



## **Terms of Service**

**March 2019**

These Terms of Service include a binding arbitration provision located in [Section 18.6](#) that requires any dispute arising out of or related to the Terms of Service to be submitted to arbitration. The arbitration provision impacts your legal rights and should be reviewed carefully.



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## GENERAL PROVISIONS

1. **Definitions.** Capitalized terms used in these Terms of Service (“TOS”) will have the meanings stated in Appendix 1.
2. **Scope of Agreement.** The TOS and the other portions of the Agreement govern Company’s receipt and use of the Services selected by Company in the Company Application. The TOS is part of the Agreement and the signature by an authorized representative of the Company on the Company Application, will be the Company’s acceptance of the terms and conditions contained in the Agreement. No strikeover of the preprinted text of the TOS will be effective. 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. **Transactions.**
  - 3.1. **Processing Limits.** Elavon may impose a cap on the dollar amount of Transaction Receipts that it will process for Company as indicated on the Company Application as Company’s annual volume or as otherwise established by Elavon. Elavon may change this limit from time to time, without prior notice to Company. If Company exceeds the established limit, Elavon may suspend the processing of Transaction Receipts, and either return all Transaction Receipts evidencing funds over the cap to Company or hold those deposits in a separate account or Reserve Account.
  - 3.2. **Company Compliance.** Company will not submit Transactions for processing to Elavon for any businesses, products, or methods of selling other than those stated in the Company Application without Elavon’s prior written consent.
  - 3.3. **Member Responsibilities.** Member will facilitate ACH Transactions and comply with all ACH Rules as applicable to Member in providing Services under this Agreement. Member will have no liability to Company under this Agreement.
4. **Security Interests; Reserve Account.**
  - 4.1. **Security Interests.**
    - (a) **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. Company grants to Elavon a security interest in and lien upon (and in Quebec, a hypothec on): (a) all funds at any time in the Reserve Account or DDA, regardless of the source of such funds; and (b) all funds underlying present and future Transaction Receipts; and (c) any amount which may be due to Company under the Agreement, including, without limitation, all rights to receive any payments or credits under the Agreement (collectively, the “**Secured Assets**”). Company agrees to provide other security to Elavon, upon request, to secure Company’s obligations under the Agreement. These security interests and liens (and hypothecs) will secure all of Company’s obligations under the Agreement and any other agreements now existing or later entered into between Company and Elavon or Member, including Company’s obligation to pay any amounts due and owing to Member or Elavon. Elavon may execute this security interest (and hypothecs), without notice or demand of any kind, by making an immediate withdrawal or by restricting Company’s access to the Secured Assets.
    - (b) **Perfection.** Upon Elavon’s request, Company will execute one or more control agreements or other documents to evidence or perfect this security interest (and hypothec). Company represents and warrants that no other person or entity has a security interest (or hypothec) in the Secured Assets. With respect to such security interests and liens (and hypothecs), Elavon will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Company will obtain Elavon’s written consent prior to granting a security interest (or hypothec) of any kind in the Secured Assets to a third party. Company agrees that this is a contract of recoupment, and Elavon is not required to file a motion for relief from a bankruptcy action

automatic stay to realize any of the Secured Assets. Nevertheless, Company agrees not to contest or object to any motion for relief from the automatic stay filed by Elavon. Company authorizes and appoints Elavon as Company's attorney in fact to sign Company's name to any control agreement used for the perfection of any security interest or lien (or hypothec) granted hereunder.

#### 4.2. Reserve Account.

- (a) **Establishment.** Elavon may establish a Reserve Account at any time to provide a source of funds to pay Elavon for any amounts owed by Company. The Reserve Account will be maintained with sums sufficient to satisfy Company's current and future obligations as determined Elavon. Elavon will have sole control of the Reserve Account. Elavon may, at any time, require that the amount on deposit in the Reserve Account be increased. Company's settlement funding may be directed to a Reserve Account if Company's websites are not in compliance with the Payment Network Regulations.
- (b) **Funding.** Elavon may fund the Reserve Account by any of the following means:
  - (i) Elavon may require Company to transfer funds to Elavon for credit to the Reserve Account;
  - (ii) Elavon may debit the DDA and provide a corresponding credit to the Reserve Account; or
  - (iii) Elavon may credit to the Reserve Account amounts it would otherwise be obligated to credit to Company.
- (c) **Use of Funds in Reserve Account.** Elavon may, without notice to Company, apply credits in the Reserve Account against any outstanding amounts Company owes or future amounts Company will owe under the Agreement or any other agreement between Company and Member or Elavon. Additionally, Elavon may debit the Reserve Account to exercise its rights under the Agreement, including its rights of set-off and recoupment to collect any amounts due to Elavon. Further, Company agrees that Elavon may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
- (d) **Termination of Reserve Account.** Credits in the Reserve Account will remain in the Reserve Account, and will be used only to pay amounts due to Elavon, until Company has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, Leased Equipment payments, and any other payments due under the Agreement. In no event will Company be entitled to a payment from Elavon in an amount equal to the credits remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement. Notwithstanding the foregoing, if Elavon determines that the circumstance that gave rise to the establishment of the Reserve Account has been sufficiently cured, then Elavon may terminate the Reserve Account or release credits from the Reserve Account, or both, prior to the termination of the Agreement.

#### 4.3. Recoupment and Set-off.

- (a) Elavon has the right of recoupment and set-off, and may offset any outstanding or uncollected amounts owed to it hereunder from:
  - (i) Any amounts it would otherwise be obligated to deposit into the DDA;
  - (ii) The Reserve Account by reducing the credits thereto; and
  - (iii) Any other amounts it may owe Company under the Agreement or any other agreement.
- (b) Company acknowledges that in the event of a Bankruptcy Proceeding, in order for Company to provide adequate protection under Bankruptcy Code Section 362 to Elavon hereunder, Elavon may require the creation of a Reserve Account and will have the right to offset against the Reserve

Account for all obligations Company may owe to Elavon, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.

- 4.4. **Remedies Cumulative.** The rights conferred upon Elavon in this Agreement are not intended to be exclusive of each other or of any other rights and remedies of Elavon under the Agreement, at law or in equity. Rather, each and every right of Elavon under the Agreement, at law or in equity, is cumulative and concurrent and in addition to every other right.

## 5. Term and Termination.

- 5.1. **Term.** Unless terminated as provided below, the Agreement will remain in effect for a period of three years (“**Initial Term**”) following the date of acceptance of the Company Application by Elavon, which date will be the date upon which the Agreement becomes effective. Thereafter, the Agreement will renew automatically for successive two year terms (successive six month terms with respect to Canada) (“**Renewal Term**”) unless terminated as provided below. If Company processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement will govern such Transaction processing.

### 5.2. Termination.

(a) **By Company.**

- (i) Company may terminate the Agreement effective at the end of the Initial Term or any Renewal Term by providing written notice of non-renewal to Elavon at least 30 days prior to the expiration of the then current term.
- (ii) Company may terminate the Agreement if Elavon has failed to perform a material obligation under the Agreement and such failure remains uncured for 30 days after Company notifies Elavon in writing of the existence of the failure.
- (iii) Company will have the termination right stated in Section 18.17 if a Force Majeure occurs.

(b) **By Elavon.** Elavon may terminate the Agreement, in whole or in part, at any time with or without cause.

- 5.3. **Notice of Termination.** To be effective, Company’s termination request must be completed on a form available from Elavon, and at a minimum, must include the name of the Company and Merchant Identification Number, and must be signed by the principal owners of Company. In those limited instances where Company’s account is reinstated by Elavon following termination by either Company or Elavon, all of Company’s obligations under the Agreement are likewise reinstated and will renew for successive two year Renewal Terms effective on the date of reinstatement.

### 5.4. Actions Upon Termination.

(a) **Account Closing.**

- (i) Company acknowledges that closing Company’s account with Elavon may take up to 30 days following Elavon’s receipt of written notice of termination.
- (ii) 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, 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.
- (iii) Funds related to Transactions processed prior to termination may be placed in a Reserve Account until Company pays all amounts Company owes Elavon and any other amounts for

which Company is liable under the Agreement. If Elavon establishes a Reserve Account, then any balance remaining after Chargeback rights have expired and all other amounts owed by Company have been paid will be disbursed to Company.

- (b) **Leased Equipment.** If Company's equipment is leased, Company will honor the terms and conditions of Schedule A. If Company's Leased Equipment is owned by Elavon, Company must return all Leased Equipment owned by Elavon within 10 business days after termination of the Agreement and immediately pay Elavon any amounts Company owes for such Leased Equipment.
- (c) **Return to Elavon.** All Confidential Information, promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to Company and not purchased by Company or consumed in use will remain the property of Elavon and must be returned to Elavon or destroyed within 10 business days after termination of the Agreement. Company will be fully liable for all loss, cost, and expense suffered or incurred by Elavon arising out of any failure to return or destroy such materials following termination.

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

- 6.1. Company will be responsible for the distribution of all passwords and user IDs issued to any Authorized User and for maintaining the confidentiality and security of Authorized User's passwords and user IDs. Company will ensure that the access granted to each Authorized User to the Services is limited to only the access and information necessary for the Authorized User to perform his or her job functions on behalf of Company. Company will ensure that all Authorized Users will be trained and qualified to access and use the Services in accordance with the terms of the Agreement, the Operating Guide and any Documentation. Company is responsible for its Authorized Users' compliance with the terms of the Agreement, the Operating Guide, and the Documentation, for all acts or omissions of the Authorized Users, and for all use of any 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.
- 6.2. 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.
- 6.3. Company is responsible for changing the user IDs and passwords of its Authorized Users if it believes that any of those user IDs or passwords have been stolen or might otherwise be misused and for disabling any Authorized User's IDs and passwords promptly upon the termination of employment of such Authorized User or the cessation of such Authorized User's need to access the Services. Company will promptly notify Elavon if Company believes the Services or Elavon's databases have been compromised



by use of a user ID or password associated with the Services.

## 7. Fees and Taxes.

- 7.1. **Compensation.** Company will compensate Elavon for all fees and other amounts due for the Services and Equipment in accordance with the Agreement and any additional application or setup forms (including enrollment forms). Such amounts will be calculated and debited from the DDA or the Reserve Account once each day or month for the previous day's or month's activity, as applicable, or will be deducted from the funds due Company under the Agreement.
- 7.2. **Research.** Company will pay Elavon at its standard rates for each research item, including research required to respond to any third party or government subpoena, summons, levy, garnishment or required reporting on Company's account.
- 7.3. **Change of Fees.** Elavon may adjust the fees in accordance with [Section 18.12](#) below.
- 7.4. **Other Amounts Owed.**
- (a) In addition to the amounts described in [Sections 7.1](#) and [7.2](#) above, Company will promptly pay Elavon for any Chargebacks, returns, adjustments and associated fees, and for 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), Leased Equipment payments, and any other payments due under the Agreement. Elavon may offset these amounts from funds otherwise owed by Elavon to Company or may debit these amounts from Company's DDA or Reserve Account by ACH. If such offset or ACH debit does not fully reimburse Elavon for the amount owed, Company will promptly pay Elavon such amount upon demand.
- (b) Elavon will charge interest on all uncollected amounts owed to Elavon that are more than 30 days past due at a rate no greater than the maximum rate of interest permitted under Laws.
- 7.5. **Taxes.** Company will pay all taxes and other charges imposed by any governmental authority on the Services and Equipment provided under the Agreement, excluding any taxes based on Elavon's property or net income. If Company is a tax-exempt entity, Company will provide Elavon with an appropriate certificate of tax exemption.
- 7.6. **Demand Deposit Account.** Company will establish and maintain one or more DDAs to facilitate payment of fees 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 fees and any other amounts that may be due by Company to Elavon under the Agreement, and Company its Company's 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. Company will obtain Elavon's prior consent to change the DDA. If Company does not get that consent, Elavon may immediately and without notice terminate the Agreement and may take any other action it deems necessary in its discretion. 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. Company may request from Elavon written confirmation of Elavon's consent to change the DDA.
- 7.7. **Depository Institution.** Company authorizes Elavon to direct the depository institution to hold funds in the DDA in an amount which Elavon deems sufficient to fully protect Elavon's and Member's rights under the Agreement or to block or restrict Company's or others' access to funds in the DDA (whether or

not such funds are specifically related to any previous deposit for any Transaction Receipt). Company directs the depository institution to immediately comply with any such direction from Elavon.

