



Terms of Service

February 2017

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TERMS OF SERVICE

These Terms of Service (TOS) and the other portions of the Agreement govern the Company's participation in the Program. The TOS is incorporated into and made part of the Agreement and the signature by an authorized representative of the Company on the Company Application, or the transmission of a Transaction Receipt or other evidence of a Transaction, shall be the Company's acceptance of and agreement to abide by the terms and conditions contained in the Agreement. No strikeover of the preprinted text of the TOS shall be effective. Company acknowledges that it has received, understands, and agrees to be bound by the Agreement.

SECTION A - GENERAL PROVISIONS

1. **DEFINITIONS.** Definitions used within this TOS are listed alphabetically in the Glossary.
2. **RULES OF CONSTRUCTION.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words “hereof,” “herein,” and “hereunder,” and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word “day” shall mean “calendar day,” unless specifically stated otherwise. In the event of a conflict between the terms of Section (A) – General Provisions, and any subsequent Section of the TOS, the terms of the subsequent Section shall prevail.
3. **ACCEPTANCE OF PAYMENT DEVICES.** Company shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as a form of payment from its Customers. The terms and conditions for the acceptance of the applicable Payment Devices and Company’s use of the Payment Device Processing Services are set forth in the Agreement and in the Operating Guide, incorporated herein and located at our website https://www.merchantconnect.com/CWRWeb/pdf/MOG_Eng.pdf. Each schedule, exhibit, addendum or attachment to the Agreement shall be governed by the TOS and the applicable provisions of the Operating Guide, as well as by the terms set forth in the Company Application.
4. **TRANSACTIONS.**
 - a. **Company Compliance.** Company must comply with all the requirements under the Agreement. Company must also comply with the procedures set forth in the Operating Guide and any other guides, manuals, or rules provided in writing to Company by Elavon from time to time.
 - b. **Settlement of Transactions.**
 - i. **Deposits.** Company agrees that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. For purposes of Transactions in Canada, 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). Subject to this Section, Elavon and Member will deposit to the DDA all funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide Company provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement). Company acknowledges that its obligation to Elavon and Member for all amounts owed under the Agreement arises out of the same transaction as Elavon’s and Member’s obligation to deposit funds to the DDA and such amounts are owed in the ordinary course of business.
 - ii. **Provisional Credit.** Company acknowledges that all credits for funds provided to it are provisional and subject to reversal in the event that Elavon and Member do not receive payment of corresponding settlement amounts from the Payment Networks. Company further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. Company authorizes Elavon or Member to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries in accordance with the Agreement as may be necessary to grant or reverse

provisional credit for any Transaction. Further, Elavon may delay Company-issued Customer credits for up to five (5) business days for accounting verification. Customer credits issued by Company to PIN-Debit Cards will not be subject to this delay. Member or Elavon may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and Elavon's sole discretion.

- iii. **Original Transaction Receipts.** Under no circumstances will Elavon or Member be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Elavon and Member.
- c. **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. This limit may be changed by Elavon 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.
- d. **Chargebacks.** Company is fully liable to Elavon and Member for all Transactions returned to Elavon or Member for whatever reason including all Chargebacks. Company will pay Elavon and Member for all Chargebacks. Company agrees to accept for Chargeback, and will be liable to Elavon and Member in the amount of any Transaction for which the Customer or Issuer disputes the validity of the Transaction for any reason. Company authorizes Elavon and Member to offset from funds due Company for Transaction activity or to debit the DDA, the Reserve Account, or any other account held at Member or at another financial institution for the amount of all Chargebacks including, as applicable, any currency fluctuations. Company will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding all Chargebacks. Guarantors are personally liable to Elavon and Member for all Chargebacks.

5. DEMAND DEPOSIT ACCOUNT (DDA).

- a. **DDA and ACH Authorization.** Company will establish and maintain with Member (or with another ACH participating financial institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. Company will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement. Company irrevocably authorizes Elavon, Member, and their respective authorized vendors and agents who provide services under the Agreement, to initiate ACH debit and credit entries to the DDA, the Reserve Account or any other account maintained by Company at any institution that is a receiving member of the ACH network, in order to make payments to or collect payments from Company due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Company's obligations to Elavon and Member have been paid in full. Company also authorizes Elavon's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. Company must obtain prior consent from Member and Elavon to change the DDA. If Company does not get that consent, Elavon or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. Elavon and Member have the right to rely upon written instructions submitted by Company requesting changes to the DDA. In the event Company changes the DDA, the ACH debit and credit authorization established hereunder will apply to the new account and Company shall provide Elavon and Member such information regarding the new DDA as they deem necessary to effect payments to and from the new DDA. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from Company to reflect in its system any change to Company's DDA. Company may request from

Elavon written confirmation of Elavon's and Member's consent to change the DDA. If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (A)(4) of the TOS. Elavon and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. To the extent required, Company authorizes Member or Elavon to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Company provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH authorization. To the extent required, Company authorizes and appoints Member to act as its agent to collect Transaction amounts from the Issuer, the Customer or the Customer's financial institution. Member, in its sole discretion or at Elavon's direction, may grant Company provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and Elavon and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and any other payments due under the Agreement.

