) two business days after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to Company's address on the Company Application or the last address shown on Elavon's records, or to Elavon at 7300 Chapman Highway, Knoxville, Tennessee 37920, with a copy to Two Concourse Parkway, Suite 800, Atlanta, GA 30328, Attn: General Counsel, or such other addresses as Elavon may designate in writing.
- 18.7. **Bankruptcy.** Company will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Company. Company will include Elavon on the list and matrix of creditors as filed with the bankruptcy court, whether or not a claim may exist at the time of filing. Company acknowledges that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of Company, and, as such, cannot be assumed or assigned in the event of Company's bankruptcy. Company will be responsible to Elavon for any damages suffered by, and expenses incurred by, Elavon due to a Company Bankruptcy Proceeding.
- 18.8. **Telephone Recording.** For quality assurance and training purposes, Company authorizes Elavon to monitor and record customer service telephone conversations at any time, subject to Laws and applicable disclosures if required.



- 18.9. **Amendments.** Except as otherwise stated in the Agreement (including in Section 6.3), amendments to the Agreement will be in writing and signed by the parties. Notwithstanding the foregoing, Elavon may amend or modify the Agreement, to the extent such changes are required by changes in Laws or the Payment Network Regulations, upon written notice to Company. Elavon will inform Company of such a change in the Payment Network Regulations or Laws in a periodic statement or other written notice, and such change will become effective at least 30 days after the issuance of the statement or notice.
- 18.10. **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired thereby. None of the failure to exercise, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor will such amend the Agreement. All waivers requested by a party must be signed by the waiving party.
- 18.11 **Independent Contractors.** Elavon and Company will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically stated in the Agreement. The Agreement has been entered into solely for the benefit of the parties to the Agreement and is not intended to create an interest in any third party except where explicitly stated otherwise.
- 18.12. **Survival.** All of the obligations of each party that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including Sections 3, 4.3, 4.4, 4.5, 5, 6, 8, 9, 12, 13, 14, 16, 18.2, and 18.12, will survive and remain binding upon and for the benefit of the parties.
- 18.13. **Counterparts; Electronic Delivery.** The Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which, taken together, will constitute one and the same agreement. Signed counterparts may be delivered by fax or electronic means (e.g., .pdf documents via e-mail), and will constitute signed originals.
- 18.14 **Force Majeure.** Neither party will be considered in default in performance of its obligations to the extent such performance is delayed by Force Majeure affecting such party's ability to perform. A "Force Majeure" means an act of God, natural disaster, war, act of terrorism, civil disturbance, action by governmental entity, strike, and other cause beyond such party's reasonable control. If a Force Majeure interrupts Elavon's provision of any Services, Company will continue to pay Elavon the fees for the Services owed under the Agreement and Elavon will make all reasonable efforts to restore such Services. If the Force Majeure continues for a more than 14 days, then Company may, upon notice to Elavon, as its sole and exclusive remedy, abate payment to Elavon to the extent Services are not performed and terminate the Agreement
- 18.15. **Business Continuity.** Elavon will maintain and adhere to business continuity plans that are commercially reasonable within the industry for the Services.
- 18.16. **Tribal Governments.** If Company qualifies as a federally recognized or acknowledged tribal government or an instrumentality thereof, then Company expressly and irrevocably provides a limited waiver of its sovereign immunity (and any defense based thereon) from any suit, action or proceeding or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, exercise of contempt powers or otherwise) brought by Elavon relative to disputes between the Elavon and Company under the Agreement in the exclusive jurisdiction set forth in Section 18.2. Without prejudice to the limited waiver of sovereign immunity provided in the Agreement, no other waiver of Company's sovereign immunity from suit may be implied from any action or document. Company waives any requirement for Elavon to exhaust tribal court remedies that might otherwise require, as a matter of law or comity, that a dispute be heard first in the tribal court of Company. The waivers and consents described in this Section 18.16 will inure to the benefit of the parties hereto. The parties will be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief. The waivers of sovereign immunity and of the obligation to exhaust tribal court remedies and the consents to jurisdiction contained in this Section 18.16 are irrevocable and will survive termination of the Agreement. Company covenants that it has obtained and will maintain in effect all authorizations and consents necessary to grant the waiver of sovereign immunity and the obligations to exhaust tribal court remedies contained herein.



## APPENDIX 1 – DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**"Customizations"** means any works of authorship, work product, and any invention, process, method, development, design, schematic or technical information, whether patentable or not, including documentation, software or enhancements, improvements, alterations, or derivatives of the Services developed by Elavon, either alone or jointly with others, in connection with the Agreement.

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

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

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

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

**"Discover"** means DFS Services LLC.

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

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

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

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

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



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

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

**"Effective Date"** means the date stated in Elavon's signature block on the signature page of the Agreement.

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

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

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

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

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

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

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

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

**"Initial Term"** has the meaning stated in Schedule A.

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

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

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

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

**"Mastercard"** means MasterCard International Incorporated





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

**"NACHA"** means the National Automated Clearing House Association.

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

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

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

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

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

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

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

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

**"Projected Monthly Transaction Volume"** means the projected monthly Transaction volume stated in Schedule A.

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

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

**"Renewal Term"** has the meaning stated in Schedule A.

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

**"SAFE-T Services"** means the integrated security services provided by Elavon, as further described in Schedule E.

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

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

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

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

**"Term"** means the Initial Term and any Renewal Term.



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

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

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

**"Transition Period"** has the meaning stated in Section 4.5

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

**"United States"** means the United States of America.

**"Visa"** means Visa U.S.A., Inc.



**SCHEDULE A**

**FEEs**

[Separately provided]



**SCHEDULE B**

**COMPANY APPLICATION**

[Separately provided]



**SCHEDULE C**  
**AFFILIATED ENTITIES**

Check one:

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

(Schedule C "Effective Date")