## 8. Compliance with Laws and Payment Network Regulations; MATCH™.

- 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 and Member are entities governed by the Laws of the United States and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States, 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. **MATCH™ and Consortium Merchant Negative File.** Company acknowledges that Elavon is required to report Company's business name and the name of Company's principals to the MATCH™ listing maintained by Mastercard and accessed by Visa, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Company specifically consents to Elavon's fulfillment of the obligations related to the listing of Company and Company information in such databases, and Company waives all claims and liabilities Company may have as a result of such reporting.
- 8.5. **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, if applicable to the Services provided under the Agreement, 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) **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. 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 Company's business operations, including any Bankruptcy Proceeding, Company will not sell, transfer, or disclose Cardholder Data to third parties, and Company will (a) return this information to Elavon or (b) provide acceptable proof of destruction of this information to Elavon.

- (iii) Elavon acknowledges that Company may collect information about Company's Customers as part of a Company sales transaction (e.g., price paid, time, store identifier, SKU information) regardless of the Customer's payment type and not in connection with the Services, and that the Agreement does not restrict Company's retention, use or disclosure of such information even though some of that information may overlap with elements of Transaction Information.
- (iv) Notwithstanding anything in Section 9.1, 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 or specific segments of Elavon's other customers.

- (d) **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. 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 limit the notices to such Customers to those required by the legal obligation, the Payment Network Regulations, or the Payment Networks, or as approved by Company.
- (e) **Company Data Incident.**
  - (i) **Notice and Investigation.** Company acknowledges that Cardholder Data and bank account information it obtains in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Company will notify Elavon within 24 hours (and if notice is given orally, it must be confirmed in writing within the same 24 hour period) if Company knows or suspects that Cardholder Data, Customer information, or Transaction Information has been accessed or used without

authorization from Company or systems within Company's control (a "**Data Incident**"). The notice must include:

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

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

- (ii) **Preservation of Records.** If there is a Data Incident, Company will take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Company will cooperate with Elavon to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon with (and obtaining any necessary waivers for) all relevant information to verify Company's ability to prevent future data incidents in a manner consistent with the Agreement.
- (iii) **Liability for Data Incident.** Without waiving any of Elavon's rights and remedies, Company is liable for all fraudulent transactions related to any Data Incident and all costs Elavon incurs as a result of such Data Incident, including all (i) fees, fines, penalties or assessments by the Payment Networks, (ii) claims from third parties, and (iii) costs related to the notification of Cardholders or Customers, cancellation of Payment Devices (including underlying accounts), re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI-DSS review for a report of compliance.
- (iv) **Data Incident and Payment Network Audit.** If there is a known or suspected Data Incident, or if required by the Payment Networks, then at Elavon's or any Payment Network's request, Company will obtain at its expense and submit to Elavon a copy of a forensic audit from a qualified incident response assessor of the information security of Company's business. Company acknowledges that the Payment Networks have the right to audit Company's operations to confirm compliance with the Payment Network Regulations.
- (v) **Data Breach Reimbursement.** Company may be eligible to receive reimbursement or setoff from amounts owed to Elavon for: (a) any sums reasonably required to conduct an independent security audit of Company to identify the source of the Data Incident, and (b) any fines and assessments levied or collected by the Payment Networks in connection with a Data Incident (collectively, "**Data Breach Reimbursement**"). In order to be eligible to receive Data Breach Reimbursement, Company must be enrolled in Elavon's PCI Compliance Program and be classified as either a Level 3 or Level 4 Company by the Payment Networks. If Company is eligible for Data Breach Reimbursement, except as otherwise provided in the Agreement, the maximum amount of Data Breach Reimbursement available to Company is



\$50,000.

#### 10. **Audit and Information.**

10.1. **Audit.** 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 obtain and submit a copy of an audit from a third party acceptable to Elavon of the financial, physical security, information security, and operational facets of Company's business at its expense when requested by Elavon. Further, Company acknowledges and agrees that the Payment Networks have the right to audit Company's business to confirm compliance with the Payment Network Regulations. 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.

#### 10.2. **Company Information.**

- (a) **Authorizations.** Company authorizes Elavon to make, from time to time, any business and personal credit or other inquiries it considers necessary to review the Company Application or continue to provide services under the Agreement. Company also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Elavon.
- (b) **Financial Information.** Upon Elavon's request, Company will provide Elavon audited financial statements prepared by an independent certified public accountant selected by Company. Company further agrees to provide to Elavon such other information regarding Company's financial condition as Elavon may request from time to time. Within 120 days after the end of each fiscal year, Company will furnish Elavon, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year. Company also will provide Elavon such interim financial statements and other information as Elavon may request from time to time. Notwithstanding the requirements in this section, Company will not be obligated to provide financial statements or similar information required by this section other than those included in Company's filings with the Securities and Exchange Commission so long as Company remains registered and obligated to file financial statements (including annual reports on Form 10-K and quarterly reports on Form 10-Q) pursuant to the Securities Exchange Act of 1934, as amended.
- (c) **Beneficial Ownership; Bearer Shares.** Company will promptly notify Elavon of any changes in Company's beneficial ownership structure or if Company has the ability to issue bearer shares.

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.** Company will indemnify and defend Elavon, 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 arising out of (a) any Transaction processed under the Agreement; (b) Company's breach of the Agreement; (c) all use of any user ID and password other than by Elavon or Elavon's third-party contractors; (d) Company's or its Service Providers' gross negligence or willful misconduct; (e) Company's or its Service Providers' violation of Laws or Payment Network Regulations; or (f) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers. Company will not 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.
14. **Limitation of Liability.** Company acknowledges that fees for the Services are very small in relation to the funds conditionally credited to Company for Transactions, and, consequently, Elavon's willingness to provide these Services is based on the liability limitations contained in the Agreement. Therefore, Elavon's aggregate liability for any Losses, regardless of the form of action, arising out of the Agreement or Elavon's performance or non-performance of Services under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise), will not exceed an amount equal to the fees paid by Company during the three 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. In no event will Elavon, Member, or their agents, officers, directors, or employees be liable to Company 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).
15. **Purchased Equipment.** Elavon will ship to Company the Purchased Equipment described in the Company Application or any 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. **Personal Guaranty.** As a primary inducement to Elavon and Member to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by Elavon or Member to or for the benefit of Company, the designated Guarantor(s), jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance by Company of each of its duties and obligations to Elavon and Member pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice. No act or thing, except full payment and discharge of all of Company's duties and obligations to Elavon and Member, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), will in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives all defenses of Company pertaining to Company's duties and obligations to Elavon and Member, any evidence thereof, and any security therefore, except the defense of discharge by payment. Guarantor(s) understands further that Elavon or Member may proceed directly against Guarantor(s) without first exhausting their respective remedies against Company or any other person or entity responsible therefore or any security held by Elavon, Member, or Company. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guaranty and of the creation and existence of Company's duties and obligations



to Elavon and Member; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing Company's duties and obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); and (iv) **the right to trial by jury in action in connection with this Personal Guaranty.** This Personal Guaranty will not be discharged or affected by the death of the Guarantor(s), will bind all heirs, administrators, representatives, and assigns, and may be enforced by or for the benefit of any successors in interest to Elavon or Member. Guarantor(s) understands that the inducement to Elavon and Member to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Company, is consideration for the Personal Guaranty and that each Personal Guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guaranty.

## 17. Third-Party Vendors.

### 17.1. 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.

**17.2. 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).

- 17.3. **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.

## 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: (i) any schedule or amendment to the Agreement; (ii) the TOS; (iii) the Company Application; (iv) any Company Processing Agreement; (vi) the Operating Guide; and (vii) any Documentation provided to Company in writing by Elavon.
- 18.2. **Jurisdiction and Venue; Governing Law.** For all disputes relating to the enforceability of the arbitration agreement set forth below in [Section 18.6](#), or to the extent the arbitration agreement set forth in [Section 18.6](#) is determined to be unenforceable or inapplicable to any claim, controversy or dispute between the Company and Elavon, whether sounding in contract, tort or otherwise, then, the laws of the state of Georgia, without giving effect to its choice-of-law rules will govern any claim, controversy or dispute to be adjudicated in a court of law or equity, and each party hereby submits to the exclusive jurisdiction of the courts of the state of Georgia (Fulton County) or the United States District Court for the Northern District of Georgia with respect to any such claim, controversy or dispute. The parties each waive any objection to venue with respect to any actions brought in those courts. All performances and Transactions under the Agreement will be deemed to have occurred in the state of Georgia, and Company's entry into and performance of the Agreement will be deemed to be the transaction of business within the state of Georgia.
- 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.** The Agreement may be assigned by Member or Elavon. 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. If Company sells its business and the new owners incur Chargebacks, the original owners and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.
- 18.6. **Arbitration.** All claims, controversies or disputes between the parties arising out of or related to the Agreement, the schedules to this Agreement or the relationship between the parties will be submitted to and decided by arbitration held in the city and state in which the Company maintains its principal place of business and in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (a copy of which can be reviewed at [www.adr.org](http://www.adr.org)) except that the arbitration proceeding will be conducted before one neutral arbitrator who will be an active member of the bar of the state in which the arbitration is conducted and actively engaged in the practice of law for at least 10 years and who will issue a reasoned award. The arbitrator will have the authority to award any remedy or relief that a federal court in the state in which the arbitration is conducted could order or grant.

The arbitrator will have no authority to decide claims on a class action or collective action basis. The arbitrator can only decide Elavon's or the Company's claims and may not consolidate or join the claims of other persons who may have similar claims. No party to this Agreement may assert a claim in arbitration on behalf of any third party or represent any class of claimants in an arbitration brought pursuant to the Agreement. While each party will bear its own attorney's fees incurred in the arbitration proceeding, absent a contrary determination by the arbitrator as set forth in a reasoned award, Elavon will bear all administrative cost of the arbitration including the arbitrator's fees and will reimburse the Company's filing fee if the Company initiates the arbitration. The parties agree that the underlying agreement between the parties involves interstate commerce and that, notwithstanding the choice of law provision in Section 18.2, any arbitration will be governed by the Federal Arbitration Act.

- 18.7. **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 (or the Canada Post mail, as applicable), 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, or such other addresses as Elavon may designate in writing.
- 18.8. **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.
- 18.9. **Attorneys' Fees and Expenses.** Company will be liable for and will indemnify and reimburse Member and Elavon for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member or Elavon: (i) in the enforcement of the Agreement; (ii) in collecting any amounts due from Company to Member or Elavon; (iii) resulting from any breach by Company of the Agreement; or (iv) in defending against any claim, proceeding, or cause of action brought against Elavon or Member arising out of Company's obligations under this Agreement. Except as stated in the previous sentence, each party will pay its own costs and expenses in connection with the Agreement and the transactions contemplated hereby, including all attorneys' fees, accounting fees and other expenses
- 18.10. **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.
- 18.11. **Communication with Company.** Company agrees that Elavon and Member may provide Company with information about their services, including information about new products and services, by telephone, electronic mail, and facsimile. By providing Elavon with a telephone number for a cellular phone or other wireless device, including a number that Company later converts to a cellular number, Company is expressly consenting to receiving communications — including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system—from Elavon and its affiliates and agents at that number. This express consent applies to each such telephone number that Company provide to Elavon now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from Company's cellular provider.
- 18.12. **Amendments.** Member and Elavon may propose amendments or additions to the Agreement. Member or Elavon will inform Company of a proposed change in a periodic statement or other notice. Company will be deemed to have agreed to the change if Company continues to present Transactions to Member and Elavon after 30 days following the issuance of the statement or notice. Notwithstanding any limitations set forth in the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Company, unless a later effective date is provided. Further, Elavon is entitled to pass through to Company any fee increases imposed upon Elavon by Visa, Mastercard, Discover Network, any other

Payment Network, and any other third party including telecommunications vendors.

- 18.13.**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.
- 18.14.**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.
- 18.15.**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 4, 5.3, 5.4, 7, 9, 11, 13, 14, 16, 17, 18.2, and 18.6 of the TOS, will survive and remain binding upon and for the benefit of the parties.
- 18.16.**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.
- 18.17.**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.
- 18.18.**Business Continuity.** Elavon will maintain and adhere to business continuity plans that are commercially reasonable within the industry for the Services.

