



# **Terms of Service**

**June 2025**

These Terms of Service include a binding arbitration provision located in [Section 17.6](#) that allows 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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**SUMMARY OF TERMS OF SERVICE CHANGES**

Date	Section	Changes from Prior Version	Rationale
April 2025	14 (Limitation of Liability)	Language added to clarify exclusion from liability cap	Updated to clarify responsibilities.
	16 (Personal Guaranty)	Removed personal guaranty	Updated to remove duplication with application.
	17.3 (Severability and Waiver)	Revised severability language	Updated for clarity.
	Schedule A (Provisions Applicable to Acceptance of Transactions in Canada)	Removed personal guaranty	Updated to remove duplication with application.
	Schedule C (Safe-T Services)	Updated Safe-T Services Terms	Updated to reflect current requirements and functionality.
	Schedule D (Paze <sup>SM</sup> Wallet Service Agreement)	Add Wallet Service Agreement	Updated to reflect current services.
March 2024	9.3 (Data Privacy) and Appendix 1 (Definitions)	Added California Consumer Privacy Act of 2018 (CCPA) language and definitions.	Updated to clarify responsibilities.
	12.2(b) (Company Representations, Authority and Power)	Removed references to Affiliated Entity.	Updated for applicability.
	18.16 (Counterparts; Electronic Delivery)	Added clarification regarding use of electronic representation of signatures.	Updated for clarity.
	Schedule A (Equipment Leasing)	Removed schedule.	Updated to reflect current services.

## 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 that have not been applied against amounts due to Elavon will remain in the Reserve Account until Company has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, and any other payments due under the Agreement. Notwithstanding the foregoing, if Elavon determines that the 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, based on Elavon's reasonable determination for the continuing potential risk of loss to Elavon.

#### 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 17.17 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 is responsible for all fees incurred during the Term, including those that are debited or invoiced after the expiration or termination of the Agreement. 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.

- (iv) Company will return to Elavon (or, if purchased, destroy or securely delete all information within) all Equipment following expiration or termination of this Agreement, and will be responsible for all fraud involving Equipment following the closure of Company's account.
- (b) **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 Authorized User's user ID and password other than by Elavon or Elavon's third-party contractors or use by third parties of the user IDs and passwords obtained by such third parties from Elavon or Elavon's third-party contractors.
- 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 Company Applications). 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. **Change of Fees.** Elavon may adjust the fees in accordance with [Section 17.12](#) below.
- 7.3. **Other Amounts Owed.**
- (a) In addition to the amounts described in [Section 7.1](#) above, Company will promptly pay Elavon for any Chargebacks, returns, adjustments and associated fees, and for any fines, penalties, assessments, or charges (including all those imposed by the Payment Networks as a result of Company's violation of Payment Network Regulations), 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.
- 7.4. **Taxes.** Company will pay all taxes and other charges imposed by any governmental authority on the Services and Equipment provided under the Agreement, excluding any taxes based on Elavon's property or net income. If Company is a tax-exempt entity, Company will provide Elavon with an appropriate certificate of tax exemption.
- 7.5. **Demand Deposit Account.** Company will establish and maintain one or more DDAs to facilitate payment of fees to Elavon. Company authorizes Elavon and its Affiliates that provide Services under the Agreement to initiate ACH credit and debit entries to the DDA in order to pay the fees and any other amounts that may be due by Company to Elavon under the Agreement, and Company authorizes its depository institution to grant Elavon access to any information or records regarding the DDA reasonably requested by Elavon to debit or credit the DDA and to otherwise exercise Elavon's rights under the Agreement with respect to the DDA. The foregoing authorizations will remain in effect throughout the Term and after termination of the Agreement until all of Company's payment obligations to Elavon have been paid in full. 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.
- 7.6. **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 the Office of Foreign Asset Control (“OFAC”) or the United States Department of the Treasury or any successor thereto.
- 8.3. **Export Laws Compliance.** Company will comply with all United States export Laws governing the export and re-export of hardware, software or technology applicable to the Services and Equipment, including United States Department of State International Traffic In Arms Regulations (ITAR), United States Foreign Corrupt Practices Act, United States Commerce Department’s Export Administration Regulations, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto. Company will not, and will not request Elavon to, export, directly or indirectly, any technical data pursuant to the Agreement or any product using any such data to any country for which the United States Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
- 8.4. **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; Data Privacy.

### 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.** Elavon will undergo an annual assessment of its compliance with the PCI-DSS. Company may review Elavon's current PCI-DSS compliance status on the Payment Network websites as available.
- (c) **Cardholder Data and Transaction Information.**
  - (i) Elavon and Company will ensure the security of Cardholder Data and Transaction Information in accordance with all Laws and Payment Network Regulations. In accordance therewith, each of Elavon and Company will maintain reasonable and appropriate administrative, physical, and technical safeguards designed to (i) maintain the security and confidentiality of Cardholder Data, Transaction Information, and Confidential Information; (ii) protect such information against anticipated threats or hazards to its security or integrity; and (iii) prevent unauthorized access, use, or exfiltration of such information in violation of applicable Laws. Elavon and Company will retain Cardholder Data and Transaction Information for the duration required by Laws and the Payment Network Regulations and thereafter will destroy, in a manner that will render the information unreadable, all such information that is no longer necessary or appropriate to maintain for ordinary business purposes.
  - (ii) Company will not disclose Cardholder Data to any third party, except to a Service Provider, unless required by Laws or the Payment Network Regulations. Company will not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose. After authorization, Company will retain only the Customer account number, name, and card expiration date if Company has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement. If there is a failure or other suspension of Company's business operations, including any Bankruptcy Proceeding, Company will not sell, transfer, or disclose Cardholder Data to third parties, and Company will (a) return this

information to Elavon or (b) provide acceptable proof of destruction of this information to Elavon.

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

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

### 9.3. Data Privacy

- (a) **Definitions.** The terms Business, Business Purposes, Collects, Consumers, Personal Information, Share, Sell, Sensitive Personal Information, and Service Provider, as used in this Section 9.3, have the meanings defined in the CCPA.
- (b) **Status of the Parties.** If Company is a Business under the CCPA, then with respect to applicable Personal Information, Elavon is a Service Provider to Company and is subject to the restrictions that apply to Service Providers under the CCPA. Elavon will not Sell or Share any Personal Information without providing an opt-out mechanism for online activities or without the Company's consent when providing any California Company Information to referral partners.
- (c) **Business Purposes and Restriction on Use.** Elavon may only process the Personal Information being disclosed by Company or otherwise Collected in connection with this Agreement for a Business Purposes (e.g., performing services on behalf of Company, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing analytic services, or providing similar services on behalf of Company). In addition to Elavon's obligations in the Agreement with respect to the Services and Elavon's treatment of Confidential Information (including the California Company Information), Cardholder Data, and Transaction Information, Elavon will not: (A) retain, use, or disclose the Personal Information for any purpose other than for the Business Purposes in order to provide the products and services under the Agreement to Company, or as Company may otherwise instruct, or as may be permitted under the CCPA; (B) retain, use, or disclose the Personal Information outside of the direct business relationship between Company and Elavon, unless otherwise permitted by the CCPA; or (C) combine or update the Personal Information with Personal Information received from another source or Collected from Elavon's own interaction with a Consumer, except as specifically allowed under CCPA. Elavon will not Collect any Sensitive Personal Information for the purpose of inferring characteristics about any individual who is a resident of California.
- (d) **Consumer Requests.** If Elavon receives requests from Cardholders to exercise their rights under the CCPA, Elavon may inform the Cardholder that the request cannot be acted upon because the request has been sent to a Service Provider. Requests regarding Company Personal Information can be submitted by completing a Personal Information Request Form at [www.elavon.com/privacy-policy.html](http://www.elavon.com/privacy-policy.html) or by calling Elavon at 1-800-725-1243.
- (e) **Other States.** Elavon is exempt from state privacy laws that include an exemption for "financial institutions" that are subject to the Gramm-Leach-Bliley Act (e.g., Colorado Privacy Act, Connecticut Act Concerning Personal Data Privacy and Online Monitoring of 2022, Iowa's Act Relating to Consumer Data Protection, Utah Consumer Privacy Act of 2022, and Virginia Consumer Data Protection Act).

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

## 12. Representations and Disclaimers

### 12.1. Elavon Representations.

Elavon represents to Company the following as of the effective date:

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

12.2. **Company Representations.** Company represents to Elavon the following as of the effective date:

- (a) **Organization and Information.** Company is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Company conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Company Application, the bid process, and Company Applications, as applicable, and in the assumptions in any 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 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 goods or services sold by Company resulting in a Transaction processed under the Agreement; (b) Company's breach of the Agreement; (c) all use of any user ID and password other than by Elavon or Elavon's third-party contractors; (d) Company's or its Service Providers' gross negligence or willful misconduct; (e) Company's or its Service Providers' violation of Laws or Payment Network Regulations; or (f) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers. 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 (other than those arising out of Elavon's gross negligence, willful misconduct, or fraud), 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. **Third-Party Vendors.**

16.1. **Company Service Providers and Company Resources.**

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

(iii) Elavon's reasonable determination that the Service Provider poses an unacceptable security risk to Elavon, Company or any Payment Network, or

(iv) The Service Provider's failure to maintain certification to Elavon or the expiration or termination of any agreement between Elavon and the Service Provider specific to certification to Elavon with respect to the Services.

