

SCHEDULE A

TERMS AND CONDITIONS

1. **Defined Terms.** Capitalized terms used in the Agreement will have the meanings stated in Appendix 1 of this Schedule A. Capitalized terms used but not defined in this Schedule A will have the meanings stated in the Operating Guide.
2. **Scope of Agreement.**
 - 2.1. **Gateway Services.** Elavon will provide Company with the Gateway Services as set forth in the Gateway Services chapter of the Operating Guide. In addition to the terms of this Schedule A, Company will comply with any terms of the Operating Guide applicable to the Gateway Services, and any Documentation Elavon provides to Company in writing from time to time that is applicable to the Gateway Services. Company will only use the Gateway Services in the jurisdiction selected on the Enrollment Form.
 - 2.2. **Support Services.** Elavon will operate a technical support call center twenty four (24) hours per day, seven (7) days per week, three hundred sixty five (365) days per year (24x7x365).
 - 2.3. **Professional Services.** Elavon may perform certain professional services as mutually agreed pursuant to a professional services agreement to be separately executed by the parties.
3. **Term and Termination.**
 - 3.1. **Term.** Unless terminated as provided below, the Agreement will remain in effect for the term set forth on the Enrollment Form (the “**Initial Term**”). Thereafter, the Agreement will automatically renew for successive one year terms (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”) unless terminated as provided below.
 - 3.2. **Termination.**
 - (a) **Non-Renewal.** Either party may terminate the Agreement effective at the end of the Initial Term or any Renewal Term by providing written notice of non-renewal to the other party at least 90 days prior to the expiration of the then current term.
 - (b) **By Company.**
 - (i) Company will have the right to terminate the Agreement upon written notice to Elavon in the event Elavon materially breaches the Agreement and the material breach is incapable of cure or remains uncured for a period of 30 days after receipt by Elavon of a written notice of breach from Company specifying the nature of the breach.
 - (ii) Company will have the termination rights set out in Section 15.9 and Section 15.14.
 - (c) **By Elavon.** Elavon will have the right to terminate the Agreement, upon written notice to Company, in the event of any of the following:
 - (i) Company is in monetary default of the Agreement for a period of 15 days after receipt of written notice of such default from Elavon; or
 - (ii) Company otherwise materially breaches the Agreement and the breach is incapable of cure or remains uncured for a period of 30 days after receipt by Company of a written notice of breach from Elavon specifying the nature of the breach.
 - 3.3. **Immediate Termination by Elavon.** Notwithstanding any cure period described herein, Elavon will further have the right to immediately terminate the Agreement or Company’s use of the Gateway Services hereunder, without further liability on the part of Elavon, upon written notice to Company in the event of any of the following: (i) Elavon determines, in its reasonable discretion, that it is commercially impractical to continue performing the Gateway Services in connection with

the Agreement, including in light of a change in Law, Payment Network Regulations or the requirements of any Payment Services Entity; (ii) any Payment Network or Payment Services Entity prohibits Elavon from providing, or prohibits Company from using, the Gateway Services related to that Payment Network or Payment Services Entity or otherwise requires that Elavon terminate one or more Gateway Services; (iii) in the event of a Change of Control of Company; (iv) Company is subject to a bankruptcy proceeding; (v) Company engages in activities that violate or cause Elavon to violate Payment Network Regulations or which cause Elavon to violate its agreement with any Payment Services Entity; or (vi) Elavon determines, in its reasonable discretion, that Company has engaged in activities that are fraudulent, that violate applicable Laws or Payment Network Regulations, or that cause Elavon to violate applicable Laws or Payment Network Regulations, or that damage the goodwill of Elavon or any of the Payment Networks.

4. **Authorized Users; Access; Security of Passwords and User IDs.**

- 4.1. 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 Gateway 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 Gateway Services in accordance with the terms of the Agreement, the Operating Guide and any Documentation. Company is responsible for its Authorized Users' compliance with the terms of the Agreement, the Operating Guide, and the Documentation, for all acts or omissions of the Authorized Users, and for all use of any user ID and password other than by Elavon or Elavon's third-party contractors or use by third-parties of user IDs and passwords obtained by such third parties from Elavon or Elavon's third-party contractors.
- 4.2. Company will not, and will ensure that its Authorized Users do not:
- (a) access or use the Gateway 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 Gateway 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 Gateway 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 Gateway 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 Gateway Services or any Elavon Materials; or
 - (f) copy, re-sell, republish, download, frame or transmit the Gateway 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 Gateway Services.
- 4.3. 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 Gateway Services. Company will promptly notify Elavon if Company believes the Gateway Services or Elavon's databases have been compromised by use of a user ID or password associated with the Gateway Services.