## 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.

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

“**Agreement**” means the TOS, the Company Application, the Operating Guide, the Electronic Check Service Merchant Operating Guide (if applicable), and any other guides or manuals provided to Company from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.

“**American Express**” means American Express Travel Related Services Company, Inc. or Amex Bank of Canada, as applicable.

“**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.

“**Canadian Payments Association (CPA)**” means the national association that establishes standards, rules, and procedures and maintains a funds transfer system to enable depository financial institutions to exchange electronic payments.

“**Card Brands**” means (i) Visa; (ii) Mastercard; (iii) American Express; (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.

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

“**Company**” means the business entity indicated on the Company Application that provides goods or services to Customers, or that accepts payments from Customers.

“**Company Application**” means the Company Application and any additional document containing information regarding Company’s business that is submitted to Elavon and Member in connection with Company’s request for Services, including any additional location forms and any 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](#).

“**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 or to obtain cash advances.

“**Customer**” means a client of Company who elects to conduct a payment Transaction with Company through presentation of a Payment Device (including a Cardholder) or who participates in Company’s Fanfare Loyalty Program (as defined in the Operating Guide).

“**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 Reimbursement**” has the meaning given in [Section 9.2\(e\)\(v\)](#).

“**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, Leased Equipment payments and other payments due under the Agreement.

“**Debit Card**” means a card or device bearing the symbol(s) 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.

“**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.

“**Elavon**” means, as applicable, Elavon, Inc., a Georgia corporation, or Elavon Canada Company, a company validly existing and organized in Nova Scotia. 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 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 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 Materials**” means the specifications, documentation (including Documentation), application programing 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 Commerce Transaction**” means a Transaction that occurs when the Cardholder uses the Internet to make a purchase from a Company.

“**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.

“**Guarantor**” means a Person that executes a Personal Guaranty for the benefit of Elavon and Member.

“**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.

“**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.

“**Leased Equipment**” means the equipment described in the Company Application or the Agreement with all replacement parts, repairs, additions and accessories included therein or affixed thereto.

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

“**Member**” means a financial institution designated by Elavon that is a principal, sponsoring affiliate or other member of Visa, Mastercard or other member of the applicable Payment Network. Elavon may change the Member at any time and will provide notice to Company of such 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), electronic balance transfer 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.

“**Person**” means any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and will include any successor (by merger or otherwise) of such entity.

“**Personal Guaranty**” means any written guaranty of Company’s duties and obligations to Elavon and Member by a Person that is given in connection with the Agreement, including as part of this TOS, the Company Application or any other document signed by the Person in favor of Elavon or Member.

“**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.

“**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).



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

**“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.

**“Services”** means the Payment Device processing services and other related products and services received by Company pursuant to the Agreement.

**“Token”** means a numerical token provided by Elavon in substitution of a Payment Device account number.

**“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/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.

**“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 Equipment Leasing

If Company has elected to lease any Leased Equipment from Elavon d/b/a LADCO Leasing (“**Lessor**”), the following terms and conditions apply to Company as “**Lessee**” of the Leased Equipment the United States or Canada, as applicable:

### 1. Equipment Leasing in the United States.

- 1.1. **Non-Cancellable Lease. THIS LEASE IS NONCANCELABLE AND AN IRREVOCABLE AGREEMENT. THIS EQUIPMENT LEASE AGREEMENT CANNOT BE CANCELED OR TERMINATED BY COMPANY.** Lessor, its successors and assigns, leases to Lessee and Lessee rents from Lessor the Leased Equipment, on terms and conditions set forth in this Section.
- 1.2. **No Warranties by Lessor.** Lessee represents that Lessee has selected and approved the Leased Equipment leased hereunder and Lessee acknowledges Lessor has made and makes no representations or warranties of any kind or nature, directly or indirectly, expressed or implied, as to any matter whatsoever, including the suitability of the Leased Equipment, its durability, its condition, or its quality. Lessee leases the Leased Equipment “as-is.” Lessor also disclaims any warranty of merchantability or fitness for use or purpose whether arising by operation of law or otherwise. Lessor and Lessor’s assignee will not be liable to Lessee or others for any loss, damage or expense of any kind or nature caused directly or indirectly by any Leased Equipment however arising, or the use or maintenance thereof or the failure of operation thereof, or the repairs, service or adjustment thereto. No representation or warranty as to the Leased Equipment or any other matter by the Leased Equipment supplier (“Equipment Vendor”) identified in the Company Application, or elsewhere in the Agreement, or others will be binding on the Lessor nor will the breach of such relieve Lessee of, or in any way affect, any of Lessee’s obligations to Lessor herein.

If the Leased Equipment is not satisfactory for any reason, Lessee will make any claim on account thereof solely against the Equipment Vendor and Lessee will nevertheless pay Lessor all rent payable under the lease. Lessor agrees to assign to Lessee, solely for the purpose of making and prosecuting any such claim, any rights it may have against the Equipment Vendor for breach of warranty or representation respecting the Leased Equipment.

Regardless of cause, Lessee will not assert any claim whatsoever against Lessor for loss of anticipatory profits or any other indirect, special, or consequential damages. Lessor makes no warranty as to the treatment of the lease for accounting or tax purposes. **NOTWITHSTANDING ANY FEES WHICH MAY BE PAID BY LESSOR TO EQUIPMENT VENDOR OR ANY AGENT OF THE LESSOR, LESSEE UNDERSTANDS AND AGREES THAT NEITHER THE EQUIPMENT VENDOR NOR ANY AGENT OF THE EQUIPMENT VENDOR IS AN AGENT OF LESSOR OR IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THE LEASE.**

- 1.3. **Authorization for Automatic Withdrawal of Monthly Payments.** Lessee authorizes Lessor, or its designee, successor or assign to withdraw the monthly lease amount and any additional amounts, including any taxes now due or imposed, owed by Lessee in connection with the Leased Equipment, by initiating debit entries to the DDA indicated on the Company Application or the Agreement, or such other DDA as the Lessee may from time to time use. In the event of default of Lessee’s obligations hereunder, Lessee authorizes the debit of its DDA for the full amount due under the lease. Lessee agrees to contest transactions that might be invalid within ninety (90) days of the transaction date, or the transaction will be deemed valid. A rental payment (whether paid by debit or other means) that is not honored by Lessee’s financial institution for any reason will be subject to a returned item service fee imposed by Lessor, the amount of which may be debited from Lessee’s DDA. Should it be necessary to switch to statement billing, Lessor is authorized to add a \$10.00 per month service charge to Lessee’s monthly payment amount as reimbursement for the added costs, services and processing expenses. If Lessor withdraws funds erroneously from Lessee’s DDA, Lessee authorizes Lessor to credit Lessee’s DDA for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect

until Lessor and Lessee's financial institution have received written notice from Lessee of its termination in such time and in such manner as to afford Lessor and Lessee's financial institution a reasonable opportunity to act. **LESSEE REPRESENTS AND WARRANTS THAT ITS DDA HAS BEEN ESTABLISHED AS A BUSINESS-PURPOSE COMMERCIAL CHECKING ACCOUNT.**

- 1.4. **Finance Lease.** Lessor and Lessee agree that the lease is a "Finance Lease" as defined by Section 11-2A-103(g) of the Georgia Uniform Commercial Code (the "GA UCC"). Lessee acknowledges either (i) that Lessee has reviewed and approved any written "Supply Contract" as defined by GA UCC Section 11-2A-103(y) covering the Leased Equipment purchased from the "Supplier" as defined by GA UCC Section 11-2A-103(x) thereof for lease to Lessee or (ii) that Lessor has informed or advised Lessee, in writing, either previously or by the lease of the following: (1) the identity of the Supplier; (2) that the Lessee may have rights under the Supply Contract; and (3) that the Lessee may contact the Supplier for a description of any such rights Lessee may have under the Supply Contract.
- 1.5. **Ordering Equipment; Lessor's Right to Terminate.** Lessee requests Lessor to purchase the Leased Equipment from Equipment Vendor and arrange for delivery to Lessee at Lessee's expense. If within forty-five (45) days from the date Lessor orders the Leased Equipment, the same has not been delivered, installed and accepted by Lessee in form satisfactory to Lessor, Lessor may on 10 days written notice to Lessee terminate the lease and its obligations to Lessee.
- 1.6. **Term and Rent.** The sum of all periodic installments of rent indicated in the Company Application or the Agreement will constitute the aggregate rent reserved under the lease. The lease term will commence as of the date that the lease is accepted by Lessor, (the "Commencement Date"), and will continue until the obligations of the Lessee under the lease will have been fully performed. The installments of rent will be payable monthly in advance as stated above or on a schedule, the first such payment being due on the Commencement Date, or such later date as Lessor designates in writing, and subsequent payments will be due on the same day of each successive month thereafter until the balance of the rent and any additional rent or expenses chargeable to Lessee under the lease will have been paid in full. All payments of rent will be made to Lessor at the address set forth in the Company Application or the Agreement or such other address as Lessor may designate in writing. Lessee's obligation to pay such rentals will be absolute and unconditional and is not subject to any abatement, set-off, defense of counterclaim for any reason whatsoever. Lessee authorizes Lessor to insert into the lease the serial numbers and other identification data of the Leased Equipment when determined by Lessor and dates or other omitted factual matters and to correct any typographical or spelling errors. If a security deposit is indicated in the Company Application, or in any additional application and setup forms, the same will be held by Lessor to secure the faithful performance of the terms of the lease and returned or applied in accordance with Section 1.17(d) below. In addition to the payment of monthly rent, Lessee agrees to pay Lessor an annual fee in an amount not to exceed \$50.00 for the administration, billing, reconciliation, and tracking of payments due under the lease, which may generate a profit to Lessor.
- 1.7. **Assignment.** (i) **LESSOR MAY ASSIGN OR TRANSFER THE LEASE OR LESSOR'S INTEREST IN THE LEASED EQUIPMENT WITHOUT NOTICE TO LESSEE.** Any assignee of Lessor will have all of the rights, but none of the obligations, of Lessor under the lease and Lessee agrees that it will not assert against any assignee of Lessor any defense, counterclaim or offset that Lessee may have against Lessor. Lessee acknowledges that any assignment or transfer by Lessor will not materially change Lessee's duties or obligations under the lease nor materially increase the burdens or risks imposed on Lessee. Lessee agrees that Lessor may assign or transfer the lease or Lessor's interest in the Leased Equipment even if said assignment or transfer could be deemed to materially affect the interest of Lessee. (ii) **LESSEE WILL NOT ASSIGN OR IN ANY WAY DISPOSE OF ALL OR ANY PART OF ITS RIGHTS OR OBLIGATIONS UNDER THE LEASE OR ENTER INTO ANY SUBLEASE OF ALL OR ANY PART OF THE LEASED EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR.** (iii) Lessee will not create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Leased Equipment or the lease or any of Lessor's interests thereunder.
- 1.8. **Title; Quiet Enjoyment.** Lessor will at all times retain title to the Leased Equipment. All documents of

title and evidence of delivery will be delivered to Lessor. Lessee authorizes Lessor, at Lessee's expense, to cause the lease or any statement or other instrument in respect to the lease showing the interest of Lessor in the Leased Equipment including Uniform Commercial Code Financing Statements, to be filed or recorded or refiled and rerecorded, and grants Lessor the right to execute Lessee's name thereto. Lessee agrees to execute and deliver any statement or instrument requested by Lessor for such purpose, and agrees to pay or reimburse Lessor for any filing, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement. Lessee will at its expense, protect and defend Lessor's title against all persons claiming against or through Lessee, at all times keep the Leased Equipment free from legal process or encumbrance whatsoever and, will give Lessor immediate notice thereof and will indemnify Lessor from any loss caused thereby. Lessee agrees to procure for Lessor, such estoppel certificates, landlord's or mortgagees' waiver or other similar documents as Lessor may reasonably request. Provided Lessee is not in default hereunder, Lessee will quietly use and enjoy the Leased Equipment subject to the terms hereof.