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

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

## **17. General Provisions.**

**17.1. 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.

**17.2. Governing Law; Jurisdiction and Venue; Class Action Waiver.** Subject to Section 17.6, (i) the laws of the State of Georgia, without giving effect to its conflict of laws provisions, will govern any claim, controversy or dispute between the Company and Elavon, whether sounding in contract, tort or otherwise, regarding this Agreement or any aspect of any relationship between the parties (each, a "**Claim**"), and (ii) each party submits to the exclusive jurisdiction of the United States District Court for the Northern District of Georgia or the courts of the state of Georgia (Fulton County) (including the Georgia State-wide Business Court), agrees to bring any action, litigation, or proceeding against any other party only in those courts (except for collection actions by Elavon relating to amounts owed by Company under the Agreement), and waives any objection to venue with respect to the 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. Any Claim filed in court will be brought on an individual basis only. The parties agree not to participate in any class action, private attorney general action, or other representative action for any Claim filed in court by any party. For clarity, if Elavon is processing Transactions for Company in Canada, the terms of Schedule A, Section 1.6 will apply rather than this Section.

**17.3. Exclusivity.** During the Term, Company will not enter into an agreement with any other entity for services similar to those Services that Company has elected to receive from Elavon under the Agreement without Elavon's written consent.

**17.4. 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.

17.5. **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.

17.6. **Arbitration.**

- (a) Notwithstanding anything in Section 17.2 to the contrary, any party may elect in writing, and without consent of the others, to arbitrate any Claim. The Claim 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 a single, 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 decide the dispute in accordance with the terms of this Agreement and applicable substantive law, including the Federal Arbitration Act and applicable statutes of limitation. 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, including relief contemplated under Federal Rule of Civil Procedure 11.
- (b) At the time of initiating arbitration, the party seeking to initiate arbitration must provide the parties against whom a Claim is filed with a demand for arbitration that includes a short and plain statement of the claims asserted and relief sought. Federal Rule of Civil Procedure 11 will apply to the arbitration proceeding, including that the Claims and relief sought are neither frivolous nor brought for an improper purpose.
- (c) Any Claim filed in arbitration will be brought on an individual basis only, and no class action, private attorney general, or other representative claims may be pursued in arbitration, nor may such action be pursued in court if any party elects arbitration. The arbitrator will have no authority to decide such claims. 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. If under applicable Law a claim, remedy or request for relief cannot be compelled to arbitration, then that claim, remedy or request for relief will be severed and may be brought in a court of competent jurisdiction under this Agreement after arbitration and all appeals are concluded. The remaining claims, remedies or requests for relief will be submitted to arbitration consistent with the terms of this provision. If this paragraph is determined by the arbitrator to be unenforceable, then this entire provision will be null and void.
- (d) While each party will bear its own attorney, expert and witness 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 17.2, any arbitration will be governed by the Federal Arbitration Act. For clarity, if Elavon is processing Transactions for Company in Canada, the terms of Schedule A, Section 1.7 will apply rather than this Section.
- (e) Except as this provision otherwise provides, if any part of this provision is deemed to be invalid or otherwise unenforceable by the arbitrator, that part will be severed from the remainder of this provision and the remainder of this provision will be enforced.

- 17.7. **Notices.** Unless otherwise specified, except for routine operational communications (including account modification, chargeback, and hold notices), which may be delivered personally or transmitted by electronic mail, all notices to the other party will be deemed received upon the earlier of (a) actual receipt, (b) five business days after being deposited in the United States mail (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 address as Elavon may designate in writing.
- 17.8. **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 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.
- 17.9. **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.
- 17.10. **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.
- 17.11. **Communication with Company.**
- (a) 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 provides 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.
  - (b) Company further authorizes Elavon to provide Company's contact information to American Express, and Company agrees that American Express may use and share such contact information for its business purposes and as permitted by applicable Laws, including to communicate with Company regarding products, services, and resources available to Company's business. 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 American Express. Consent to American Express's use of contact information for such communication may be withdrawn at any time by contacting our customer service center. Even if consent is withdrawn, Company may still receive messages related to important information about Company's account from American Express.
- 17.12. **Amendments.** Member and Elavon may propose changes to any term of this Agreement or additions to the Agreement. Member or Elavon will notify Company of a proposed change or addition to the

Agreement in writing, electronically, or by any other method permitted by Law. The parties agree that 30 days' written or electronic notice prior to the effective date of any change or addition is reasonable. 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 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.

- 17.13. **Severability and Waiver.** If any sentence, term, right, duty, or obligation within any clause or provision of this Agreement, or the application of any such sentence, term, right, duty, or obligation to any person or circumstance, is invalid or unenforceable, the remainder of any sentence, term, clause or provision within this Agreement, or the application of such sentence, term, right, duty, or obligation to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. 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.
- 17.14. **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.
- 17.15. **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, 17.2, and 17.6 of the TOS, will survive and remain binding upon and for the benefit of the parties.
- 17.16. **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, the use of an electronic representation of signatures), and will constitute signed originals. The parties agree that the Agreement signed with an electronic representation of a party's signature is legally binding.
- 17.17. **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, pandemic, war, act of terrorism, civil disturbance, action by governmental entity, strike, and other cause beyond such party's reasonable control. If a Force Majeure interrupts Elavon's provision of any Services, Company will continue to pay Elavon the fees for the Services owed under the Agreement and Elavon will make all reasonable efforts to restore such Services. If the delay caused by the Force Majeure continues for a more than 14 days, then Company may, upon notice to Elavon, as its sole and exclusive remedy, abate payment to Elavon (to the extent Services are not performed) and terminate the Agreement.
- 17.18. **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.

“**California Company Information**” means the Personal Information (as defined under the CCPA) that Elavon may collect that is about Company, its employees, its owners, its agents, and Guarantors, who are residents of California and considered Consumers (as defined under the CCPA) under the CCPA.

“**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.

“**CCPA**” means the California Consumer Privacy Act of 2018 (CCPA), codified at California Civil Code section 1798.100 *et seq.*, as amended by the California Privacy Rights Act (CPRA), and all applicable regulations and successor laws thereto.

“**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).

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

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

**“Electronic 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.

**“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, located at [https://www.mypaymentsinsider.com/api/file/c/Operating\\_Guide\\_English](https://www.mypaymentsinsider.com/api/file/c/Operating_Guide_English) (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.

**“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

### 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 the Trade and Export Controls Bureau of Global Affairs 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 17.2. Governing Law; Jurisdiction and Venue; Class Action Waiver.** To the maximum extent permitted by Law, and subject to Section 17.6, any claim, controversy or dispute between the Company and Elavon, whether sounding in contract, tort or otherwise, regarding this Agreement or any aspect of any relationship between the parties (each, a “**Claim**”) will be governed by and construed in accordance with 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, 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. To the maximum extent permitted by Law, subject to Section 17.6, each party submits to the exclusive jurisdiction of the courts of the Province of Ontario located in Toronto, Ontario (and the courts of the Province of Québec located in Montreal, Québec with respect to the Québec Hypothec), and agrees to bring any action, litigation, or proceeding against any other party only in those courts (except for collection actions by Elavon relating to amounts owed under the Agreement), and waives any objection to venue with respect to the actions brought in those courts. 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 Claim filed in court will be brought on an individual basis only. 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. The parties agree not to participate in any class action, collective action or other representative action for any Claim filed in court by any party.
  - 1.6. **Section 17.6. Arbitration.**