5. **Fees and Taxes.**

- 5.1. **Fees.** Company will pay to Elavon the fees set forth on the Enrollment Form for Gateway Services under the Agreement, including the monthly minimum fee, if any. Company will be responsible for, and Elavon may pass through to Company, all fees, fines, penalties, or assessments imposed by any Destination Point or other Payment Services Entity, Payment Network or other third party as a result of the activities, acts or omissions of Company. Elavon will have the right to increase the fees set forth on the Enrollment Form or any schedule or addendum to the Agreement to pass through to

Company any increases in or any new fees imposed by a Destination Point or other Payment Services Entity, Payment Network or other third party. Any modification to fees identified as “pass-through” fees in a notice, on the Enrollment Form or any other schedule or addendum that may later be added to the Agreement will reflect the actual costs to Elavon set by the third party for such fees. Elavon may also increase fees that are not identified as “pass-through” fees at any time upon notice to Company via periodic statement or other notice at least 30 days before such increase becomes effective. If Elavon increases non-pass-through fees by more than five percent in any calendar year, Company may terminate this Agreement in writing within 30 days of notification of such increase.

- 5.2. **Payment Terms.** All Elavon fees will be billed in advance, unless fees are being calculated on a per Transaction basis. All fees will be due and payable in accordance with the payment terms provided on the Enrollment Form and are non-refundable. All amounts due and payable will be made in United States dollars for Gateway Services in the United States, and Canadian dollars for Gateway Services in Canada. If Company fails to pay any undisputed fees in full when due and payable, then, in addition to all other rights and remedies at law or otherwise, Elavon will have the right to charge Company, and Company will have the obligation to pay, interest equal to one percent (1.0%) per month on the unpaid amount for the period starting with the date payment was due and ending on the date when the full payment is received by Elavon. In addition, Elavon will be entitled to recover from Company all reasonable costs incurred to obtain full payment of undisputed fees, including reasonable attorneys’ fees.
- 5.3. **Taxes.** The fees listed in the Agreement do not include sales, use, excise, property, value added, gross receipts or any other taxes or import or export duties. If any taxes or duties are assessed on the Gateway Services, Company is obligated to pay those taxes and duties as required under applicable Laws and will reimburse Elavon for any such taxes or duties, except for 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.
- 5.4. **Demand Deposit Account.** Company will establish and maintain with an ACH participating financial institution one or more demand deposit accounts (“**DDAs**”) to facilitate payment of fees to Elavon. Company irrevocably authorizes Elavon and its affiliates that provide Gateway 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 authorizes Company’s depository institution to grant Elavon access to any information or records regarding the DDA reasonably requested by Elavon to debit or credit the DDA and to otherwise exercise Elavon’s rights under the Agreement with respect to the DDA. The foregoing authorizations will remain in effect after termination of the Agreement until all of Company’s payment obligations to Elavon have been paid in full. Elavon has the right to rely on written instructions submitted by Company requesting changes to the DDA. In the event 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.

6. Compliance with Laws and Payment Network Regulations.

- 6.1. **General.** Elavon and Company will comply with all Laws and Payment Network Regulations applicable to the Gateway Services.
- 6.2. **Office of Foreign Assets Control Compliance.** Company acknowledges that Elavon is an entity governed by the Laws of the United States of America and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including the Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto.
- 6.3. **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 Gateway 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 or 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.

- 6.4. **Customer Identification.** To help the United States Government fight the funding of terrorism and money laundering activities, federal law requires financial institutions and their affiliates to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Company will provide certain information and identifying documents requested by Elavon to allow Elavon to identify Company.

7. Confidentiality; Data Security and Use.

7.1. 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 7.1 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 7.1 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.