- 1.9. **Care, Use and Location.** Lessee will maintain the Leased Equipment in good operating condition, repair and appearance, and protect the same from deterioration other than normal wear and tear; will use the Leased Equipment in the regular course of its business, within its normal operating capacity, without abuse, and will comply with all Laws with respect to the use, maintenance and operation of the Leased Equipment; will use the Leased Equipment solely for business purposes; will not make any modification, alteration or addition to the Leased Equipment, without the written consent of Lessor, which will not be unreasonably withheld; will not at any time so affix the Leased Equipment to realty as to change its nature to real equipment or to a fixture regardless of how attached or installed; will keep the Leased Equipment at the location shown in the Company Application or the Agreement, and will not remove the Leased Equipment without written consent of Lessor, which will not be unreasonably withheld.
- 1.10. **Net Lease; Taxes.** Lessee intends the rental payments hereunder to be net to Lessor, and Lessee agrees to pay all sales, use, excise, personal equipment, stamp, documentary and ad valorem taxes, license and registration fees, assessment, fines, penalties and similar charges imposed on the ownership, possession or use of the Leased Equipment during the term of the lease; will pay all taxes (except Lessor's federal or state net income taxes) imposed on Lessor or Lessee with respect to the rental payments hereunder or the ownership of the Leased Equipment; and, will reimburse Lessor upon demand for any taxes paid by or advanced by Lessor. Lessee agrees that the reimbursement of equipment tax calculation is based on an average tax rate. Unless otherwise agreed to in writing, Lessee will file personal equipment tax returns with respect to the Leased Equipment.
- 1.11. **Indemnity.** Lessee will indemnify and save Lessor, its agents, servants, successors, and assigns harmless from all liability, damage or loss, including reasonable attorney's fees, arising out of the ownership, selection, possession, leasing, operation, control, use, condition (including but not limited to latent and other defects, whether or not discoverable by Lessee), maintenance, delivery and return of the Leased Equipment. The indemnities and obligations herein provided will continue in full force and effect notwithstanding the termination of the lease.
- 1.12. **Insurance.** During the term of the lease, Lessee agrees to maintain, at Lessee's expense, (i) "Special Form" property insurance protecting the Leased Equipment for its replacement value, naming Lessor as a loss payee on a "Lender's Loss Payable" endorsement; and (ii) public liability insurance, in amounts acceptable to Lessor, naming Lessor as an additional insured (together, "Required Insurance"). Lessee must provide Lessor satisfactory written evidence of Required Insurance within thirty (30) days of the Commencement Date or any subsequent written request. If Lessee does not do so, Lessor may obtain insurance from an insurer of Lessor's choosing in such forms and amounts as Lessor deems reasonable to protect Lessor's interests ("Lease Insurance"). Lease Insurance covers the Leased Equipment and the Lessor; it does not name the Lessee as an insured and may not cover all of the Lessee's interest in the Leased Equipment. Lessee agrees to pay Lessor periodic charges for Lease Insurance ("Insurance Charges") that include: a premium that may be higher than if the Lessee maintained the Required Insurance separately; a finance charge of up to 1.5% per month on any premium advances made by the Lessor or Lessor's agents; and billing and processing fees; each of which may generate a profit to Lessor and Lessor's agents. Unless Lessee provides satisfactory evidence of Required Insurance by the

Insurance Charge due date, Lessor will pay such Insurance Charge by debiting Lessee's DDA under the withdrawal provision of the lease. Lessor will discontinue billing Insurance Charges upon receipt of satisfactory evidence of Required Insurance.

- 1.13. **Loss or Destruction of Leased Equipment.** Lessee will bear the entire risk and be responsible for loss, theft, damage or destruction of the Leased Equipment from any cause whatsoever after taking possession of the Leased Equipment. Lessee will notify Lessor immediately if the Leased Equipment is lost, destroyed, stolen or taken by any other person. In the event of loss, damage or destruction of any item of Leased Equipment, Lessee at its expense (except to the extent of any proceeds of insurance provided by Lessee which will have been received by Lessor as a result of such loss, damage or destruction), and at Lessor's option, will either (i) repair such item, returning it to its previous condition, unless damaged beyond repair; (ii) pay Lessor all accrued and unpaid rental payments and late charges, plus an amount (the "Loss Amount") equal to (1) the value of all rental payments to become due during the remaining term of the lease, plus (2) the amount of any purchase option or obligation with respect to the Leased Equipment or, if there is no such option or obligation, the fair market value of the Leased Equipment, as estimated by Lessor in its sole reasonable discretion; or (iii) replace such item with a like item acceptable to Lessor, in good condition and of equivalent value, which will become equipment of Lessor, included within the term "Leased Equipment" as used herein, and leased from Lessor herewith for the balance of the full term of the lease.
- 1.14. **Loss or Destruction Waiver.** Lessor may waive Lessee's responsibility for loss or destruction of the Leased Equipment and for keeping the Leased Equipment fully insured during the lease term (a "Loss or Destruction Waiver"). Should Lessee fail to provide proof of insurance, Lessor may invoke the Loss or Destruction Waiver and charge a monthly fee at current rates established by the Lessors in order that Lessor may fully insure the loss of the Leased Equipment. In the event of loss or destruction of the Leased Equipment, Lessor will provide for its replacement with Leased Equipment of comparable value at that time provided (i) Lessee took reasonable care in preventing the loss or destruction of the Leased Equipment and (ii) Lessee has paid in a timely manner the required monthly amount for the Loss or Destruction Waiver. Lessee will cooperate with Lessor in making any claim with respect to the Leased Equipment.
- 1.15. **Event of Default.** If any one of the following events (each an "Event of Default") will occur, then to the extent permitted by applicable Law, Lessor will have the right to exercise any one or more remedies set forth in Section 1.16 below: (i) Lessee fails to pay any rental or any other payment hereunder when due; (ii) Lessee fails to pay, when due, any indebtedness of Lessee to Lessor arising independently of the lease, and such default will continue for five (5) days; (iii) Lessee fails to perform any of the terms, covenants, or conditions of the lease, other than as provided above, after 10 days' written notice; (iv) Lessee becomes insolvent or makes an assignment for the benefit of creditors; (v) a receiver, trustee, conservator, or liquidator of Lessee, of all or a substantial part of its assets, is appointed with or without the application or consent of Lessee; or (vi) a petition is filed by or against Lessee under the Bankruptcy Code of 1978, as amended, or under any other insolvency law(s), providing for relief of debtors.
- 1.16. **Remedies.** If an Event of Default will occur, Lessor may, at its option, at any time (i) declare immediately due and payable and recover from Lessee, as liquidated damages for the loss of a bargain and not as a penalty, an amount equal to all accrued and unpaid rental payments and late charges, taxes, and other fees, plus the Loss Amount; provided, however, that if an Event of Default will occur as described in Section 1.15(iv) through (vi) above, Lessor without any notice or action will be deemed to have made such a declaration; (ii) automatically charge the DDA or other bank accounts for all money amounts owed; (iii) to the extent permitted by applicable Law, without demand or legal process, enter into the premises where the Leased Equipment may be found and take possession of and remove the Leased Equipment, without liability for such retaking; (iv) Lessor may hold, sell or otherwise dispose of any such Leased Equipment at a private or public sale; or (v) exercise any other remedies available under applicable Law. If Lessor takes possession of the Leased Equipment, Lessor will give Lessee credit for any sums received by Lessor from the sale or rental of the Leased Equipment after deduction of the expenses of sale or rental and Lessee will remain liable to Lessor for any deficiency. Notwithstanding the foregoing, to the extent any software included with the Leased Equipment is nontransferable or its



transfer restricted, Lessee agrees that neither the Lessor or the licensor of such software will have any duty to remarket or otherwise mitigate any damages relating to such software.

Lessee will also be liable for and will pay to Lessor (i) all expenses incurred by Lessor in connection with the enforcement of any of Lessor's remedies including all collection expenses, that includes, but is not limited to, charges for collection letters and collection calls, charges of collection agencies, sheriffs, etc.; and all expenses of repossessing, storing, shipping, repairing and selling the Leased Equipment; and (ii) reasonable attorney's fees and court costs. Lessor and Lessee acknowledge the difficulty in establishing a value for the unexpired lease term and, owing to such difficulty, agree that the provisions of this Section represent an agreed measure of damages and are not to be deemed a forfeiture or penalty. All remedies of Lessor hereunder are cumulative, are in addition to any other remedies provided for by Law, and may, to the extent permitted by Law, be exercised concurrently or separately. The exercise of any one remedy will not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of the Lessor to exercise and no delay in exercising any right to remedy will operate as a waiver thereof or modify the terms of the lease.

#### 1.17. END OF LEASE TERM.

- (a) **UPON EXPIRATION OF THE LEASE TERM, LESSEE WILL HAVE THE OPTION TO PURCHASE LEASED EQUIPMENT FOR ITS RESIDUAL FAIR MARKET VALUE OR RETURN THE LEASED EQUIPMENT TO LESSOR.**
- (b) **THE EXERCISE OF THIS OPTION MUST BE COMMUNICATED TO LESSOR IN WRITING AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE LEASE TERM. THE LEASED EQUIPMENT IS SOLD "AS IS" "WHERE IS" "WITH ALL FAULTS." EXCEPT AS PROVIDED IN THE LEASE, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED EQUIPMENT PURCHASED.**
- (c) **IF LESSEE DOES NOT PURCHASE THE LEASED EQUIPMENT, THEN UPON EXPIRATION OR EARLIER TERMINATION OF THE LEASE, LESSEE WILL RETURN THE LEASED EQUIPMENT TO LESSOR IN GOOD OPERATING CONDITION AND REPAIR, SHIPPED BY PREPAID AND INSURED FREIGHT TO A LOCATION DESIGNATED BY LESSOR. IF, IN THE JUDGMENT OF LESSOR, THE LEASED EQUIPMENT IS RETURNED DAMAGED, INCOMPLETE, OR SHOWS SIGNS OF EXCESSIVE WEAR, LESSEE AGREES TO PAY THE REPLACEMENT COST OR THE REPAIR AND REFURBISHING COST (INCLUDING CLEANING), FOR AN AMOUNT DESIGNATED BY LESSOR AND PAYABLE WITHIN 10 DAYS OF LESSOR'S DEMAND.**
- (d) **IF LESSEE DOES NOT ELECT TO PURCHASE OR RETURN THE LEASED EQUIPMENT UPON EXPIRATION OR TERMINATION OF THE LEASE AS PROVIDED HEREIN, THE LEASED EQUIPMENT WILL CONTINUE TO BE HELD AND LEASED HEREUNDER, AND THE LEASE WILL BE EXTENDED FOR A PERIOD OF UP TO 12 MONTHS UPON THE EXISTING TERMS AND CONDITIONS OF THIS LEASE AGREEMENT AND AT THE SAME MONTHLY RENTAL, SUBJECT TO THE RIGHT OF EITHER THE LESSEE OR THE LESSOR TO TERMINATE THE LEASE UPON THIRTY (30) DAYS WRITTEN NOTICE, WHEREUPON THE LESSEE WILL FORTHWITH DELIVER THE LEASED EQUIPMENT TO LESSOR AS SET FORTH IN THIS SECTION. ONCE THE LESSEE HAS FULLY PAID THE ADDITIONAL 12 MONTHS OF EXTENDED LEASE RENTAL, SUCH PAYMENT WILL OPERATE AS PAYMENT OF THE RESIDUAL FAIR MARKET VALUE OF THE EQUIPMENT AND LESSEE WILL BE DEEMED TO HAVE PURCHASED THE LEASED EQUIPMENT.**
- (e) **PROVIDED LESSEE HAS FULFILLED ALL OF ITS OBLIGATIONS TO LESSOR HEREUNDER, LESSEE'S SECURITY DEPOSIT OR SECURITY RESERVE, IF ANY, AS**

**INDICATED IN THE COMPANY APPLICATION, OR IN ANY ADDITIONAL APPLICATION AND SETUP FORMS, (1) WILL BE REFUNDED TO LESSEE AT THE EXPIRATION OF THE LEASE WITHOUT INTEREST OR (2) AT LESSEE'S DIRECTION, SUCH SECURITY DEPOSIT MAY BE APPLIED TO THE PURCHASE OF THE LEASED EQUIPMENT, IN WHICH EVENT THE LEASED EQUIPMENT NEED NOT BE RETURNED TO LESSOR.**