- (a) Notwithstanding anything in Section 17.2 to the contrary, any party may elect in writing, and without consent of the others, to arbitrate any Claim. The Claim will be submitted to and decided by arbitration administered by the Alternative Dispute Resolution of Canada Inc. held in Toronto, Ontario and in accordance with the ADRIIC Arbitration Rules (a copy of which can be reviewed at <http://adric.ca/arbrules/>), except that the arbitration proceeding will be conducted before a single, 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 language of the arbitration will be English. The arbitrator will decide the dispute in accordance with the terms of this Agreement and applicable Law. 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.
  - (b) At the time of initiating arbitration, the party seeking to initiate arbitration must provide the parties against whom a Claim is filed with a demand for arbitration that includes a short and plain statement of the claims asserted and relief sought.
  - (c) Any Claim filed in arbitration will be brought on an individual basis only, and no class action, collective action or other representative actions may be pursued in arbitration, nor may such action be pursued in court if any party elects arbitration. The arbitrator will have no authority to decide such claims. 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. If under applicable Law a claim, remedy or request for relief cannot be compelled to arbitration, then that claim, remedy or request for relief will be severed and may be brought in a court of competent jurisdiction pursuant to Section 17.2 after arbitration and all appeals are concluded. The remaining claims, remedies or requests for relief will be submitted to arbitration consistent with the terms of this provision. If this paragraph is determined by the arbitrator to be unenforceable, then this entire provision will be null and void.
  - (d) While each party will bear its own legal, expert and witness 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.
  - (e) Except as this provision otherwise provides, if any part of this provision is deemed to be invalid or otherwise unenforceable by the arbitrator, that part will be severed from the remainder of this provision and the remainder of this provision will be enforced.
- 1.7. **Section 17.8 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.
- 1.8. **Section 17.12. 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 Payments Canada, 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 Payments Canada. **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.payments.ca](http://www.payments.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.payments.ca](http://www.payments.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, the introduction of a new fee, or a reduction in applicable interchange rates; 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, fee increases or reduction in applicable interchange rates 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. **Compliance.** Company acknowledges that Elavon is required to comply with the Code of Conduct including the requirements with respect to related service providers and related service contracts, in each case as such concepts are defined under or in connection with the Code of Conduct. Notwithstanding anything in the Agreement to the contrary, if Company has requested that the requirements of the Code of

Conduct not be addressed under or in connection with the Agreement, then Company (a) waives compliance by Elavon with the requirements of the Code of Conduct, (b) agrees to indemnify and save harmless Elavon in respect of any such noncompliance and (c) will use commercially reasonable efforts to assist Elavon to comply with the Code of Conduct upon request by Elavon

- 2.6. **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 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 B

### 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.mypaymentsinsider.com/api/file/en\\_US/154907/ECS\\_Op%20Guide\\_Eng.pdf](https://www.mypaymentsinsider.com/api/file/en_US/154907/ECS_Op%20Guide_Eng.pdf), and the following terms and conditions:

1. Company will comply with and be bound by (a) the ECS Rules, 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 a paper check or ABA Routing Number and account information for ECS processing in payment for goods or services sold by Company, or in payment for an obligation owed to Company, and only in compliance with ECS Rules
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, (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 will cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representments, 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 ABA Routing Number and account 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 that holds the Customer account to be debited or credited through ECS.

**"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 ECS 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 ECS, 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.

**"Drawee Bank"** means the financial institution where a Customer maintains a checking or other deposit account (i) on which a paper check that serves as the source document for an Item is drawn, or (ii) as to which a Customer provides the ABA Routing Number and account information for use in generating an Item.

**"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 (a) all applicable rules and operating regulations of or applicable to the ECS Associations, (b) the ECS MOG, and (c) the ECS Primer, in each case including all changes made thereto from time to time.

**"ECS Transaction"** means any purchase, reversal/void, decline, Chargeback, or representment/resubmit pursuant to the ECS Rules.

**"Item"** means an electronic file or entry representing a Transaction that is created from (i) the information captured by Company from a paper check using a Check Reader/Imager, or (ii) Customer inputs of ABA Routing Number and account information, that is forwarded by Company to Elavon or Member in accordance with the Agreement.

**"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.



## Schedule C

### Safe-T Services

- A. **GENERAL.** If Company has elected to receive SAFE-T Services, then, in the course of its acceptance and use of the SAFE-T Services (as defined below), Company agrees to the following terms and conditions.
1. **Description of Safe-T Services.** Subject to the terms and conditions of this Schedule C and the Agreement, Elavon will provide Company with the following services (collectively, the “SAFE-T Services”):
    - 1.1. **Encryption Services.** Elavon will decrypt full primary Credit Card or Debit Card account numbers (“PANs”) properly encrypted by Company using Elavon-approved software and Equipment and Elavon-injected encryption keys, all in accordance with the terms and conditions of the Agreement (such services, the “Encryption Services”). Transactions submitted via the POS Device with Elavon-approved software will not be transmitted by the POS Device to Elavon if the POS Device fails to encrypt the PANs.
    - 1.2. **Tokenization Services.** Elavon will provide Company Tokenization Services as set forth in the Tokenization chapter of the Operating Guide.
  2. **Company Responsibilities.**
    - 2.1. Company will cause the appropriate Equipment, including POS Devices and any Equipment provided by or on behalf of Elavon from time to time, to be readily available for use at all Company locations that are the recipients or users of the Safe-T Services. For purposes of this Schedule, the term “POS Device” refers only to payment terminals and does not refer to any other point-of-sale devices or software.
    - 2.2. Company acknowledges that Elavon does not store Credit Card or Debit Card expiration dates. In order to use a Token to process a Transaction, Company must provide the Token (in lieu of a PAN) together with the expiration date for the original Credit Card or Debit Card.
    - 2.3. (c) For Safe-T Solo, Silver, or Gold, Company must cooperate with Elavon to promptly take any action necessary to enable the Safe-T Services on Company’s Equipment, including promptly downloading, installing and implementing any software or updates thereto in accordance with Elavon’s instructions.
  3. **De-Tokenization.** For Safe-T Link, Company may request a reversal of the Tokenization process as follows:
    - 3.1. To reverse the Tokenization process on an individual Token basis, Company may access an Elavon web portal and, with appropriate authentication credentials, retrieve the PAN associated with any Token.
    - 3.2. To reverse the Tokenization process on a bulk basis (i.e., in excess of 100 Tokens at a time), an officer of Company must make a request in writing to Elavon and provide Elavon with the Tokens for which Company wishes to reverse the Tokenization process. Elavon will provide Company’s requesting officer with an encrypted file containing the PANs associated with such Tokens within 30 days of receiving the request. Company acknowledges and agrees that additional terms and conditions may apply to reversal of Tokenization on a bulk basis.
  4. **P2PE Protect.** For Safe-T Link with P2PE Protect, Elavon will maintain the solution’s P2PE validation status, will update the Point to Point Product Encryption Manual with any necessary additions for Company to maintain compliance, and will maintain applicable Equipment in Elavon’s or its service provider’s possession (and deploy such equipment) in accordance with PCI P2PE guidelines. Company will comply with all the terms of the Point-to-Point Encryption Product Implementation Manual, a copy of which is available on [https://www.mypaymentsinsider.com/api/file/c/Safe-T\\_PIM](https://www.mypaymentsinsider.com/api/file/c/Safe-T_PIM), as Elavon may update it from time to time.
  5. **Liability.**

5.1. If Company suffers unauthorized third party access to personal information of individuals (which personal information must include the individual's unencrypted PAN) as a result of the failure of the Safe-T Services to perform in accordance with this Schedule C, Elavon will reimburse Company (on a Company-wide, not a per-MID basis if Company is using Safe-T Link) for (a) Company's documented costs incurred for a forensic investigation conducted in accordance with subsection (ii) to identify the source of the Data Incident, and (b) any fines and assessments levied or collected by a Payment Network in connection with a Data Incident, up to an aggregate amount not to exceed \$100,000 (if Company uses Safe-T Silver), or \$250,000 (if Company uses Safe-T Gold, Safe-T Solo, or Safe-T Link) (the "**Safe-T Reimbursement**"). For Level 4 companies, the Safe-T Reimbursement will be in lieu of (and not in addition to) any reimbursement allowed under Elavon's PCI Compliance Program (see Section 9.2(e)(v)). In order to be eligible to receive the Safe-T Reimbursement, Company must certify to Elavon in writing that:

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

## B. EQUIPMENT

### 1. Equipment and Pricing.

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

2. **Terminal Software and Encryption Keys.** Elavon will install the encryption keys and licensed software onto Company's POS Devices specified on the Company Application prior to delivery of such POS Devices to Company, and Company will pay the applicable fees set forth on the Company Application for any encryption keys or licensed software that Company receives.

### 3. Warranty Terms.

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

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

Premium Advanced Exchange Program:

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

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

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

Premium Repair Warranty Program:

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

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

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

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

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

- C. **SIMPLIFY AND BRIDGE SOFTWARE LICENSE.** If Company elects Safe-T Link, this Part C will be a part of this Exhibit C.

### Section I – Terms and Conditions for Simplify License

**1. Definitions.** Capitalized terms used in this Part C and not otherwise defined herein will have the meanings ascribed to them in the glossary set forth in Section II or, if not defined in such glossary, as defined in the Agreement.