7.2. Data Security and Use.

- (a) **Security Programs Compliance.** Elavon and Company will each comply with the applicable requirements of the Security Programs.
- (b) **PCI-DSS Attestation.** Company may review Elavon's current PCI-DSS compliance status on the Payment Network websites as available. Elavon will undergo an annual assessment of its compliance with the Security Programs and, if applicable to the Gateway Services provided under the Agreement, the Payment Application Data Security Standards.
- (c) **Gateway Data.** Company grants to Elavon a non-exclusive, royalty-free right and license to access and use all Gateway Data as necessary or appropriate for Elavon to provide the Gateway Services and as otherwise permitted under the

Agreement, including releasing such Gateway Data to third parties as directed by Company (including release to Destination Points and any other Payment Services Entities) or in connection with Elavon’s performance of the Gateway Services. Elavon will retain Gateway Data 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. Company acknowledges and agrees that Elavon may use, retain, distribute and disclose derivative data based originally on Gateway Data that has been compiled and aggregated with other data (the “**Aggregated Data**”), so long as such Aggregated Data does not identify Company as the source of such data. “Aggregated Data” will not constitute Gateway Data or Company’s Confidential Information under the Agreement. Elavon will not use Aggregated Data in any manner prohibited by applicable Laws.

- (d) **Data Protection.** Subject to the terms of the Agreement (including Section 12), Elavon acknowledges that it is responsible for the security of Cardholder Data that it transmits on behalf of Company in connection with the Gateway Services while such Cardholder Data is in Elavon’s possession; therefore, Elavon will ensure the security of such Cardholder Data in accordance with all Laws and Payment Network Regulations.

8. **Company 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 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 6.1.

9. **Proprietary Rights.** As between Elavon and Company, Elavon retains all right, title and interest in and to the Gateway Services, Elavon Materials, Hosted System, Updates, Customizations, and all Intellectual Property Rights in any of the foregoing. Company will not acquire any ownership interest or license rights (except such rights as are expressly stated in the Agreement (including the Operating Guide)) in or to the Gateway Services, Elavon Materials, Hosted System, Updates, Customizations or Intellectual Property Rights in any of the foregoing. If any right, title or interest in and to any Customizations is deemed to vest in Company, Company hereby assigns and agrees to assign to Elavon all worldwide right, title and interest in and to such Customizations, including, all Intellectual Property Rights therein. All rights not otherwise stated in the Agreement are reserved to Elavon. The rights granted to Company under the Agreement are non-exclusive and nothing in the Agreement will limit the ability of Elavon to market, sell, offer for sale, license or otherwise exploit the Gateway Services, Elavon Materials, Hosted System, Updates, Customizations or Intellectual Property Rights in any of the foregoing to any third parties or to appoint or authorize any other person or entity to do the same.

10. Representations and Disclaimers

10.1. **Elavon Representations.** Elavon represents to Company the following as of the Effective Date:

- (a) **Organization.** Elavon is a corporation validly existing and 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.

10.2. **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 any bid process and enrollment forms, as applicable, and in the assumptions in Schedule A or any other document submitted to Elavon is true and complete and properly reflects the business, financial condition and ownership of Company in all material respects.

- (b) **Authority and Power.** Company has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Company to all provisions of the Agreement, and such person is authorized to execute any document and to take any action on behalf of Company that Elavon requires to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Company is subject.
- (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Company's knowledge, threatened, which if decided adversely would impair Company's ability to carry on its business substantially as now conducted or which would materially and adversely affect Company's financial condition or operations.
- (d) **Business Use.** Company is obtaining and using the Gateway Services from Elavon to facilitate lawful business Transactions between Company and its Customers, and using the DDA only for lawful business purposes.
- (e) **Gateway Data.** Company has all necessary right, title and interest in and to Gateway Data to provide such information to Elavon for use and retention by Elavon as contemplated under the Agreement.

10.3. **Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE AGREEMENT, THE GATEWAY SERVICES, ELAVON MATERIALS AND HOSTED SYSTEM ARE PROVIDED "AS IS" AND ELAVON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE GATEWAY SERVICES, ELAVON MATERIALS AND HOSTED SYSTEM, AND COMPANY'S USE OF THIRD-PARTY SERVICES, EQUIPMENT, SOFTWARE, OR DATA IN CONNECTION WITH THE GATEWAY 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.