- 1.18. **Entire Agreement; Changes.** Notwithstanding anything in the TOS to the contrary, the lease terms in this Schedule A contain the entire agreement between the parties regarding the lease and may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by an executive officer of Lessor and by the Lessee.
- 1.19. **Miscellaneous.** If Lessee fails to pay any rent or other amount required herein to be paid to Lessor within five (5) days of when due, Lessee agrees to pay Lessor, in addition to the payment, a late charge of 15% of the amount past due (but at least \$7.50) for each late payment. Each month the past due payment remains unpaid, an additional late fee in the amount defined will be assessed. Payments are applied to late fees and service charges first and then to the lease obligation. Amounts will be payable in addition to all amounts payable by Lessee to Lessor as a result of exercise of any of the remedies herein provided. If Lessee requests any services not provided for herein, Lessee agrees to pay an applicable fee for delivery of such services. Lessee will inform Lessor of any change in Lessee's name, address, billing address, telephone numbers, location of the Leased Equipment, or DDA. If Lessee fails to comply with any provision of the lease, Lessor will have the right, but not be obligated, to affect such compliance on behalf of Lessee upon 10 days prior written notice to Lessee. In such event, all monies expended by, and all expenses of Lessor in effecting such compliance, will be deemed to be additional rental, and will be paid by Lessee at the time of the next monthly payment of rent. All notices under the lease will be sufficient if given personally or mailed postage prepaid to the party intended at the respective address set forth herein, or at such other address as said party may provide in writing from time to time. The lease inures to the benefit of and is binding upon the personal representatives, successors and assigns of the parties hereto. Time is of the essence of the lease. Lessor and Lessee intend the lease to be a valid and subsisting legal instrument, and agree that no provision of the lease that may be deemed unenforceable will in any way invalidate any other provision or provisions of the lease, all of which will remain in full force and effect. The lease will be binding when accepted in writing by Lessor and will be governed by the laws of the State of Georgia, provided however, if the lease or any provision hereof is not enforceable under the laws of the State of Georgia then the laws of the state where the Leased Equipment is located will govern. To the extent the arbitration agreement set forth in Section 18.6 of the TOS, which is incorporated herein, is determined by a court of competent jurisdiction to be inapplicable to a dispute related in any way to the lease of equipment then, Lessee and Lessor consent and submit to the jurisdiction of the federal and state courts located in the State of Georgia and within Fulton County (the "Courts"), and expressly agree to such forum for the bringing of any suit, action or other proceeding arising out of the Lessee's or Lessor's obligations hereunder, and expressly waive any objection to venue in any such Courts. Lessee agrees that any process served for any court action or proceeding will be valid if mailed by certified mail, return receipt requested.
- 1.20. **Important Information about Credit Reporting.** Lessor may report information about this account to credit bureaus. Late payments, missed payments, or other defaults on this account may be reflected in the credit reports of Lessee and Guarantor.

## 2. Equipment Leasing in Canada.

- 2.1. **Non-Cancellable Lease.** This lease cannot be cancelled by Lessee during the term hereof except under certain circumstances outlined in the Code of Conduct for the Credit and Debit Card Industry in Canada. Lessor leases to Lessee and Lessee leases from Lessor the Leased Equipment on terms and conditions set forth herein. The parties agree that the lease of the Leased Equipment in the lease is, for all purposes, a financial lease under a financial lease agreement (as such terms are used in the Bank Act (Canada) and the regulations thereunder). Lessee acknowledges acceptance and receipt of the Leased Equipment and certify that the Leased Equipment will be used for business purposes only. **Lessee authorizes any credit**

**reporting agency or bureau to furnish to Lessor upon Lessor's request a credit bureau report that relates to Lessee.**

- 2.2. **No Warranties by Lessor.** Lessor has made and makes no representations or warranties of any kind or nature, directly or indirectly, expressed or implied, as to any matter whatsoever, including the suitability of the Leased Equipment, its durability, its condition, or its quality. Lessee leases the Leased Equipment "as-is." Lessor disclaims any warranty of merchantability or fitness for use or purpose whether arising by operation of law or otherwise. Lessor will not be liable to Lessee or others for any loss, damage or expense of any kind or nature caused directly or indirectly by any Leased Equipment however arising, or the use or maintenance thereof or the failure of operation thereof, or the repairs, service or adjustment thereto. No representation or warranty as to the Leased Equipment or any other matter by the supplier of the Leased Equipment (the "Vendor"), the manufacturer or others will be binding on Lessor nor will the breach of such relieve Lessee of, or in any way affect, any of Lessee's obligations to Lessor herein. If the Leased Equipment is not satisfactory for any reason, Lessee will make any claim on account thereof solely against the Vendor or manufacturer, or both, and Lessee will nevertheless perform all of Lessee's obligations under the lease. Lessee will not assert any claim whatsoever against Lessor for any loss whatsoever including without limitation any loss of anticipatory profits or any other indirect, special, or consequential damages. Lessor makes no warranty as to the treatment of the lease for accounting or tax purposes. Neither Vendor nor any agent of Vendor is an agent of Lessor or is authorized to waive or alter any term or condition of the lease.
- 2.3. **Ordering Leased Equipment; Lessor's Right to Terminate.** Lessee has selected the Leased Equipment and the Vendor and requested that Lessor purchase the Leased Equipment from the Vendor and arrange for delivery to Lessee at Lessee's expense. If within 45 days from the date Lessor orders the Leased Equipment, it has not been delivered, installed and accepted by Lessee in form satisfactory to Lessor, Lessor may on 10 days written notice to Lessee terminate the lease and Lessor's obligations to Lessee.
- 2.4. **Term and Payments.** The sum of all periodic monthly installment payments indicated herein or on any application will constitute the aggregate payments under the lease. The term of the lease will commence as of the date that the lease is accepted by Lessor (the "Commencement Date"), and will continue until all of Lessee's obligations under the lease have been fully performed. The installment payments will be payable monthly in advance, the first payment being due on the Commencement Date, or such later date as Lessor designates in writing, and subsequent payments will be due on the same day of each successive month thereafter until all of the balance of the payments and any additional payments or expenses payable by Lessee under the lease have been paid in full. All payments will be made to Lessor by pre-authorized debit as contemplated herein or at the address set forth herein or such other address as Lessor may designate in writing. Lessee authorizes Lessor and its agents to withdraw without advance notice to Lessee, which notice Lessee waives, any amounts, including any taxes now due or imposed, owed by Lessee in conjunction with the lease, by initiating periodic debit entries to the DDA all in accordance with and subject to the terms of Schedule B. Upon a Default (as defined below), Lessee authorizes debit of the DDA for the full amount due under the lease. Lessee agrees that any withdrawals authorized above are pre-authorized debits for business purposes, as defined under Rule H1 of the CPA. Lessee represents, warrants and guarantees that all persons whose signatures are required to sign on the DDA have signed the lease and that the DDA is a business purpose account. By providing and delivering this authorization to Lessor, this constitutes delivery to the financial institution that maintains the DDA. A lease payment (whether paid by debit or other means) that is not honored by Lessee's financial institution for any reason will be subject to a returned item service fee in the amount of \$20 payable by Lessee to Lessor, the amount of which may be debited from the DDA. Should it be necessary to switch to statement billing from pre-authorized debits, Lessor is authorized to add a \$10.00 per month service charge to the monthly payment amount as reimbursement for the added service and processing expenses. Lessee's obligation to make all payments hereunder will be absolute and unconditional and is not subject to any abatement, set-off, compensation, defense or counterclaim for any reason whatsoever. If a security deposit is required, the same will be held by Lessor to secure the faithful performance of the lease and returned or applied in accordance with the terms of the lease. If Lessee fails to make any monthly payment or other amount required herein to be paid to Lessor within five (5) days of when due, Lessee agrees to pay Lessor, in addition to the required payment, a late fee of 15% of the amount past due (but at least \$7.50) for each



late payment. Each month the past due payment remains unpaid, an additional late fee will be assessed. Payments are applied to late fees and service charges first and then to payments in respect of lease obligations. These amounts will be payable in addition to all amounts payable by Lessee to Lessor as a result of exercise of any of the remedies herein provided. If Lessee requests and Lessor provides any services not set out herein, Lessee agrees to pay additional applicable fees. In addition to the payment of monthly rent, Lessee agrees to pay Lessor an annual fee in an amount not to exceed \$50.00 for the administration, billing, reconciliation, and tracking of payments due under the lease, which may generate a profit to Lessor.

- 2.5. **Assignment.** (a) Lessor may assign or transfer the lease or Lessor's interest in the Leased Equipment without notice to or consent by Lessee. Any assignee of Lessor will have all of the rights, but none of the obligations, of Lessor under the lease and Lessee agrees that it will not assert against any assignee of Lessor any defense, counterclaim, set-off or compensation that Lessee may have against Lessor, (b) Lessee will not assign all or any part of Lessee's rights or obligations under the lease or enter into any sublease of all or any part of the Leased Equipment without Lessor's prior written consent, (c) Lessee will not create, incur, assume or suffer to exist any security interest, mortgage, lien, pledge, hypothec or other right, encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Leased Equipment or the lease or any of Lessor's interests thereunder.
- 2.6. **Title; Quiet Enjoyment.** Lessor will at all times retain title to the Leased Equipment. Lessor may at Lessee's expense, cause the lease or any document, statement or other instrument in respect to the lease showing Lessor's interest in the Leased Equipment, including without limitation Personal Property Security Act or Civil Code of Québec financing statements, to be filed, registered or recorded, or refiled, reregistered and rerecorded, as applicable. Lessee waives the right, where permitted by law, to receive a copy of any financing statement, financing change statement or verification statement. Lessee agrees to execute and deliver any document, statement or instrument requested by Lessor for such purpose, and agrees to reimburse Lessor for any expense arising therefrom. Lessee will at Lessee's expense protect and defend Lessor's title against all persons claiming against or through Lessee, at all times keep the Leased Equipment free from legal process or encumbrance whatsoever, and will give Lessor immediate notice thereof and will indemnify Lessor from any loss caused thereby. Lessee agrees to procure for and deliver to Lessor, such estoppel certificates, landlord's or mortgagees' waiver or other similar documents as Lessor may request. Provided Lessee is not in default hereunder, Lessee may quietly use and enjoy the Leased Equipment subject to the terms hereof.
- 2.7. **Care, Use and Location.** Lessee will maintain the Leased Equipment in good operating condition, repair and appearance, and protect the same from deterioration other than normal wear and tear; will use the Leased Equipment in the regular course of Lessee's business, within its normal operating capacity, without abuse, and will comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Leased Equipment; will use the Leased Equipment solely for business purposes; will not make any modification, alteration or addition to the Leased Equipment without Lessor's prior written consent; will not affix the Leased Equipment to real or immovable property as to change its nature to a fixture; will keep the Leased Equipment at the location(s) to which Lessor has agreed, and will not move the Leased Equipment from such location(s) without Lessor's prior written consent. Under no circumstances does Lessor have any responsibility to install, promote, service, clean, maintain or repair the Leased Equipment, all of which is Lessee's responsibility.
- 2.8. **Net Lease; Taxes.** Lessee intends the monthly payments hereunder to be net to Lessor, and Lessee agrees to pay all provincial, territorial and federal sales, goods and services, harmonized, use, excise, stamp, documentary and ad valorem taxes, license and registration fees, assessments, fines, penalties and similar charges imposed on the lease, possession or use of the Leased Equipment during the term of the lease; Lessee will pay all taxes (except Lessor's net capital and income taxes) imposed on Lessor or Lessee with respect to the payments hereunder or the lease of the Leased Equipment; and, will reimburse Lessor upon demand for any taxes paid by or advanced by Lessor. Lessor is entitled to the tax benefits available to an owner of the Leased Equipment, including without limitation, the right to claim tax depreciation, capital cost allowance or other deductions in respect of the capital cost thereof, investment tax credits and deductions for interest incurred by Lessor to finance the purchase of the Leased Equipment, and Lessee

will not take any tax filing position inconsistent with the foregoing.