**2. License Grant and Permitted Use.**

- a) Elavon hereby grants to Company a limited, personal, non-exclusive, non-sublicensable (except as specifically set forth herein), and non-assignable (except in connection with a permitted assignment of the Agreement) license in the United States and Canada, as applicable, during the Term to use and allow Authorized Users to use the Simplify Software as installed on Company's POS Devices owned or otherwise controlled by Company and to install, use, and allow Authorized Users to use any subsequent Releases of such Simplify Software provided to Company from time to time, solely for Company's internal business purposes to process data in accordance with the Documentation (the "**Simplify License**"). This Simplify License permits Company to use the Simplify Software only on the total number of POS Devices set forth on the Company Application. Company is not permitted to use the Simplify Software to service any other POS Devices unless permitted by Elavon in writing. Company is not authorized to make copies of the Simplify Software.
- b) Elavon hereby grants to Company a limited, personal, non-exclusive, non-sublicensable (except as specifically set forth herein), and non-assignable (except in connection with a permitted assignment of the Agreement) license during the Term to use and to allow Authorized Users to use the Documentation solely in connection with access to and use of the Simplify Software pursuant to this Simplify License. Company will have the right to make a reasonable number of copies of the Documentation, at no additional charge, solely for Company's own internal business purposes in connection with access to and use of the Simplify Software under this Simplify License; provided, however, that all proprietary markings of Elavon must be affixed and retained by Company on any such copies.
- c) Except as provided in this Simplify License, Company will not: (i) copy, re-sell, reproduce, transfer, rent, lease, pledge, sublicense, distribute or republish in any form or by any means or allow another to use or access the Licensed Materials, or any portion thereof, including, without limitation, to provide outsourcing, service bureau, hosting services or training to third parties; (ii) alter, modify or otherwise prepare derivative works of the Licensed Materials; (iii) reverse engineer, disassemble or decompile the Simplify Software, or any part thereof; (iv) remove, change or obliterate the copyright, trade secret or other proprietary protection legends or notices which appear on or in the Licensed Materials; or (v) combine any Licensed Materials with any unauthorized third party software. Company will not access or use, and it will not permit any Authorized Users to access or use, the Licensed Materials or proprietary materials disclosed to Company for the purpose of creating, in whole or in part, a system that is functionally competitive with the Simplify Software. Company will promptly notify Elavon of and will otherwise cooperate with Elavon in preventing any unauthorized access to, use of, or copying of, the Licensed Materials by Authorized Users or any other third party.
- d) All rights not expressly granted to Company under this Simplify License are reserved by Elavon.

**3. Delivery and Installation.**

- a) All installation of the Simplify Software, other than installation of Releases (as described below) must be conducted by or at the direction of Elavon. If Company purchases POS Devices from Elavon via the Company Application or subsequent to the Effective Date, the Simplify Software will be installed on such terminals prior to shipment to Company. If Company requests installation of the Simplify Software on POS Devices purchased prior to the Effective Date or not obtained from Elavon, Elavon and Company must enter into a statement of work or other agreement governing the delivery of such terminals to Elavon or Elavon's designee for installation of the Simplify Software.
- b) Delivery of the Simplify Software by Elavon will be deemed to have occurred when a POS Device with the Simplify Software installed is tendered by Elavon or on Elavon's behalf to a carrier for shipment to Company. Elavon will deliver one copy of the Documentation to Company in a format determined by Elavon.

**4. Simplify Software Support Services; Releases.**

- a) Simplify Software Support Services. Elavon will provide Company with the following support services:

- i) Providing Company with solutions to any known material problem relating to each installation of the Simplify Software in a timely manner as such solutions become known to Elavon;
  - ii) Using commercially reasonable efforts to supply timely corrections for problems reported to Elavon by Company that Elavon can reproduce in a currently supported version of the Simplify Software;
  - iii) Furnishing a reasonable level of telephone support, as determined by Elavon, in the form of counsel and advice on use and maintenance of the Simplify Software; and
  - iv) Providing Company with new Releases of the Simplify Software as provided herein.
- b) New Releases. Elavon will provide new Releases of the Simplify Software to Company from time to time by automatic provisioning to Company's POS Device.
- c) Supported Releases. Elavon will provide Simplify Software Support Services to Company only for the then-current Release of the Simplify Software (a "Supported Release"); provided that Company complies with the terms and conditions of this Simplify License and the Documentation, including, without limitation, payment obligations.
- d) Unsupported Releases. If Company uses any Release other than a Supported Release (an "Unsupported Release"), except for providing telephone support under Section 4(a)(iii) above for the Unsupported Release, Elavon will have no obligation to provide any other Simplify Software Support Services for such Unsupported Release. Elavon, in its sole discretion, may elect to provide Simplify Software Support Services for Unsupported Releases at an additional charge to be mutually determined by the parties in writing. Whether or not Elavon elects to provide Simplify Software Support Services for an Unsupported Release, Elavon will have no responsibility or liability for security vulnerabilities or the compliance or non-compliance of any such Unsupported Release with industry standards, Laws or Payment Network Regulations.

## 5. Responsibilities of Company.

- a) Company Data. Company acknowledges the Simplify Software does not verify accuracy of information or format of any data or information input by Company.
- b) Company Telecommunications. Company will be responsible for ensuring that its telecommunications connectivity, and any such connectivity provided by any third party on behalf of Company, is properly certified and maintained and complies with applicable industry rules and regulations, including Payment Network Regulations.
- c) Company Systems and Equipment. Company will be responsible for ensuring that the systems and equipment, including, without limitation, any POS Devices and any systems or equipment of third-party vendors used by Company, remain certified and compatible with the most recent Release of the Simplify Software. Elavon will not be responsible for any updates, upgrades, or changes to Company's systems or equipment, including, without limitation, the POS Device or any third-party systems or equipment, that may be necessary in conjunction with delivery, installation or use of the Simplify Software. Failure of the Company's systems or equipment, including, without limitation, the POS Device, or any third-party systems, to remain certified or to be compatible and function with a Supported Release of the Simplify Software as regulated or required will excuse Elavon from any and all liability under this Simplify License and in connection with any other services that Elavon may be providing to Company for the failure of the Simplify Software to perform in accordance with the Documentation. If Company has obtained Purchased Equipment from Elavon, Elavon will ensure that each new Release of the Simplify Software is compatible with the Purchased Equipment until the end-of-life date established by the terminal manufacturer for such Purchased Equipment. If any Purchased Equipment reaches its end-of-life date and Company has obtained replacement POS Devices that are compatible with the Simplify Software, Company and Elavon may enter into a statement of work providing for the installation of the Simplify Software on such replacement terminals. Company will not be obligated to pay a new license fee in conjunction with such installation, although Company may be obligated to pay fees for professional services in conjunction with such installation, as agreed by the parties.
- d) ELAVON DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY DATA OR OTHER INFORMATION PROVIDED OR MADE AVAILABLE BY COMPANY OR ITS AUTHORIZED USERS, AND ELAVON WILL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN THE DATA OR RESULTS FROM USING THE LICENSED MATERIALS, EXCEPT TO THE EXTENT DIRECTLY CAUSED BY A FAILURE OF THE LICENSED MATERIALS TO PERFORM IN ACCORDANCE WITH THE DOCUMENTATION.



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

## Section II – Glossary for Simplify License

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

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

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

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

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

**“Supported Release”** has the meaning given to it in Section 4(c) of this Simplify License.

**“Unsupported Release”** has the meaning given to it in Section 4(d) of this Simplify License.

## Section III – Elavon Bridge License

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

party. Elavon and its designated agents may monitor and audit Company's use of the Elavon Bridge for purposes of verifying compliance with this Schedule.

- g) Company may sublicense the foregoing license to its Affiliated Entities (if applicable), provided that Company will be responsible for the acts and omissions of such Affiliated Entities as if the same were performed by Company.
- h) All rights not expressly granted to Company under this Bridge License are reserved by Elavon.

**3. Installation.** All installation of the Elavon Bridge must be conducted by or at the direction of Elavon. Either Company will install the Elavon Bridge or Elavon will remotely install the Elavon Bridge on Company's hardware after consultation with Company as to the timing of such installation. Company will allow Elavon all access to Company's hardware and related systems necessary to install the Elavon Bridge and any new releases.

**4. Bridge Support Services; Feedback; releases.**

- a) Bridge Support Services. Elavon will provide Company with the following support services (the "**Bridge Support Services**"):
  - v) Providing Company with solutions to any known material problem relating to each installation of the Elavon Bridge in a timely manner as such solutions become known to Elavon;
  - vi) Using commercially reasonable efforts to supply timely corrections for problems reported to Elavon by Company that Elavon can reproduce in a currently supported version of the Elavon Bridge;
  - vii) Furnishing a reasonable level of telephone support, as determined by Elavon, in the form of counsel and advice on use and maintenance of the Elavon Bridge;
  - viii) Providing Company with new releases of the Elavon Bridge provided herein.
- b) Limited Warranty. The Bridge Support Services will be performed in a professional and workmanlike manner. Elavon will have and maintain sufficient resources to perform the Bridge Support Services in accordance with this Bridge License.
- c) Feedback. Company has no obligation to provide Elavon any suggestions, comments, or other feedback regarding the Elavon Bridge (collectively, "**Feedback**"). If Company nonetheless provides Feedback to Elavon, Company agrees that Elavon may freely use, disclose, reproduce, license, distribute, and otherwise commercialize the Feedback in any products, technology, services, specifications or other documentation of Elavon or its Affiliates. Feedback will not constitute Confidential Information, even if it would otherwise qualify as such pursuant to the Agreement.
- d) Required Updates. Unless otherwise agreed in writing by the parties, (i) Company will ensure that its Elavon Bridge maintains network connectivity to the Elavon Bridge maintenance system on an ongoing basis in order to receive updates and transmit related information, and (ii) Elavon will provide new releases of the Elavon Bridge to Company from time to time by automatic provisioning. If Company fails to adopt the most recent release of the Elavon Bridge, Elavon may limit or suspend Transaction processing and will have no responsibility or liability for security vulnerabilities or the compliance or non-compliance of the Elavon Bridge with industry standards, Laws, or Payment Network Regulations.