11. **Indemnification.** Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against losses, damages, liabilities, fines, judgments and expenses (including all reasonable attorneys' fees) (collectively, "**Losses**") in connection with claims, actions, demands or proceedings (made or threatened) brought by a third-party arising out of (a) any Transaction processed under the Agreement; (b) Company's breach of the Agreement; (c) all use of any user ID and password other than by Elavon or Elavon's third-party contractors; (d) Company's or its Service Providers' gross negligence or willful misconduct; (e) Company's or its Service Providers' violation of Laws or Payment Network Regulations; or (f) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers. Company will not enter into any settlement that imposes any liability or obligation on any of the Elavon indemnified parties, or that contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without Elavon's prior written consent. Elavon may join in the defense, with its own counsel, at its own expense.

12. **Limitation of Liability.** Elavon's aggregate liability for any Losses, regardless of the form of action, arising out of the Agreement or Elavon's performance or non-performance of Gateway Services under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise), will not exceed the sum of fees paid by Company to Elavon during the three months immediately preceding the event giving rise to the Losses. In no event will Elavon or its 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).

13. **Purchased Equipment.** Elavon will ship to Company the Purchased Equipment described in the Enrollment Form 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.

14. **Third-Party Vendors**

14.1. **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 Gateway Services or Hosted System. Company will ensure that each Service Provider or applicable Company Resource maintains certification and compatibility with the Gateway Services and Hosted System 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 Gateway Services will excuse Elavon from all liability and all of its obligations under the Agreement to the extent that Elavon's provision of the Gateway Services is impaired by such failure.
- (b) Company is responsible for any violations of the Agreement that result from the acts or omissions of Company's Service Providers and any other person who, with or without Company's consent or cooperation, obtains access to Transaction Information from Company or access to systems under Company's or Service Provider's control (excluding acts or omissions to the extent attributable to Elavon's breach of the Agreement, gross negligence, or willful misconduct).
- (c) Elavon is not responsible for Service Providers or for the products or services offered by Service Providers, nor is it responsible for any Transaction until Elavon receives complete data for the Transaction in the format required by Elavon.
- (d) Elavon may terminate a Service Provider's access to or ability to integrate with Elavon's products, services, and systems immediately without prior notice if the termination results from:
 - (i) The Service Provider's breach of any Laws or Payment Network Regulations,
 - (ii) The requirement of any court order or Payment Network or application of Payment Network Regulations to the Gateway 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 Gateway Services.

14.2. **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).

14.3. **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.

15. **General Provisions.**

15.1. **Entire Agreement.** The Agreement (including the applicable chapter of 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 this Schedule A and the terms and conditions of any other schedule or exhibit, the terms of such schedule or exhibit will control with respect solely to the subject matter thereof.