- 2.9. **Indemnity.** Lessee will indemnify and save Lessor, Lessor's agents, servants, successors and assigns harmless from all liability, damage or loss, including without limitation reasonable legal fees, arising out of the ownership, selection, possession, leasing, operation, control, use, condition (including but not limited to latent and other defects, whether or not discoverable by Lessee), maintenance, delivery and return of the Leased Equipment. The indemnities and obligations herein provided will continue in full force and effect notwithstanding the termination of the lease.
- 2.10. **Insurance.** Lessee will keep the Leased Equipment insured against all risks of loss or damage from any cause whatsoever for not less than the full replacement value thereof. The amount of such insurance will be sufficient so that neither Lessor nor Lessee will be considered a co-insurer. Lessee will carry public liability insurance, both personal injury and equipment damage, covering the Leased Equipment. All such insurance will be in form and with insurers satisfactory to Lessor, and will name Lessor and any assignee as first loss payee as its interest may appear with respect to equipment damage coverage and as additional insured with respect to public liability coverage. Lessee will pay the premiums for such insurance and upon request deliver to Lessor satisfactory evidence of insurance coverage required hereunder. The proceeds of such insurance payable, as a result of loss or damage to any item of Leased Equipment, will be applied to satisfy Lessee's obligation as set forth in Section 2.11 below. Lessee irrevocably appoints Lessor as Lessee's attorney-in-fact, to make a claim for, receive payment of and execute and endorse all documents, cheques or drafts, received in payment for loss or damage under any such insurance policy. This appointment is coupled with an interest and is irrevocable.
- 2.11. **Loss or Destruction of Leased Equipment.** Lessee will notify Lessor immediately and will bear the entire risk and be responsible for loss, theft, damage or destruction of the Leased Equipment from any cause whatsoever after taking possession of the Leased Equipment. In such event, Lessee will at Lessee's expense (except to the extent of any proceeds of insurance provided by Lessee which will have been received by Lessor as a result thereof), and at Lessor's option, will either (a) repair such item, returning it to its previous condition, unless damaged beyond repair; or (b) pay Lessor all accrued and unpaid monthly payments and late charges payable hereunder, plus an amount (the "Loss Amount") equal to (i) the value of all monthly payments to become due during the remaining term of the lease, plus (ii) the amount of any purchase option or obligation with respect to the Leased Equipment or, if there is no such option or obligation, the fair market value of the Leased Equipment, as estimated by Lessor in Lessor's sole reasonable discretion; or (c) replace such item with a like item acceptable to Lessor, in good condition and of equivalent value, which will be and become Lessor's property, will be included within the term "Leased Equipment" as used herein and will be leased from Lessor herewith for the balance of the full term of the lease.
- 2.12. **Loss or Destruction Waiver.** Lessor may in Lessor's sole and absolute discretion waive Lessee's responsibility for loss or destruction of the Leased Equipment and for keeping the Leased Equipment fully insured during the lease term (a "Loss or Destruction Waiver"). Should Lessee fail to provide proof of insurance, Lessor may invoke the Loss or Destruction Waiver and charge a monthly fee of \$4.95 in order that Lessor may fully insure the Leased Equipment. In the event of loss or destruction of the Leased Equipment, Lessor will provide for its replacement with Leased Equipment of comparable value at that time, provided (i) Lessee took reasonable care in preventing the loss or destruction of the Leased Equipment and (ii) Lessee has paid in a timely manner the required monthly fee for the Loss or Destruction Waiver. Lessee will cooperate with Lessor in making any claim with respect to the Leased Equipment.
- 2.13. **Default.** If any one of the following events (each a "Default") will occur, then to the extent permitted by applicable law, Lessor will have the right to exercise any one or more remedies set forth herein: (i) Lessee fails to pay any payments hereunder, monthly or otherwise, when due; or (ii) Lessee fails to pay, when due, any indebtedness owed to Lessor or any of Lessor's affiliates arising independently of the lease, and such default will continue for five (5) days; or (iii) Lessee fails to perform any of the terms, covenants, or conditions of the lease, other than as provided above, after 10 days written notice; or (iv) Lessee becomes insolvent or make an assignment for the benefit of creditors; or (v) a receiver, trustee or liquidator of

Lessee or of all or a substantial part of Lessee's assets are appointed with or without Lessee's application or consent; or (vi) an application for a bankruptcy order is filed, or any other proceedings are commenced by or against Lessee, or Guarantor, under the Bankruptcy and Insolvency Act (Canada), or under any other bankruptcy, arrangement, dissolution, liquidation or insolvency law(s) providing for relief of debtors.

2.14. **Remedies.** If a Default will occur, Lessor may, at Lessor's option, at any time (i) declare immediately due and payable and recover from Lessee, as liquidated damages for the loss of a bargain and not as a penalty, an amount equal to all accrued and unpaid installment payments and late charges, taxes, and other fees, plus the Loss Amount; provided, however, that if a Default will occur as described in any of Sections 2.13(iv) through (vi) above, Lessor without any notice or action will be deemed to have made such a declaration; (ii) automatically charge any or all of Lessee's credit cards or accounts, other lines-of-credit or the DDA or other bank accounts for all money amounts owed; (iii) to the extent permitted by applicable Law, without demand or legal process, enter into the premises where the Leased Equipment may be found and take possession of and remove the Leased Equipment, without liability for such retaking; (iv) hold, sell or otherwise dispose of any such Leased Equipment at a private or public sale; or (v) exercise any other remedies available under applicable Law. If Lessor takes possession of the Leased Equipment, Lessor will give Lessee credit for any sums received by Lessor from the sale or rental of the Equipment after deduction of the expenses of sale or other disposition and Lessee will remain liable to Lessor for any deficiency. Notwithstanding the foregoing, to the extent any software forming part of the Leased Equipment is nontransferable or its transfer restricted, Lessee agrees that Lessor and the licensor of such software will have no duty to remarket such software or otherwise mitigate any damages relating to such software. Lessee will also be liable for and will pay to Lessor (i) all expenses incurred by Lessor in connection with the enforcement of any of Lessor's remedies including without limitation all collection expenses, that includes, but is not limited to, charges for collection letters and collection calls, charges of collection agencies, sheriffs, etc.; and all expenses of repossessing, storing, shipping, repairing and selling the Leased Equipment; and (ii) reasonable legal fees and court costs. Lessee and Lessor acknowledge the difficulty in establishing a value for the unexpired lease term and, owing to such difficulty, agree that the provisions of this paragraph represent an agreed measure of damages and are not to be deemed a forfeiture or penalty. All of Lessor's remedies hereunder are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised concurrently or separately. The exercise of any one remedy will not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on Lessor's part to exercise and no delay in exercising any right to remedy will operate as a waiver thereof or modify the terms of the lease.

2.15. **END OF LEASE TERM.**

- (a) **UPON EXPIRATION OF THE LEASE TERM, LESSEE WILL HAVE THE OPTION TO PURCHASE THE LEASED EQUIPMENT BASED UPON THE ORIGINAL CUSTOMER APPLICATION OR STAND-ALONE LEASE. OPTIONS MAY INCLUDE \$1, \$10, OR AN AMOUNT EQUAL TO 10% OF THE AGGREGATE LEASE PAYMENTS ON 12 MONTH, 24 MONTH, 36 MONTH, OR 48 MONTH LEASES. WRITTEN NOTICE OF THE EXERCISE OF THIS OPTION MUST BE SENT TO LESSOR AT LEAST THIRTY (30) DAYS PRIOR TO EXPIRATION OF THE LEASE TERM;**
- (b) **IF LESSEE DOES NOT ELECT TO PURCHASE THE LEASED EQUIPMENT, THEN UPON EXPIRATION OR EARLIER TERMINATION OF THE LEASE, LESSEE WILL RETURN THE LEASED EQUIPMENT TO LESSOR IN GOOD OPERATING CONDITION AND REPAIR, SHIPPED BY PREPAID AND INSURED FREIGHT TO A LOCATION DESIGNATED BY LESSOR. IF THE LEASED EQUIPMENT IS RETURNED DAMAGED, INCOMPLETE OR SHOWS SIGNS OF EXCESSIVE WEAR, LESSEE AGREES TO PAY THE REPLACEMENT COST OR THE REPAIR, REFURBISHING AND CLEANING COST IN AN AMOUNT DESIGNATED BY LESSOR WHICH IS PAYABLE WITHIN 10 DAYS OF LESSOR'S DEMAND;**
- (c) **IF LESSEE DOES NOT ELECT TO PURCHASE OR RETURN THE LEASED**

**EQUIPMENT AS PROVIDED IN (I) OR (II) ABOVE, THE LEASED EQUIPMENT WILL CONTINUE TO BE HELD AND LEASED HEREUNDER AND THE LEASE WILL BE EXTENDED UP TO 12 MONTHS AT THE THEN CURRENT MONTHLY PAYMENT. UPON NOTICE FROM LESSOR TO LESSEE, LESSEE WILL BE DEEMED TO HAVE PURCHASED THE LEASED EQUIPMENT FROM LESSOR ON AN “AS IS, WHERE IS” BASIS, SUBJECT TO THE RIGHT OF EITHER LESSEE OR LESSOR TO TERMINATE THE LEASE UPON THIRTY (30) DAYS WRITTEN NOTICE, WHEREUPON LESSEE WILL DELIVER THE LEASED EQUIPMENT TO LESSOR AS SET FORTH IN THIS PARAGRAPH;**

- (d) **PROVIDED LESSEE HAS FULFILLED ALL OF LESSEE’S OBLIGATIONS HEREUNDER, LESSEE’S SECURITY DEPOSIT, IF ANY, (1) WILL BE REFUNDED AT THE EXPIRATION OF THE LEASE WITHOUT INTEREST OR (2) AT LESSEE’S DIRECTION, SUCH SECURITY DEPOSIT MAY BE APPLIED TO THE PURCHASE OF THE LEASED EQUIPMENT BY LESSEE.**

- 2.16. **Privacy.** Each of Lessee and Guarantor consents and agrees that Lessor may (i) collect and use any personal information provided by Lessee or Guarantor or obtained under any provision of the lease for the purpose of furthering the objects of the lease and to respond to any further application for services by Lessee; (ii) **use such information to conduct credit checks from time to time with credit bureaus;** (iii) disclose such information and any information regarding late payments, missed payments or Defaults hereunder to Lessor’s affiliates and third party service providers, payment networks, credit bureaus or agencies, financial institutions and similar parties for the purposes stated herein; (iv) use such information to investigate potentially fraudulent or questionable activities regarding the Leased Equipment or services for which the Leased Equipment is used; (v) use or disclose such information in the course of any actual or potential sale, reorganization, amalgamation or other change to Lessor’s business or assignment under Section 2.5 above; (vi) collect, use and disclose such information when required or permitted by applicable law, regulation or legal process; and (vii) retain all such information for such periods of time as required by Lessor to perform Lessor’s obligations and exercise Lessor’s rights under the lease.
- 2.17. **Miscellaneous.** Lessee will inform Lessor of any change in Lessee’s name, address, billing address, telephone numbers, location of the Leased Equipment, or the DDA. If Lessee fails to comply with any provision of the lease, Lessor will have the right, but not be obligated, to effect such compliance on Lessee’s behalf upon 10 days prior written notice to Lessee. In such event, all monies expended by Lessor and all Lessor’s expenses in effecting such compliance, will be deemed to be additional obligations hereunder, and will be paid by Lessee at the time of the next monthly payment hereunder. All notices under the lease will be sufficient if given personally or mailed postage prepaid to the party intended at the respective address set forth herein, or at such other address as said party may provide in writing from time to time. The lease inures to the benefit of and is binding upon the personal representatives, successors, heirs and assigns of the parties hereto. Time is of the essence of the lease. Lessee and Lessor intend the lease to be a valid and subsisting legal instrument, and agree that no provision of the lease that may be deemed unenforceable in any jurisdiction will in any way invalidate any other provision or provisions of the lease in that jurisdiction, all of which will remain in full force and effect. References to any legislation, statutory instrument, regulation, rule or a section thereof, unless otherwise specified, is a reference to the legislation, statutory instrument, regulation, rule or section as amended, restated or re-enacted from time to time. The lease and the personal guarantee set forth herein will be binding on Lessee and Guarantor when accepted in writing by Lessor and will be governed by the laws of the Province of Ontario and the federal laws of Canada applicable in such Province, except if the Leased Equipment is situated in the Province of Québec, in which case the lease will be governed by the laws of the Province of Québec and the federal laws of Canada applicable in such Province. The limitation period in the lease is extended to the greater of six years or any longer period permitted by applicable law. For greater certainty, each of the parties hereto acknowledges that the lease is a “business agreement” as defined under Section 22 of the Limitations Act, 2002 (Ontario).