**5. Responsibilities of Company.**

- a) Company Systems and Equipment. Company will be responsible for ensuring that the systems and equipment, including any POS Devices and any systems or equipment of third-party vendors used by Company, remain certified and compatible with the most recent release of the Elavon Bridge. Elavon will not be responsible for any updates, upgrades, or changes to Company's systems or equipment, including the POS Device or any third-party systems or equipment, that may be necessary in conjunction with delivery, installation or use of the Elavon Bridge. Failure of the Company's systems or equipment, including POS Device, or any third-party systems, to remain certified or to be compatible and function with the most recent release of the Elavon Bridge as regulated or required will excuse Elavon from all liability under this Bridge License and in connection with any other services that Elavon may be providing to Company for the failure of the Elavon Bridge to perform in accordance with its specifications.

- b) ELAVON DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY DATA OR OTHER INFORMATION PROVIDED OR MADE AVAILABLE BY COMPANY OR ITS AUTHORIZED USERS, AND ELAVON WILL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN THE DATA OR RESULTS FROM USING THE ELAVON BRIDGE, EXCEPT TO THE EXTENT DIRECTLY CAUSED BY A FAILURE OF THE ELAVON BRIDGE TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS.
- c) Compliance by Company's Authorized Users. Company is responsible for compliance by each of its Authorized Users with the terms and conditions of this Bridge License and is responsible and liable for all access and use by Authorized Users and acts or omissions of Authorized Users under this Bridge License.

**D. SERVICE WEB SITE TERMS AND CONDITIONS** If Company elects to use the Service Web Site (as defined below) in connection with Safe-T Link for certain Transaction management functionality, this Part D will be a part of this Schedule and access to the Service Web Site will be deemed to constitute a part of the Safe-T Services.

**1. Definitions.**

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

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

- 2. **Company Access and Use of the Service Web Site.** Subject to and in accordance with the terms, conditions and limitations set forth in the Agreement, including this Schedule and this Part D, Elavon grants Company a limited, revocable, non-exclusive, non-assignable (except in connection with a permitted assignment of the Agreement), non-transferable right during the Term of the Agreement to access and use the Service Web Site solely for Company's own internal business purposes. Company will designate an Administrator in writing. The Administrator will create passwords and user IDs for Authorized Users. For clarity, Section 6 (Authorized Users) of the Agreement applies to the Service Web Site .
- 3. **Monitoring.** Company acknowledges and agrees that Elavon may be able to monitor access to and use of the Service Web Site and to prohibit any access or use of data or information within the Service Web Site that Elavon reasonably believes is unauthorized, may violate applicable Law or Payment Network Regulations or that may pose an unacceptable risk of material harm to Elavon, other Elavon customers or Elavon's systems. Elavon has no obligation to detect or prevent, and will not be liable for failing to detect or prevent, any unauthorized access to or use of the Service Web Site using any password or user ID assigned to or by Company.
- 4. **Transaction Data.**
  - (a) Elavon will not be liable for Company's use of Company's or a third party's telecommunications services and related networks, or for any connectivity failure, erroneous transmission, corruption or loss of data, or inability to access the Service Web Site resulting from Company's or a third party's telecommunications systems, equipment, resources, or software. Without limiting the foregoing, Elavon will not be responsible for the reconstruction of any information or data lost in transmission to or from the Service Web Site due to any malfunction of Company's or Company's third-party service provider's systems. Elavon is not responsible for ensuring or verifying the accuracy of the content or format of any Transaction Information it receives. COMPANY ACKNOWLEDGES AND AGREES THAT THE SERVICE WEB SITE RELIES ON THE DATA AND DIRECTIONS PROVIDED BY COMPANY AND ITS AUTHORIZED USERS. ELAVON DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY DATA OR OTHER INFORMATION PROVIDED OR MADE AVAILABLE BY COMPANY OR ITS AUTHORIZED USERS, AND ELAVON WILL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN DATA OR RESULTS OBTAINED THROUGH COMPANY'S



USE OF THE SERVICE WEB SITE, EXCEPT TO THE EXTENT CAUSED BY ELAVON'S BREACH OF THESE SERVICE WEB SITE TERMS AND CONDITIONS.

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

## Schedule D

### Paze(SM) Wallet Service Agreement

#### PAZE<sup>SM</sup> WALLET SERVICE AGREEMENT

If Company has elected to use the Paze<sup>SM</sup> Service (the “**Paze<sup>SM</sup> Service**”) then the terms of this Schedule D (the “**Wallet Service Agreement**”) will apply. Additional definitions relating to the Wallet Service Agreement are set forth in Section 24 of this Schedule.

1. **Paze<sup>SM</sup> Services.**

- 1.1. Upon Company’s successful completion of integration with the Paze<sup>SM</sup> Technology, Elavon will make available to Company the Paze<sup>SM</sup> Service (the “**Paze<sup>SM</sup> Service**”) which offers a method for Customers to access their Payment Credentials in the Paze<sup>SM</sup> Directory to facilitate Payment Transactions without having to manually enter their Payment Credentials.
- 1.2. When the Service Operator receives Payment Credentials from Elavon, the Service Operator will convert the primary account number (PAN) to a token (a surrogate value). The Service Operator will send that token, along with other information, to Company when the Customer chooses to use Paze<sup>SM</sup> for an online purchase with Company.

2. **Elavon’s Responsibilities.** Elavon will

- 2.1. Process Company’s transactions received through the Paze<sup>SM</sup> Service.
- 2.2. Facilitate access to and use of the Paze<sup>SM</sup> Service by Company to enable Paze<sup>SM</sup> Transactions through the Company’s websites.

3. **Company’s Responsibilities.** At all times Company is accepting Paze<sup>SM</sup> Transactions, Company will

- 3.1. Integrate with the Paze<sup>SM</sup> Technology and participate in any certification requirements and testing necessary to participate in the Paze<sup>SM</sup> Service.
  - 3.2. Be eligible to participate in the Paze<sup>SM</sup> Service.
  - 3.3. Comply and ensure that each of its employees, officers, directors, third-party service providers, and agents complies with the Service Documents and the Wallet Service Agreement with respect to participation in the Paze<sup>SM</sup> Service.
  - 3.4. Provide all disclosures, notices, and options required under applicable Law and Applicable Privacy Requirements, and/or obtain all consents, authorizations, permissions, and approvals required under Applicable Privacy Requirements, in order to provide or otherwise make available information or data to the Service Operator for use in the Paze<sup>SM</sup> Service.
  - 3.5. Access and use the Paze<sup>SM</sup> Service solely for the intended uses set forth herein and the Service Documents.
  - 3.6. Honor Customer elections with respect to Payment Transaction methods where the Paze<sup>SM</sup> Service is present and available.
4. **Company’s Eligibility.** In order to be eligible to participate in the Paze<sup>SM</sup> Service, Company must at all times during the term of this Wallet Service Agreement: be based in or operating in the U.S.; accept Payment Credentials supported by the Paze<sup>SM</sup> Service; be in good standing and able to process Payment Transactions with applicable Payments Networks; enter into and maintain a Wallet Service Agreement with Elavon.

Company must notify Elavon within one (1) Business Day if it reasonably believes that Company no longer meets the eligibility requirements in this Section 4.

5. **Technical Integrators.** Before Company can utilize a third-party Technical Integrator related to the Paze<sup>SM</sup> Service, Company must notify Elavon in writing of the intended use of a Technical Integrator and may not start use of such Technical Integrator until Elavon (1) confirms that Technical Integrator has been approved by and has entered into a Technical Integrator Agreement with Service Operator, and (2) registers the Technical Integrator with the Service Operator. Company must promptly notify Elavon if the arrangement between Company and Technical Integrator expires or is terminated.
6. **Certification and Service Documents.** Service Operator may establish certification requirements for new features or enhancements of the Paze<sup>SM</sup> Service. Company must complete applicable certification testing and must comply with all Service Documents. Service Operator may update the Service Documents from time to time, without prior notice to Company, and Company agrees to comply with such amended Service Documents.
7. **Payment Transactions.** Company acknowledges and agrees to the following:
  - 7.1. Neither Elavon nor the Service Operator is responsible for Payment Transactions initiated by Customers on or through Company's website;
  - 7.2. A Payment Transaction is a purchase transaction solely between the applicable Company and the Customer; and
  - 7.3. Company is required to investigate, address, and resolve all inquiries and disputes regarding Payment Transactions in accordance with applicable Law and Payment Network Regulations.
8. **Customer Service.** Company must have a process in place to provide service to its Customers. For servicing related to Customers' Payment Credentials or participation in the Paze<sup>SM</sup> Service, Company must instruct Customers to contact their Issuer. Company must promptly report any complaints related to the Paze<sup>SM</sup> Service to Elavon.
9. **Marketing.** Company must not discriminate against the Paze<sup>SM</sup> Service or Paze<sup>SM</sup> Transactions relative to any comparable service supported by Elavon or such Company in the United States. Without limiting the foregoing, Company shall comply with the following:
  - 9.1. The Paze<sup>SM</sup> Service has a general prominence in the marketing channels of the Company that is at least as favorable as the general prominence of any other wallet or comparable service supported by the Company in the United States.
  - 9.2. Company will display the "Paze<sup>SM</sup> Service" as a payment option on all websites, mobile apps, or other supported channels of Company at least as prominently as Company displays any other wallet or comparable service supported by Company in the United States.
  - 9.3. Company will not process or decline Paze<sup>SM</sup> Transactions or establish other limits or restrictions on Paze<sup>SM</sup> Transactions in a manner that discriminates against such Paze<sup>SM</sup> Transactions relative to any other wallet or comparable service supported by Company in the United States.