- 15.2. **Jurisdiction and Venue; Governing Laws.** For all disputes relating to the enforceability of the arbitration agreement set forth below in Section 15.6, or to the extent the arbitration agreement set forth in Section 15.6 is determined to be unenforceable or inapplicable to any claim, controversy or dispute between the Company and Elavon, whether sounding in contract, tort or otherwise, then, the laws of the state of Georgia, without giving effect to its choice-of-law rules will govern any claim, controversy or dispute to be adjudicated in a court of law or equity, and each party hereby submits to the exclusive jurisdiction of the courts of the state of Georgia (Fulton County) or the United States District Court for the Northern District of Georgia with respect to any such claim, controversy or dispute. The parties each waive any objection to venue with respect to any actions brought in those courts. All performances and Transactions under the Agreement will be deemed to have occurred in the state of Georgia, and Company's entry into and performance of the Agreement will be deemed to be the transaction of business within the state of Georgia.
- 15.3. **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.
- 15.4. **Assignability.** Company will not assign the Agreement, directly, by operation of law, or by Change of Control of Company, without Elavon's prior written consent. If Company nevertheless assigns the Agreement without Elavon's consent, the Agreement will be binding on both the assignee and Company. Elavon may transfer or assign its rights or obligations under the Agreement.
- 15.5. **Notices.** Any written legal notice to the other party will be deemed received upon the earlier of (a) actual receipt, (b) five business days after being deposited in the United States mail (or the Canada Post mail, as applicable), return receipt requested, or (c) two business days after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to Company's address on the Enrollment Form or the last address shown on Elavon's records, or to Elavon at 7300 Chapman Highway, Knoxville, Tennessee 37920, or such other addresses as Elavon may designate in writing.
- 15.6. **Arbitration.** All claims, controversies or disputes between the parties arising out of or related to the Agreement, the schedules to this Agreement or the relationship between the parties will be submitted to and decided by arbitration held in the city and state in which the Company maintains its principal place of business and in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (a copy of which can be reviewed at www.adr.org) except that the arbitration proceeding will be conducted before one neutral arbitrator who will be an active member of the bar of the state in which the arbitration is conducted and actively engaged in the practice of law for at least 10 years and who will issue a reasoned award. The arbitrator will have the authority to award any remedy or relief that a federal court in the state in which the arbitration is conducted could order or grant. The arbitrator will have no authority to decide claims on a class action or collective action basis. The arbitrator can only decide Elavon's or the Company's claims and may not consolidate or join the claims of other persons who may have similar claims. No party to this Agreement may assert a claim in arbitration on behalf of any third party or represent any class of claimants in an arbitration brought pursuant to the Agreement. While each party will bear its own attorney's fees incurred in the arbitration proceeding, absent a contrary determination by the arbitrator as set forth in a reasoned award, Elavon will bear all administrative cost of the arbitration including the arbitrator's fees and will reimburse the Company's filing fee if the Company initiates the arbitration. The parties agree that the underlying agreement between the parties involves interstate commerce and that, notwithstanding the choice of law provision in Section 15.2, any arbitration will be governed by the Federal Arbitration Act.
- 15.7. **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.
- 15.8. **Communication with Company.** Company agrees that Elavon may provide Company with information about their services, including information about new products and services by telephone, electronic mail, and facsimile. By providing Elavon with a telephone number for a cellular phone or other wireless device, including a number that Company later converts to a cellular number, Company is expressly consenting to receiving communications — including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system— from Elavon and its affiliates and agents at that number. This express consent applies to each such telephone number that

Company provide to Elavon now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from Company’s cellular provider.

- 15.9. **Amendments.** Elavon may propose amendments or additions to the Agreement. Elavon will inform Company of a proposed change in a periodic statement or other notice. Except as otherwise specified in the Agreement, Company will be deemed to have agreed to the change if Company continues to present Transactions to Elavon after 30 days following the issuance of the statement or notice. Unless the change is required by changes in Law or the Payment Network Regulations, if Company objects to the change, Company may terminate the Agreement in writing within such 30 day period.
- 15.10. **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired thereby. None of the failure to exercise, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor will such amend the Agreement. All waivers requested by a party must be signed by the waiving party.
- 15.11. **Independent Contractors.** Elavon and Company will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically stated in the Agreement. Each party is responsible for the supervision, management, payment and direction of its own employees. 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.
- 15.12. **Survival.** All of the obligations of each party that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including Sections 5, 6, 7, 9, 10, 11, 12, 14, 15.2, 15.6, 15.12, and 15.16 will survive and remain binding upon and for the benefit of the parties.
- 15.13. **Counterparts; Electronic Delivery.** The Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which, taken together, will constitute one and the same agreement. Signed counterparts may be delivered by fax or electronic means (e.g., .pdf documents via e-mail), and will constitute signed originals.
- 15.14. **Force Majeure.** Neither party will be considered in default in performance of its obligations to the extent such performance is delayed by Force Majeure affecting such party’s ability to perform. A “Force Majeure” means an act of God, natural disaster, war, act of terrorism, civil disturbance, action by governmental entity, strike, and other cause beyond such party’s reasonable control. If a Force Majeure interrupts Elavon’s provision of any Gateway Services, Company will continue to pay Elavon the fees for the Gateway Services owed under the Agreement and Elavon will make all reasonable efforts to restore such Gateway Services. If the Force Majeure continues for more than 14 days, then Company may, upon notice to Elavon, as its sole and exclusive remedy, abate payment to Elavon to the extent Gateway Services are not performed and terminate the Agreement.
- 15.15. **Business Continuity.** Elavon will maintain and adhere to business continuity plans that are commercially reasonable within the industry for the Gateway Services.
- 15.16. **Tribal Governments.** If Company qualifies as a federally recognized or acknowledged tribal government or an instrumentality thereof, then Company expressly and irrevocably provides a limited waiver of its sovereign immunity (and any defense based thereon) from any suit, action or proceeding or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, exercise of contempt powers or otherwise) brought by Elavon relative to disputes between the Elavon and Company under the Agreement in the exclusive jurisdiction set forth in Section 15.2. Without prejudice to the limited waiver of sovereign immunity provided in the Agreement, no other waiver of Company’s sovereign immunity from suit may be implied from any action or document. Company waives any requirement for Elavon to exhaust tribal court remedies that might otherwise require, as a matter of law or comity, that a dispute be heard first in the tribal court of Company. The waivers and consents described in this Section 15.16 will inure to the benefit of the parties hereto. The parties will be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief. The waivers of sovereign immunity and of the obligation to exhaust tribal court remedies and the consents to jurisdiction contained in this Section 15.16 are irrevocable and will survive termination of the Agreement. Company covenants that it has obtained and will maintain in effect all authorizations and consents necessary to grant the waiver of sovereign immunity and the obligations to exhaust tribal court remedies contained herein.