## Schedule B

### Provisions Applicable to Acceptance of Transactions in Canada

1. **The following provisions supersede the referenced provisions of the Agreement for purposes of Transactions in Canada:**
  - 1.1. **Section 3.3. Member Responsibilities.** Member will facilitate ACH Transactions and comply with all ACH Rules as applicable to Member in providing Services under this Agreement. Member will have no liability to Company under this Agreement.
  - 1.2. **Section 4.3(b). Recoupment and Set-Off.** Company acknowledges that in the event of a Bankruptcy Proceeding, in order for Company to provide adequate protection under applicable Laws to Elavon and in order to ensure that Elavon does not and is not obliged to advance credit to Company, Elavon may create a Reserve Account or Company will create or maintain the Reserve Account as required by Elavon and Elavon will have the right to offset against the Reserve Account for all obligations Company may owe to Elavon, without regard to whether the obligations relate to Transactions initiated or processed before or after the filing of the application, petition, motion, request for stay or other proceeding in connection with a Bankruptcy Proceeding.
  - 1.3. **Section 8.2. Office of Foreign Assets Control Compliance.** Intentionally Omitted.
  - 1.4. **Section 8.3. Export Laws Compliance.** Company will comply with all Canadian export Laws, including the list and guide maintained by Export Controls Division of Foreign Affairs, Trade and Development Canada, the *Corruption of Foreign Public Officials Act (Canada)* and OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, governing the export and re-export of hardware, software or technology applicable to the Services and Equipment. 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 Canadian 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.
  - 1.5. **Section 16. Personal Guaranty.** As a primary inducement to Elavon and Member to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by Elavon or Member to or for the benefit of Company, the designated Guarantor(s), jointly and severally, and in Quebec solidarily, unconditionally and irrevocably, guarantee the continuing full and faithful payment and performance by Company of all duties, debts, liabilities and obligations of Company to Elavon or Member, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by Company to Elavon or Member in any currency, and wherever incurred, and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by Company to Elavon or Member in any currency pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice (collectively, the "Obligations"). The Guarantor(s) also unconditionally agrees that, if Company does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Guarantor(s) for any reason under the guarantee set forth above, the Guarantor(s) will indemnify Elavon and Member immediately on demand against any cost, loss, damage, expense or liability suffered by Elavon or Member as a result of Company's failure to do so. The liability of the Guarantor(s) hereunder is unlimited. No act or thing, except the indefeasible and full payment and discharge in cash of all of the Obligations, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), will in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives all defenses of Company pertaining to the Obligations, any evidence thereof, and any security therefore, except the defense of discharge of the Obligations by full and indefeasible payment in cash. Guarantor's(s') liability to pay or perform the Obligations will arise immediately after demand has been made in writing on Guarantor(s). Guarantor(s) understands further that Elavon or Member may proceed directly against Guarantor(s) without first exhausting their respective remedies against Company or any other person or entity responsible therefore or any security



held by Elavon, Member, or Company. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guarantee and of the creation and existence of the Obligations; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing the Obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); (iv) without limiting in any way any other waivers of defenses set out herein, all defenses available at equity or common law to the fullest extent permitted under applicable law; and (v) **the right to trial by jury in action in connection with this Personal Guarantee.** Guarantor(s) agrees that this is a continuing guarantee and that Guarantor's(s') liability under this Personal Guarantee will not be discharged, affected or released by: (a) any variation, renewal, extension or replacement of the Agreement, other agreements or any security (including any other guarantees) held by Elavon or Member; (b) any extension of time or other indulgence given to Company or others under the Agreement or any security; (c) any delay or refusal by Elavon to require or enforce payment of the Obligations or any security; (d) the taking, non-perfecting, or giving up of any security or by any dealings with Company or others respecting the Obligations, the Agreement or any security; (e) the death or legal incapacity of the Guarantor(s) or the dissolution, amalgamation, other fundamental change, death or legal incapacity, as the case may be, of Company; or (f) any event which results in Company not being under a legal obligation to make any payment or perform any obligation under the Agreement. Guarantor(s) renounces the benefit of discussion and division. This Personal Guarantee will bind all heirs, administrators, estate trustees, representatives, permitted successors, and assigns of Guarantor(s), and may be enforced by or for the benefit of any successors in interest to Elavon or Member. Guarantor(s) understands that the inducement to Elavon and Member to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Company, is consideration for the Personal Guarantee and that each Personal Guarantee remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guarantee. **Guarantor authorizes any credit reporting agency or bureau to furnish Elavon and Member upon request with a credit bureau report that relates to the Guarantor.** To the extent that any limitation period applies to any claim for payment of obligations or remedy for enforcement of obligations under this Personal Guarantee, each Guarantor agrees that: (a) any limitation period is expressly excluded and waived entirely if permitted by applicable law; (b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law; (c) any limitation period applying to this Personal Guarantee expressed to be payable on demand will not begin before an express demand for payment of the relevant obligations is made in writing by Elavon or Member to the Guarantor; (d) any applicable limitation period will begin afresh upon any payment or other acknowledgment by the Guarantor of its obligations; and (e) each of this Personal Guarantee and the Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies to it. This Personal Guarantee has been negotiated by the Guarantor or reviewed by the Guarantor with the benefit of independent legal counsel and any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply to the construction or interpretation of this Personal Guarantee.

- 1.6. **Section 18.2. Jurisdiction and Venue; Governing Law.** For all disputes relating to the enforceability of the arbitration agreement set forth below in Section 18.6, or to the extent the arbitration agreement set forth in section 18.6 is determined to be unenforceable or inapplicable to any matter arising out of or related to the Agreement, whether in contract, tort or otherwise, then the Laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario, without giving effect to the choice-of-law rules of the Province of Ontario, will govern such matter, except for a hypothec created pursuant to Section 4.1(a) (the "**Québec Hypothec**") which will be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada applicable in the Province of Québec. The parties agree that all performances and Transactions in Canada will be deemed to have occurred in the Province of Ontario and that Company's entry into and performance of the Agreement will be deemed to be the transaction of business within the Province of Ontario. Any action or proceeding relating to or arising from the Agreement (other than with respect to the Québec Hypothec) must be brought, held, or otherwise occur exclusively in Toronto, Canada, and the parties attorn to the exclusive jurisdiction of the courts of Ontario (the courts of the Province of Québec located in Montreal, Québec with respect to the Québec Hypothec). Elavon and Company waive all right to trial by jury in any action or proceeding relating to the Agreement. Elavon and Company each represents to the other that this waiver is knowingly, willingly and voluntarily given.

- 1.7. **Section 18.6. Arbitration.** All claims, controversies or disputes arising out of, or in connection with, this Agreement, or in respect of any legal relationship associated with it or derived from it, will be finally resolved by arbitration administered by the Alternative Dispute Resolution Institute of Canada Inc. under its ADRIE Arbitration Rules (a copy of which can be reviewed at <http://adric.ca/arbrules/>), except that the arbitration proceeding will be conducted before one neutral arbitrator who will be an active member of the bar of the Province of Ontario and actively engaged in the practice of law for at least 10 years and who will issue a reasoned award. The seat of arbitration will be Toronto, Ontario. The language of the arbitration will be English. The arbitrator will have the authority to award any remedy or relief that a provincial court in the Province of Ontario could order or grant. The arbitrator will have no authority to decide claims on a class action or collective action basis. The arbitrator can only decide Elavon's or the Company's claims and may not consolidate or join the claims of other persons who may have similar claims. No party to this Agreement may assert a claim in arbitration on behalf of any third party or represent any class of claimants in an arbitration brought pursuant to the Agreement. While each party will bear its own legal fees incurred in the arbitration proceeding, absent a contrary determination by the arbitrator as set forth in a reasoned award, Elavon will bear all administrative cost of the arbitration including the arbitrator's fees and will reimburse the Company's filing fee if the Company initiates the arbitration.
- 1.8. **Section 18.8 Bankruptcy.** Company will immediately notify Elavon of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Company or any of its principals. Company will include Elavon on the list and matrix of creditors as filed with any bankruptcy, commercial or civil court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and will allow the pursuit of any other action available to Elavon under applicable Payment Network Regulations or Laws. Company agrees that the Agreement is a contract for the advance of credit to Company within the meaning of Section 11.01(b) of the *Companies' Creditors Arrangement Act* (Canada) and within the meaning of Section 65.1(4)(b) of the *Bankruptcy and Insolvency Act* (Canada) and cannot be assigned by Company in the event of a Bankruptcy Proceeding relating to Company. Company acknowledges but that for the agreement in the immediately preceding sentence, Member and Elavon would not have entered into the Agreement.
- 1.9. **Section 18.12. Amendments.** Member and Elavon may propose amendments or additions to the Agreement. Member or Elavon will inform Company of a proposed change in a periodic statement or other notice. Company will be deemed to have agreed to the change if Company continues to present Transactions to Member and Elavon after thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Company, unless a later effective date is provided; provided, that, with respect to Credit Card and Debit Card Transactions, changes to fees or the introduction of new fees authorized by the Agreement will be effective upon ninety (90) days' notice to Company, unless a later effective date is provided. Further, Elavon is entitled to pass through to Company any fee increases imposed upon Elavon by Visa, Mastercard, Discover Network, any other Payment Network, and any other third party including telecommunications vendors; provided, that, with respect to Credit Card and Debit Card Transactions, any such fee increases will be effective upon ninety (90) days' notice to Company.
2. **The following provisions apply to Company's acceptance of Transactions in Canada in addition to the provisions of the Agreement:**
- 2.1. **Pre-Authorized Debits (PADs).** Company authorizes Elavon, and its vendors and agents to initiate debit and credit entries to the DDA, the Reserve Account, or any other account maintained by Company at any institution that is a member of the Canadian Payments Association, all in accordance with the Agreement, including those stated to be made by way of ACH. Company agrees that any withdrawal by Elavon and its respective vendors and agents in accordance with the Agreement are PADs for business purposes, as defined under Rule H1 of the Canadian Payments Association. **Company waives the right to receive advance notice from Elavon and its respective vendors and agents of all such debits.** This authorization will remain in effect after termination of the Agreement and until all of Company's obligations to Elavon have been paid in full. If Company changes the DDA, this PAD authorization will apply to the new account and Company will provide Elavon in writing such information regarding the

new DDA as it deems necessary. It may take Elavon up to 10 business days after Elavon's receipt of a written notice from Company to reflect in its system any change to Company's DDA. If Company changes the DDA, Company agrees that it is responsible for all costs Elavon incurs in connection with Company's decision to change the DDA. Company may revoke the PAD authorization upon 30 days' prior written notice to Elavon, but any such revocation will constitute a material breach of the Agreement. Company may obtain a sample cancellation form, as well as further information on Company's right to cancel a PAD authorization by contacting Company's financial institution or by visiting [www.cdnpay.ca](http://www.cdnpay.ca). Company has certain recourse rights if any debit does not comply with the Agreement. For example, Company has the right to receive reimbursement for any debit that is not authorized or is not consistent with this PAD Agreement. To obtain more information on Company's recourse rights, Company may contact its financial institution or visit [www.cdnpay.ca](http://www.cdnpay.ca).

- 2.2. **Security Agreement.** The following sentence is added to the end of Section 4.1(a): "The hypothec created pursuant to this Section 4.1(a) is granted for the sum of \$1,000,000 with interest at the rate of twenty-five percent (25.0%) per annum."
  - 2.3. **Termination.** In addition to Company's other termination rights in Section 5 of the Agreement, the Agreement may be terminated by Company without penalty if Elavon notifies Company of a fee increase or the introduction of a new fee; provided that Company may not terminate the Agreement in connection with new fees or fee increases made in accordance with pre-determined fee schedules, if any. Company will notify Elavon of its intent to terminate the Agreement within 90 days of receiving notice of the new fee or fee increases from Elavon.
  - 2.4. **Taxes.** In addition to the provisions of Section 7.5 of the Agreement, all fees or charges payable by Company to Elavon as set forth in this Agreement, including the Schedules hereto, the Documentation or any exhibits, do not include goods and services tax, harmonized sales tax, Québec sales tax, value added tax, retail sales taxes and other similar taxes whether now imposed or to be imposed in the future. If any such tax (other than taxes based on Elavon's income) is found to be applicable, the appropriate amount of tax will be added to and will be payable by Company to Elavon at the same time and upon the same terms as apply to the fees and other charges
  - 2.5. **Language.** The parties acknowledge that they have required the Agreement and all related documents to be drawn up in the English language. Les parties reconnaissent avoir demandé que le présent contrat ainsi que tous les documents qui s'y rattachent soient rédigés en langue anglaise.
3. **Definitions.** The following definitions supersede the referenced definitions of the Agreement or are added to Appendix 1 – Definitions the for purposes of Transactions in Canada:

"**Code of Conduct**" means the Code of Conduct for the Credit and Debit Card Industry in Canada issued by the Department of Finance Canada and administered by the FCAC and all guidance, compliance bulletins and decisions issued by the FCAC in connection therewith, all as amended, restated, supplemented or replaced from time to time.