## 10. Intellectual Property

### 10.1. Ownership and Licenses.

- (i) Subject to compliance with the Agreement, Wallet Service Agreement, and Service Documents, Elavon grants Company a non-exclusive, non-transferable, royalty-free license to integrate to, code to, and use the Paze<sup>SM</sup> Technology to access and use the Paze<sup>SM</sup> Service through a Service Integration as

expressly permitted by the Wallet Service Agreement and the Service Documents. Company shall not do any of the following, whether directly or indirectly:

- a) Use, reproduce, or distribute all or any part of the Paze<sup>SM</sup> Service other than as expressly permitted in the Wallet Service Agreement or the Service Documents;
  - b) Rent, electronically distribute, timeshare, or market all or any part of the Paze<sup>SM</sup> Service by interactive network, remote processing services, service bureau, or otherwise;
  - c) Modify, reverse engineer, decompile, disassemble, or derive source code from all or any part of the Paze<sup>SM</sup> Service;
  - d) Remove, deactivate, or otherwise circumvent any license restrictions or mechanisms intended to limit access to or use of all or any part of the Paze<sup>SM</sup> Service;
  - e) Obfuscate, combine, comingle, remove, destroy, or otherwise alter any copyright notices, proprietary markings, or confidentiality notices placed upon, contained within, or associated with all or any part of the Paze<sup>SM</sup> Service;
  - f) Misuse, damage, disrupt, or otherwise impair all or any part of the Paze<sup>SM</sup> Service or interfere with, disrupt, or otherwise impair any other Person's access to or use of all or any part of the Paze<sup>SM</sup> Service;
  - g) Access or use all or any part of the Paze<sup>SM</sup> Service: (1) in a manner that violates applicable Law, the Wallet Service Agreement, or the Service Documents; (2) to misappropriate, infringe upon, or otherwise violate Service Operator's intellectual property rights or the intellectual property rights of any third party; (3) to engage in any activity that interferes with, disrupts, harms, damages, or accesses in any unauthorized manner the servers, security, networks, data, applications, or other properties or services of Service Operator or any third party; (4) to harass, abuse, stalk, spam, mislead, defraud, threaten, or otherwise violate the legal rights of others; (5) for any obscene or immoral purpose; (6) to submit false or misleading information; (7) to store, upload, or transmit viruses or any other type of malicious or destructive code, files, scripts, agents, or programs; (8) to spam, phish, pharm, pretext, spider, crawl, or scrape; or (9) in a manner that excessively burdens the Service Operator System.
- (ii) If Company provides Elavon with any reports, evaluations, suggestions for improvements, or other feedback regarding all or any part of the Paze<sup>SM</sup> Service or any other products or services of Service Operator (collectively, "**Feedback**"), Elavon may provide such feedback to Service Operator and Company hereby grants to Elavon and the Service Operator a perpetual, worldwide license to use, disclose, publish, profit from, and otherwise exploit such Feedback, without restriction and without any attribution or compensation to Elavon, Company, or any applicable individual, for any purpose.

**10.2. Service Operator Marks.** Subject to compliance with the Agreement, Wallet Service Agreement, and Service Documents, Elavon grants Company a limited, non-exclusive, revocable, non-transferable, non-sublicensable, royalty-free license to use, display, and reproduce, during Company's participation in the Paze<sup>SM</sup> Service, the Service Operator Marks, only for use on the Company's websites to convey participation in the Paze<sup>SM</sup> Service. Company must comply with the *Paze<sup>SM</sup> Marketing Guidelines*. Except as set forth in this Section 10.2, all right, title, and interest in or to the Service Operator Marks is and will remain the exclusive property of the Service Operator. All use, display and reproduction by Company of the Service Operator Marks, including any goodwill associated with such use, display or reproduction of the Service Operator Marks, will inure solely to the benefit of the Service Operator.

- 10.3. **Use of Name; Publicity.** Company shall not use the name, logo, or other marks of another Participant, Merchant, or the Service Operator, including in promotional or Marketing Materials, without the prior written consent of such other Participant, Merchant, or Service Operator. Service Operator may issue a press release regarding Company's participation in the Paze<sup>SM</sup> Service, including with respect to the execution or renewal of the Wallet Service Agreement, or Company's election to receive certain products or services offered by the Service Operator.
11. **Management and Maintenance of APIs and SDK.** Subject to compliance with the Agreement, Wallet Service Agreement, and Service Documents and approval by the Service Operator, Elavon grants Company, for the duration of Company's participation in the Paze<sup>SM</sup> Service, a non-exclusive, non-transferable, royalty-free, non-sublicensable license to integrate to, code to, and use the Wallet Technology to access and use the Paze<sup>SM</sup> Service through a Paze<sup>SM</sup> Service Integration, as expressly permitted by the Service Documents.
12. **Malware.**
- 12.1. Company shall take commercially reasonable measures to maintain antivirus and inspection tools designed to: (1) Ensure that malicious software and functionalities are not transmitted, coded, or otherwise introduced into the Paze<sup>SM</sup> Service or the Systems of the Service Operator or Elavon; and (2) remove malicious software and functionalities from any transmitted data.
- 12.2. Company shall continue to review, analyze, and implement improvements to and upgrades of its malicious software and functionalities prevention and correction programs and processes that are commercially reasonable and consistent with the then-current information technology industry's standards.
- 12.3. If Company believes or has reason to believe that malicious software or functionalities have been found or introduced into the Paze<sup>SM</sup> Service or the Systems of the Service Operator, Elavon, or Company, Company shall promptly notify Elavon, and use commercially reasonable efforts and diligently work to remedy the effects of such malicious software or functionalities.
13. **Access Credentials.** Company will be responsible for maintaining adequate security controls of any and all Access Credentials. Company is responsible for all activity performed using its Access Credentials, other than activity performed by Elavon or Elavon's third-party contractors.
14. **Data Incident.** Any unauthorized access to or use, disclosure, or loss of Confidential Information related to the Paze<sup>SM</sup> Service in possession, custody, or control of Company is considered a "Data Incident" subject to Section 9.2(e) of the Agreement. In addition to the requirements of that Section 9.2(e), Company must cooperate with Elavon, the Service Operator, regulators, and law enforcement to assist in regaining possession of Confidential Information and prevent its further unauthorized use, or further unauthorized access to or use of the Confidential Information, and to notify affected Customers (only if required by applicable Law); and take measures to restore and enhance its security policies and procedures to avoid further Security Incidents.
- 14.1. Except as otherwise required by applicable Law or the Payment Network Regulations, Company shall not make any public announcement with respect to any Security Incident related to the Paze<sup>SM</sup> Service without obtaining Elavon and the Service Operator's prior written consent.
- 14.2. In addition to the requirements set forth in Section 9.2(e) of the Agreement, Company shall provide to Elavon and/or Service Operating details concerning the Security Incident, including:
- a) the nature and impact of the Security Incident;
  - b) an assessment of immediate risk due to the Security Incident;
  - c) corrective actions already taken; and
  - d) corrective actions to be taken.