APPENDIX 1 - DEFINITIONS

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

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

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

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

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

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

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

“**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 Gateway 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. Gateway Data is not Confidential Information under this definition, and is addressed in Section 7.2.

“**Credit Card**” means a card or device bearing the symbol of any Credit Card Association 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.

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

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

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

“**DDA**” has the meaning given to it in [Section 5.4](#) of this [Schedule A](#).

“**Debit Card**” means a card or device bearing the symbol(s) of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from 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 Credit Card Association and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct PIN-based, online debit Transactions.

“**Destination Point**” means the location of a Payment Services Entity designated by Company with respect to which Company has requested Elavon to provide the Gateway Services or to which Company has requested Elavon submit 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).

“**Documentation**” means the Elavon standard written description for the Gateway 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.

“**Effective Date**” means the effective date set forth on the Enrollment Form.

“**EFT Networks**” means (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes 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 Elavon, Inc. (if in Puerto Rico, as servicer for Elavon Puerto Rico Inc.) or Elavon Canada Company, as applicable.

“**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 Gateway Services.

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

“**Enrollment Form**” means the enrollment form pursuant to which Company elects to receive certain Gateway Services pursuant to the terms and conditions of the Agreement, subject to Elavon’s approval and acceptance of the Enrollment Form.

“**Gateway Data**” means all Cardholder Data and Transaction Information provided to Elavon by or on behalf of Company in order for Elavon to provide the Gateway Services.

“**Hosted System**” means the Elavon proprietary switch technology, operating systems and software platform operated by Elavon for the Gateway Services, including (if applicable) the Elavon-controlled, non-public network connectivity and interfaces for transmitting data to and from the Origination Point.

“**Initial Term**” has the meaning given to it in [Section 3.1](#) of this Schedule A.

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

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

“**Operating Guide**” means Elavon’s Operating Guide, located at www.merchantconnect.com (or such other website that Elavon may specify), that prescribes rules and procedures governing Transactions and Company’s use of the Gateway Services. Elavon may amend the Operating Guide from time to time, which amendments will be effective upon notice to Company.

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

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

“Payment Network” means any Credit Card Association, 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.

“Payment Services Entity” means any third party (which may include Elavon if Company has engaged Elavon to provide Payment Device or Transaction processing services) that Company has designated as a Destination Point for receipt of Transactions and to which Elavon is certified to submit transactions, including but not limited to, Transaction Processors, Payment Networks, third party service providers, program managers and other third parties associated with Payment Device acceptance or other programs of Company.

“PCI-DSS” means the Payment Card Industry Data Security Standards.

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

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

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

“Renewal Term” has the meaning given to it in [Section 3.1](#) of this Schedule A.

“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, 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.

“Term” has the meaning given to it in [Section 3.1](#) of this Schedule A.

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

“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 Processor**” means service bureaus and other persons that provide transaction processing services, including authorization and settlement services, to Company. The authorization services may support processing of credit, debit, check or other types of transaction services as may be available through the Gateway Services. In order to provide Gateway Services with respect to a Transaction Processor designated by Company for a location at which Company uses the Gateway Services, Elavon must be certified with the selected Transaction Processor for the applicable Gateway Services.

“**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.

“**United States**” means the United States of America.

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