"**EFT Networks**" means (i) Interac and any services offered by Interac, including online, debit and contactless services permitting Cardholders to pay for goods and services by debiting money directly from their accounts; and (ii) any other organization, association, service or network that hereafter authorizes, enables or is approved by Elavon or Member to authorize, capture, or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

"**FCAC**" means Financial Consumer Agency of Canada.

"**Interac**" means Interac Association.

"**Interac Direct Payment**" means the service provided by Interac to permit Cardholders to pay for goods and services by debiting money directly from their accounts using a POS Device equipped with a PIN pad with PIN verification.



“**Laws**” means all applicable domestic or foreign laws (including common law), statutes, codes, acts, rules, regulations, treaties, ordinances, guidelines, industry commitments and all orders and decrees of all courts, tribunals and arbitrators, and includes the Code of Conduct, each as amended from time to time.

“**Member**” means each of the financial institutions or other entities designated by Elavon that is a principal, sponsoring affiliate or other member of the applicable Payment Network. A Member may be changed by Elavon at any time. As of the date of distribution of this Schedule, U.S. Bank National Association, acting through its Canadian branch, is the Visa Member, and Elavon Canada Company is the Mastercard Member, the Interac Member, and the Discover Network Member. Elavon may change the Member at any time and will provide notice to Company of such change.

“**Visa**” means Visa Canada Corporation.

## Schedule C

### Electronic Check Services

If Company has selected Electronic Check Services (“ECS”), Company agrees to the terms and conditions of the Electronic Check Service Merchant Operating Guide (the “ECS MOG”), which are incorporated herein by reference and located at <https://www.merchantconnect.com/CWRWeb/ElectronicCheckService.do>, and the following terms and conditions:

1. Company will comply with and be bound by (a) the ECS Rules and the ECS Primer, and (b) Laws, including the Check Clearing for the 21<sup>st</sup> Century Act and Regulation CC, Article 3 and Article 4 of the Uniform Commercial Code as in effect in the applicable states, the Electronic Fund Transfer Act and Regulation E, and the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act.
2. Company will pay the ECS fees as set forth in the Company Application and any additional application and setup forms.
3. Company will cause a Check Reader/Imager to be readily available for use at all Company locations where Company will accept Paper Checks for ECS processing.
4. Company must use commercially reasonable procedures to verify the identity of each Customer who submits a payment.
5. Company will provide Customers with notifications and disclosures in connection with ECS, including posting all point of sale signage and distributing all Customer takeaways and all notices and disclosures required to be provided under the ECS Rules and Laws.
6. Company may use the ECS only in connection with the presentment and acceptance of certain types of Customer payments (as set forth in the ECS MOG) in payment for goods or services sold by Company, or in payment for an obligation owed to Company. If Company accepts for ECS any types of Customer payments that are ineligible as specified in the ECS MOG, such Transaction is subject to Chargeback. Company may be liable for the face value of the Transaction and any actual damages related to or arising out of processing a Transaction that has been charged back.
7. Company will be the sole user of the ECS, and may not resell or otherwise transfer any portion of ECS (or any associated information) to any other Person.
8. Company represents and warrants, with respect to each ECS Transaction submitted for processing by Elavon, that (i) the Customer has duly authorized the debiting of the Customer’s account for the amount of the ECS Transaction in accordance with Laws and ECS Rules, (ii) the Transaction represents an obligation of the Person who is submitting a Customer payment, (iii) the Transaction is for merchandise actually sold or rented, for services actually rendered, or for the actual amount due and owing from the Customer to Company, in each case for the actual price of such merchandise or services (including tax) or for the actual amount due and owing to Company, and (iv) no portion of the Transaction involves any element of Company’s extension of credit.
9. Company may not use ECS for merchandise returns or refunds. Rather, Company must handle merchandise returns or refunds by direct negotiation between Company and the Customer.
10. Company is responsible to Elavon for any Transaction charged back by Elavon or its agent in accordance with the Agreement, including the ECS MOG, and for any fines, penalties or assessments incurred as a result of Company’s non-compliance with Laws or the ECS Rules. Company will immediately pay to Elavon or its agent (by means of debit or set-off initiated by Elavon or its agent, submission of payment by Company, or otherwise, at the sole option of Elavon), an amount equal to the amount of any ECS Transaction that is stopped, not settled, or charged back, as well as any related fees and charges.
11. Company must fully cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representations, and errors in accordance with the ECS Rules and Laws.

12. Company will ensure that all information, including MICR data and payment amounts, is accurately captured from a Paper Check in accordance with the applicable ECS Rules, and that all such information is accurately reflected in the related Item Company sends to Elavon for processing through ECS. Company will not submit for clearing or settlement any physical Paper Check unless and until Elavon and Member have processed and settled a Chargeback to Company with respect to any Items created from such Paper Check.
13. Company will not disclose to third parties any information related to ECS Transactions, including Customer DDA information, driver's license number, telephone number, or social security number, except as specified in the Agreement (including the ECS MOG). Company will keep all such information confidential and secure in accordance with the Agreement and Laws.
14. Company will only use ECS data to support the ECS.
15. Additional definitions applicable to Electronic Check Services:

“**ABA Routing Number**” means the ABA number that uniquely identifies the bank on which a check is drawn.

“**Chargeback**” means, for purposes of this Schedule, (i) a sales Transaction disputed by a Customer or an Item not in compliance with Conversion with Guarantee (each as defined in the ECS MOG) warranty provisions or ECS Rules; (ii) for all Service Levels (as defined in the ECS MOG) other than Conversion with Guarantee, the face amount of any Item that is returned by the Drawee Bank or an ECS Association to Elavon unpaid and that is ineligible for resubmission to the Drawee Bank or the ECS Association, including any Item returned for non-sufficient or uncollected funds after the third presentment; and (iii) for all Service Levels, an Item that is not in compliance with Company's obligations, representations and warranties under the Agreement.

“**Check Reader/Imager**” means a device certified by Elavon that electronically captures the MICR line or an image of the Paper Check.

“**ECS Primer**” means the detailed information relating to ECS processes and implementation provided by Elavon to Company, which must be used by Company in conjunction with the technical specifications and certification requirements provided by Elavon to promote integrated point of sale system connectivity and integration between Company and Elavon.

“**ECS Rules**” means all applicable rules and operating regulations of or applicable to the ECS Associations (including the ACH Rules) and the ECS MOG, in each case including all amendments, changes, and revisions made thereto from time to time.

“**ECS Transaction**” means any purchase, reversal/void, decline, Chargeback, or representment/resubmit pursuant to the Electronic Check Service Rules.

“**Drawee Bank**” means the financial institution where a Customer maintains a checking account on which a Paper Check that serves as the source document to generate an Item at the POS Device or payment for a Transaction is drawn.

“**Item**” has the meaning given in the ECS MOG.

“**MICR**” means the magnetic ink character read line encoded on a Paper Check that contains information about the Customer's checking account, including the ABA Routing Number and checking account number.

“**Paper Check**” means a Customer's paper check presented to Company for payment to Company, which check will serve as the source document for Items.

## Schedule D

### Safe-T for SMB Services

If Company has elected to receive SAFE-T for SMB Gold, SAFE-T for SMB Silver, or SAFE-T Solo for SMB, then, in the course of its acceptance and use of the SAFE-T for SMB Services (as defined below), Company agrees to the following terms and conditions. For the avoidance of doubt, this Schedule D will not apply to any tokenization or encryption solution offered by Elavon other than the SAFE-T for SMB Gold, SAFE-T for SMB Silver, and SAFE-T Solo for SMB offerings, and to the extent terms governing any other such tokenization or encryption solution are separately provided to Company, those terms, rather than this Schedule D, will apply.

1. **Description of Safe-T for SMB Services.** Subject to the terms and conditions of this Schedule D and the Agreement, Elavon will provide Company with the following services (collectively, the “**SAFE-T for SMB Services**”):
  - 1.1. **Encryption Services.** Elavon will decrypt full primary account numbers (“**PANs**”) properly encrypted by Company using Elavon-provided encryption software, Elavon-approved POS Devices and other similar hardware used by Company to accept Payment Devices (“**Hardware**”), and Elavon-injected encryption keys, all in accordance with the terms and conditions of this Schedule D and the Agreement (such services, the “**Encryption Services**”). Transactions submitted via a POS Device with Elavon-approved software will not be transmitted by the POS Device to Elavon if the POS Device fails to encrypt the PANs.
  - 1.2. **Tokenization Services.** Elavon will provide Company with Tokens in substitution for PANs. More specifically, when Company transmits to Elavon a PAN associated with a Transaction, Elavon will:
    - (a) Generate a Token;
    - (b) Associate the Token with the PAN; and
    - (c) Send the Token, instead of the PAN, back to the Company in the Transactions authorization response message.
      - (i) As long as Company is receiving the SAFE-T for SMB Services, Company may submit the Token, rather than the PAN, to Elavon to process additional Transactions to the Credit Card, Debit Card or Gift Card associated with such Token at any of Company’s locations.
      - (ii) **Note:** The SAFE-T for SMB Services only apply to card-present Transactions (the processing environment where the Payment Device is physically presented to the Company by the Cardholder as the form of payment at the time of Transaction) and mail order/telephone order Transactions, and do not apply for Electronic Commerce Transactions. For mail order/telephone order transactions, information must be hand-keyed into the POS Device for SAFE-T For SMB Services to apply.
2. **Company Responsibilities.**
  - 2.1. Company will cause the appropriate Hardware, including POS Devices and any other Hardware provided by or on behalf of Elavon from time to time, to be readily available for use at all Company locations that are the recipients or users of the SAFE-T for SMB Services. Company will be solely responsible for ensuring that, for every Transaction, (i) it uses only such Hardware that is included on Elavon’s then-current list of Hardware compatible with the SAFE-T for SMB Services for every Transaction, and (ii) the SAFE-T for SMB Services are enabled on such Hardware.
  - 2.2. Company acknowledges that Elavon does not store Payment Device expiration dates. In order to use a Token to process a Transaction, Company must provide the Token (in lieu of a PAN) together with the expiration date for the original Payment Device, if available.

- 2.3. Company must cooperate with Elavon to promptly take any action necessary to enable the SAFE-T for SMB Services on Company's Hardware, including promptly downloading, installing and implementing any software or updates thereto in accordance with Elavon's instructions. Company acknowledges and agrees that it may not be able to receive the benefits of the SAFE-T for SMB Services to the extent that it does not take such actions in accordance with Elavon's instructions.
3. **Liability.** Notwithstanding the forgoing, but subject to the eligibility requirements provided in Section 9.2(e)(v), companies that have selected the Silver level of the SAFE-T for SMB Services will be eligible for Data Breach Reimbursement up to a maximum amount of \$100,000, companies that have selected the Gold Level of SAFE-T for SMB Services will be eligible for Data Breach Reimbursement of up to a maximum amount of \$250,000, and companies that have selected SAFE-T Solo for SMB will be eligible for Data Breach Reimbursement of up to \$250,000; provided, in each case, that such companies have properly installed all software and updates made available by Elavon in connection with the SAFE-T for SMB Services and the SAFE-T for SMB Services are actually enabled on the Company's Hardware. The foregoing does not affect the Data Breach Reimbursement limitations set forth in Section 9.2(e)(v) with respect any Data Incident relating to data associated with Electronic Commerce Transactions.