15. **Employee Controls.** Company must not knowingly permit any employee or agent of the Company to have access to the Paze<sup>SM</sup> Service, Paze<sup>SM</sup> Transaction Data, or Platform Data if the person has been convicted of a crime in connection with a financial crime, dishonest act as it relates to fiduciary duty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C § 1829(a).
16. **Confidentiality.** In connection with participation in the Paze<sup>SM</sup> Service, Company, Elavon, and Service Operator acknowledge and agree that all Confidential Information shall be subject to the Wallet Service Agreement, the Paze<sup>SM</sup> Service Operating Rules (the “**Rules**”) and the Agreement. In accordance with the Wallet Service Agreement, the Rules and the Agreement, Company, Elavon and Service Operator may make available to one another Confidential Information. Each party will not access, use, or disclose the Disclosing Party’s Confidential Information except to perform obligations under the Wallet Service Agreement and Service Documents, without the prior written consent of the Disclosing Party or as otherwise expressly permitted by the Wallet Service Agreement, the Rules or the Agreement. For the avoidance of doubt, Service Operator, and Elavon on behalf of Service Operator, may access, use, or disclose Confidential Information to make available, provide, operate, test, maintain, support, and enhance the Paze<sup>SM</sup> Service. As between Elavon and Company, the Paze<sup>SM</sup> Transaction Data and the Platform Data shall be Elavon’s Confidential Information. In the event of a conflict between the Rules and the Agreement, the Rules shall control, including, for the avoidance of doubt, with respect to the return or destruction of any Confidential Information.
17. **Suspension of Paze<sup>SM</sup> Services.** Elavon or the Service Operator may suspend Company’s participation in the Paze<sup>SM</sup> Service, without prior written consent.
18. **Term and Termination of Paze<sup>SM</sup> Services.**
- 18.1. Unless terminated as provided below, the Paze<sup>SM</sup> Wallet Service Agreement will remain in effect for the Paze<sup>SM</sup> Service Initial Term. Thereafter, the Paze<sup>SM</sup> Wallet Service Agreement will automatically renew for successive additional renewal terms of one (1) year (each, a “**Paze<sup>SM</sup> Service Renewal Term**”) unless terminated as provided below. The Paze<sup>SM</sup> Wallet Service Agreement will immediately terminate: (1) upon termination, with or without cause, of the Agreement, (2) if the underlying agreement between Elavon and Service Operator terminates.
- 18.2. By Elavon or Service Operator. The Paze<sup>SM</sup> Wallet Service Agreement may be terminated, in whole or in part, at any time with or without cause by Elavon or the Service Operator.
- 18.3. By Company. Company may terminate its participation in the Paze<sup>SM</sup> Service by providing advance written notice to Elavon. Elavon will promptly notify the Service Operator of the Company’s intent to terminate, upon receipt of written notice from Company. The termination will not be effective until the Service Operator has confirmed the termination in writing. The Service Operator will revoke Company’s Access Credentials. Until the Service Operator has confirmed in writing that the revocation has been completed, the termination will not be effective, and Company will be responsible for performing in accordance with this Wallet Service Agreement and the Service Documents.
- 18.4. Effect of Termination. Upon termination of the Wallet Service Agreement: (1) Company shall immediately cease accessing or using the Paze<sup>SM</sup> Service; (2) all rights and licenses granted hereunder will be terminated as of the effective date of termination; (3) all Confidential Information will be returned or destroyed by the Receiving Party as set forth herein; (4) Company must remove all Service Operator Marks, and mentions of, or messaging related to, the Paze<sup>SM</sup> Service from all applicable websites; and (5) must take any further action as may be required under the Service Documents and fully cooperate with Elavon and Service Operator to wind down the parties’ relationship related to the Paze<sup>SM</sup> Service.



18.5. Company will remain fully liable for all obligations associated with Paze<sup>SM</sup> Transactions and payment of any Fees or other payments to Elavon in connection with its participation in the Paze<sup>SM</sup> Service, incurred prior to the effective date of termination.

19. **Disclaimers of Warranties.** COMPANY ACKNOWLEDGES AND AGREES THAT THE PAZE<sup>SM</sup> SERVICE INTEGRATIONS, THE PAZE<sup>SM</sup> SERVICE, THE WALLET SERVICE AGREEMENT, THE SERVICE DOCUMENTS, AND ANY OTHER DATA OR INFORMATION IS PROVIDED “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND ELAVON HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PAZE<sup>SM</sup> SERVICE INTEGRATIONS, THE PAZE<sup>SM</sup> SERVICE, THE WALLET SERVICE AGREEMENT, THE SERVICE DOCUMENTS, AND ANY OTHER DATA OR INFORMATION, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES AS TO THE ACCURACY, COMPLETENESS, OR CURRENTNESS OF INFORMATION OR DATA TRANSMITTED THROUGH THE SERVICE INTEGRATIONS OR THE SERVICE, OR OTHERWISE PROVIDED IN CONNECTION WITH THE PAZE<sup>SM</sup> SERVICE INTEGRATIONS, THE PAZE<sup>SM</sup> SERVICE, THE WALLET SERVICE AGREEMENT, OR THE SERVICE DOCUMENTS, AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY WARRANTIES THAT PERFORMANCE OF THE PAZE<sup>SM</sup> SERVICE INTEGRATIONS OR THE PAZE<sup>SM</sup> SERVICE WILL BE UNINTERRUPTED, TIMELY, OR ERROR-FREE, THAT DEFECTS OR ERRORS IN THE PAZE<sup>SM</sup> SERVICE INTEGRATIONS, THE PAZE<sup>SM</sup> SERVICE, THE WALLET SERVICE AGREEMENT, THE SERVICE DOCUMENTS, OR INFORMATION OR DATA WILL BE CORRECTED, OR THAT THE PAZE<sup>SM</sup> SERVICE INTEGRATIONS, THE PAZE<sup>SM</sup> SERVICE, THE WALLET SERVICE AGREEMENT, OR THE SERVICE DOCUMENTS, WILL BE COMPATIBLE WITH FUTURE SERVICE OPERATOR OR ELAVON SOFTWARE, PRODUCTS, OR SERVICES OR ANY THIRD PARTY SOFTWARE, PRODUCTS, OR SERVICES, OR THAT ANY INFORMATION OR DATA STORED OR TRANSMITTED THROUGH THE PAZE<sup>SM</sup> SERVICE INTEGRATIONS OR THE PAZE<sup>SM</sup> SERVICE WILL NOT BE LOST, CORRUPTED, OR DAMAGED.
20. **Disclaimers of Damages.** AS RELATED TO THE PAZE<sup>SM</sup> SERVICE, ANY LIMITATIONS OF COMPANY’S LIABILITY TO ELAVON SET FORTH IN THE AGREEMENT, INCLUDING ANY LIMITATION TO LIABILITY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT (WHETHER IN NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE), OR OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT APPLY TO LIABILITY ARISING FROM COMPANY’S (A) BREACH OF SECTION 10 (INTELLECTUAL PROPERTY), (B) BREACH OF SECTION 23 (USE OF THE PAZE<sup>SM</sup> SERVICE), (C) INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 21, (D) INFRINGEMENT, MISAPPROPRIATION, OR VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY, OR (E) FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT IN NO EVENT WILL ELAVON BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT, TORT (WHETHER IN NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE), OR OTHER LEGAL OR EQUITABLE THEORY, OR FOR ANY LOSS OF PROFITS OR REVENUE IN CONNECTION WITH THE PAZE<sup>SM</sup> SERVICE, THE WALLET SERVICE AGREEMENT, OR THE SERVICE DOCUMENTS, REGARDLESS OF WHETHER ELAVON KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
21. **Indemnification.** In addition to the indemnification obligations set forth in Section 13 of the Agreement, Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against all Losses (including any non-compliance fines and fees imposed by the Service Operator) in connection with Claims brought by a third-party arising out of: (1) Company’s breach of any terms, conditions, representations, warranties, covenants, acknowledgements, agreements, or other provisions of the Wallet Service Agreement or Service Documents by Company or Company’s employees, officers, directors, or agents (each, a “**Company Party**”); (2) any matter, issue, act, or omission for which Company has been allocated

responsibility under the Wallet Service Agreement or Service Documents; (3) any infringement, misappropriation, or other violation of the Service Operator's or a third party's intellectual property rights by Company or Company Party; (4) Company's or its Service Providers' gross negligence or willful misconduct; (5) Company's or its Service Providers' violation of Laws or Payment Network Regulations; or (6) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers.

22. **Fees.** In addition to the fees identified in the Agreement, Elavon may pass through to Company increases, new fees or non-compliance fees imposed by Service Operator and Company agrees to pay to Elavon such fees.

23. **Use of the Paze<sup>SM</sup> Service.**

23.1. The Paze<sup>SM</sup> Service must be accessed and used only in the United States and with Payment Credentials supported by the Paze<sup>SM</sup> Service and issued in the United States. A Customer with a Payment Credential issues in the United States who is temporarily outside of the United States can engage in Paze<sup>SM</sup> Transactions with an eligible Merchant in the United States.

23.2. Processing Paze<sup>SM</sup> Transactions. Prior to initiating a Paze<sup>SM</sup> Transaction, Company must obtain the Customer's consent to access the data for the specific purpose for which the Company intends to use it. Company must also provide any other disclosures required by applicable Law. If Company allows a Customer to change any of the Paze<sup>SM</sup> Transaction Data received from the Service Operator, neither Elavon nor the Service Operator shall be liable for any claims arising as a result of these changes. A change of any Paze<sup>SM</sup> Transaction Data is not considered part of the Paze<sup>SM</sup> Transaction. Company must support the ability to receive Paze<sup>SM</sup> Transaction Data provided by the Service Operator and may use Paze<sup>SM</sup> Transaction Data, along with their internal risk management processes, to determine whether to proceed with its transaction with a Customer.

23.3. Operation of the Paze<sup>SM</sup> Service. Company is responsible for the management and maintenance of its portion of the Paze<sup>SM</sup> Service and must ensure the Paze<sup>SM</sup> Service is operational and meets all applicable requirements and service-level standards outlined in the *Paze<sup>SM</sup> Integration Guide*. If Company is unable to meet these obligations, or the Paze<sup>SM</sup> Service becomes inoperable, the Company must notify Elavon and promptly take steps to resolve the situation. Company acknowledges that it is responsible for its own costs and expenses relating to the exercise of its rights, licenses, and the performance of its obligations under the Wallet Service Agreement and Service Documents.

24. **Acceptance.** Company acknowledges and agrees that by presenting the Paze<sup>SM</sup> Service and accepting Paze<sup>SM</sup> Transactions it has agreed to the terms and conditions contained in this Wallet Service Agreement.

25. **Additional Definitions.**

**"Access Credentials"** means identification credentials, passwords, public or private encryption keys, or any other codes for purposes of giving access to the Paze<sup>SM</sup> Service, the Systems, technology, or intellectual property of Service Operator, Confidential Information, or any data or content contained therein in its possession or control.

**"Applicable Privacy Requirements"** means applicable Law governing the handling, use and re-use, disclosure and re-disclosure, protection, or processing of Personal Information, including, but not limited to (a) Gramm-Leach-Bliley Act, (b) the California Financial Information Privacy Act (Cal. Fin. Code § 4050 et seq.), (c) the California Consumer Privacy Act (Cal. Civ. Code § 1798.100 et seq.), (d) the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth (201 Code Mass. Regs. § 17.00 et seq.), (e) federal and state unfair and deceptive acts, practice statutes, and (f) the Payment Network Regulations.

**"Confidential Information"** means information or materials not generally known to the public, or is identified as, or should reasonably be understood to be, proprietary or confidential, including: (i) information concerning marketing plans, marketing philosophies, objectives, and financial results; (ii) information regarding business

systems, methods, processes, financing data, programs, and products; (iii) information unrelated to the activities contemplated by the Wallet Service Agreement or Service Documents obtained by a party from or through the other party, including by accessing or being present at the business location of the other party; (iv) proprietary technical information, including source code; (v) competitive advantages and disadvantages, technological development, sales volume, merchandise mix, business relationships, methods of transacting business, operational and data processing capabilities, and systems, software, and hardware, and the documentation thereof; (vi) Service Operator Metrics, (vii) Personal Information, (viii) any copies, excerpts, summaries, analyses, or notes of the foregoing. Service Operator Metrics are the Confidential Information of Service Operator, and (viii) the Paze<sup>SM</sup> Transaction Data and the Platform Data.

**“Customer”** means any consumer who has or has had a debit card enrolled in the Paze<sup>SM</sup> Directory and is or has been eligible to initiate Merchant Transactions.

**“Distributor”** means an entity that has executed a Service Participation Agreement to participate in, market, and make available the Paze<sup>SM</sup> Service to Merchants.

**“Issuer”** means an entity that has executed a Service Participation Agreement to participate in the Paze<sup>SM</sup> Service as an Issuer and is providing Payment Credentials and other identifying information to the Service Operator for its customers.

**“Marketing Materials”** means any advertising or marketing communication and / or promotional materials that incorporate references to the Paze<sup>SM</sup> Service and is used for consumer or commercial purposes.

**“Merchant”** means any entity that has executed a Wallet Service Agreement and accepts as a method of payment any of the types of Payment Credentials supported by the Paze<sup>SM</sup> Service in exchange for products or services.

**“Participant”** means an Issuer or Distributor that has been approved to participate in the Paze<sup>SM</sup> Service and is a party to a Service Participation Agreement that has been executed by the Service Operator.

**“Payment Credentials”** means a name, payment card, account number, identification number, or other credential of a Customer that is supported by a Payment Network and that enables such Customer to initiate Payment Transactions with Merchants.

**“Payment Transaction”** means a purchase transaction between a customer and a Merchant, utilizing the Payment Credentials from the Paze<sup>SM</sup> Directory.

**“Paze<sup>SM</sup> Directory”** means the multi-Payment Network and multi-bank directory of enrolled and stored Payment Credentials for accounts issued or provided to the Service Operator by any Issuer, along with any identifying information (e.g., billing or mailing address, email address, or phone number identifier) of Customers.

**“Paze<sup>SM</sup> Service”** means a service that (i) allows Customers to access their Payment Credentials in the Paze<sup>SM</sup> Directory, (ii) allows such Customers to share their Payment Credentials and other identifying information with Merchants to initiate Payment Transactions without having to manually enter such information, and (iii) if supported by the Service Operator and enabled by a Merchant, allows Customers to store their tokenized Payment Credentials with the Merchant for use for subsequent Payment Transactions.

**“Paze<sup>SM</sup> Service Integration”** means an integration developed by or on behalf of a Participant or any Merchant using the Service Technical Specifications (and any software development kit provided by or on behalf of Early Warning, if any, for purposes of developing the integration), to interface Participant’s or such Merchant’s Systems with the Paze<sup>SM</sup> Service.

**“Paze Technology”** means The Paze<sup>SM</sup> APIs and the Service Technical Specifications.

**“Paze<sup>SM</sup> Transaction”** means each event involving credentials served by the Paze<sup>SM</sup> Service that includes both (i) presenting identifiers for available Payment Credentials in the Paze<sup>SM</sup> Directory to a Customer and the

Customer selecting from such identifiers for use in a Payment Transaction, and (ii) the Payment Credential and related information being provided to the Merchant for use in a Payment Transaction and/or to store the Payment Credential on file for subsequent Payment Transaction(s).

**“Paze<sup>SM</sup> Transaction Data”** means certain Customer and Merchant related data regarding a Payment Transaction, including but not limited to: transaction date, currency, Merchant name, transaction amount, industry category, industry code, transaction type, transaction status, Merchant industry (code, category, name), Merchant address and network transaction ID.

**“Personal Information”** means nonpublic Personal Information and any individually identifiable information that relates to, or could be reasonably linked with, an identified or identifiable natural person device or household, or any information that combined with such individually identifiable information, including information that can be used to authenticate that individual or access an account, or as defined and relevant under Applicable Privacy Requirements, and provided to or received by a party in connection with the Paze<sup>SM</sup> Service.

**“Platform Data”** means aggregated and anonymized or statistical data provided or otherwise made available to the Service Operator by any entity, that is derived from or in connection to Paze<sup>SM</sup> Transactions processed by the Service Operator in conjunction with the operation of the Paze<sup>SM</sup> Service or from reports or data files produced by Participants to the Service Operator hereunder. For avoidance of doubt, Platform Data does not include Paze<sup>SM</sup> Transaction Data.

**“Security Incident”** means a reasonably suspected or actual theft, unauthorized disclosure, or loss of Confidential Information, or actual unauthorized intrusion into the facilities or information processing systems of Merchant that harms the confidentiality, integrity, or availability of Confidential Information.

**“Service”** has the same meaning as “Paze<sup>SM</sup> Service”.

**“Service Documents”** means the Paze<sup>SM</sup> Service Operating Rules, Service Technical Specifications, and all other guides, manuals, policies, and bulletins amended by the Service Operator from time to time, including the Paze<sup>SM</sup> Integration Guide and Paze<sup>SM</sup> Marketing Guidelines.

**“Service Operator”** means the entity that operates the Paze<sup>SM</sup> Service, whether that entity is Early Warning or its Affiliate.

**“Service Operator Marks”** means all registered or unregistered trademarks, service marks, word marks, logos, taglines, slogans, trade names, trade dress rights, and other similar or related intellectual property arising, whether now or existing or hereafter adopted or acquired, relating to the Paze<sup>SM</sup> Service and owned by or licensed to the Service Operator. The Distributor Marks are not considered Service Operator Marks.

**“Service Participation Agreement”** means the written agreement between a Participant and the Service Operator pursuant to which the Participant is permitted to participate in the Service.

**“Service Technical Specifications”** means any and all technical specifications, technical requirements, descriptions or instructions describing the installation, setup, function, features, operation, and use of the Paze<sup>SM</sup> Service in written or electronic form, that are made available by the Service Operator.

**“Technical Integrators”** means an entity that (i) provides or otherwise makes available a software solution of such entity to Merchants and (ii) integrates the payment acceptance functionality and capabilities offered by a third party with the software solution of such entity.

**“Technical Integrator Agreement”** means the written agreement between a Technical Integrator and the Service Operator pursuant to which Service Operator grants to such Technical Integrator (a) a license to integrate to, code to, and use the Paze<sup>SM</sup> Technology to access and use the Paze<sup>SM</sup> Service through a Paze<sup>SM</sup> Service Integration, and (b) the right to make available the Paze<sup>SM</sup> Service.