- b. **Asserted Errors.** It is the responsibility of Company to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Company receives for Company's DDA. Company must promptly examine all statements relating to the DDA and immediately notify Elavon and Member in writing of any errors in the statement Company received from Elavon. Company's written notice must include: (i) Company name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Company believes an error exists and the cause of it, if known. That written notice must be received by Elavon within forty-five (45) days after the month end date on the statement containing the asserted error. If Company fails to provide such notice to Elavon within said forty-five (45) days, Elavon and Member shall not be liable to Company for any errors Company asserts at a later date. Company may not make any claim against Member or Elavon for any loss or expense relating to any asserted error for sixty (60) days immediately following Elavon's receipt of Company's written notice. During that sixty (60) day period, Elavon will be entitled to investigate the asserted error, and Company shall not incur any cost or expense in connection with the asserted error without notifying Elavon.
- c. **Depository Institution.** Company authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA. Company authorizes Elavon and/or Member to direct the depository institution to hold funds in the DDA in an amount which Elavon and/or Member, in their respective discretion, either individually or collectively, deem 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 or Member.
- d. **Indemnity.** Company will indemnify and hold harmless Elavon and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement. Company will also indemnify and hold harmless the depository institution at which it maintains its DDA for acting in accordance with any instruction from Elavon and/or Member regarding the DDA.

6. SECURITY INTERESTS; RESERVE ACCOUNT; RECOUPMENT AND SET-OFF.

a. Security Interests.

- i. **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. Company grants to Elavon and Member 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 and Member, upon request, to secure its 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 and/or Member including Company’s obligation to pay any amounts due and owing to Member or Elavon. Elavon and Member 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.

- ii. **Perfection.** Upon request of Elavon or Member, Company will execute one (1) 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 and Member will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Company will obtain from Elavon and Member 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 and Member are 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 or Member. 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.
- b. **Reserve Account.**
- i. **Establishment.** Elavon and/or Member may establish a Reserve Account at any time for the purpose of providing a source of funds to pay Member and Elavon for any and all amounts owed by Company. The Reserve Account shall be maintained with sums sufficient to satisfy Company’s current and/or future obligations as determined by Member or Elavon. Member and Elavon shall have sole control of the Reserve Account. Member and/or Elavon may, at any time, require that the amount on deposit in the Reserve Account be increased.
 - ii. **Funding.** Member and Elavon may fund the Reserve Account by any one or more of the following means.
 - aa. Member and Elavon may require Company to deposit into the Reserve Account funds in an amount determined by Elavon;
 - bb. Member and Elavon may debit the DDA in any amount; or
 - cc. Member and Elavon may deposit into the Reserve Account funds they would otherwise be obligated to pay Company.
 - iii. **Use of Funds in Reserve Account.** Member or Elavon may, without notice to Company, apply funds 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. Also, Member or Elavon may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or Elavon. Further, Company agrees that Elavon or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.

- iv. **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Company has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and any other payments due under the Agreement. In no event shall Company be entitled to a return of any funds remaining in the Reserve Account before two-hundred-seventy (270) days following the effective date of termination of the Agreement.
- c. **Recoupment and Set-off.** Member and Elavon have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe Company under the Agreement or any other agreement. Company acknowledges that in the event of a Bankruptcy Proceeding, in order for Company to provide adequate protection under Bankruptcy Code Section 362 or applicable law to Elavon and Member, and in order to ensure that Elavon and Member do not and are not obliged to advance credit to Company, Company must create or maintain the Reserve Account as required by Elavon and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations Company may owe to Elavon and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the initiation of the Bankruptcy Proceeding or the filing of the petition, motion, request for stay or other proceeding in connection with a Bankruptcy Proceeding.
- d. **Remedies Cumulative.** The rights conferred upon Member and Elavon in this Section are not intended to be exclusive of each other or of any other rights and remedies of Member and Elavon under the Agreement, at law or in equity. Rather, each and every right of Member and Elavon under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

7. FEES; OTHER AMOUNTS OWED; TAXES.

- a. **Fees.** Company will pay Member and Elavon fees for services, supplies, and equipment in accordance with the Agreement and any additional application or setup form(s). Such fees 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. In addition, Company will pay Elavon at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on Company's account. Elavon may adjust the fees in accordance with Section (A)(18)(p) below.
- b. **Other Amounts Owed.** Company will immediately pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of Company's Transaction processing), assessments from the Payment Networks, Leased Equipment payments and any other payments due under the Agreement. Elavon or Member may offset these amounts from funds otherwise owed by Elavon or Member to Company or may debit these amounts from Company's DDA or Reserve Account by ACH, and in the event such offset or ACH debit does not fully reimburse Elavon or Member for the amount owed, Company will immediately pay Elavon or Member such amount. Elavon will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.

- c. **Taxes.** Company is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If Company is a tax-exempt entity, Company will provide Elavon and Member with an appropriate certificate of tax exemption.

8. ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.

- a. **Accuracy of Information.** Company represents and warrants to Member and Elavon that all information provided to Elavon in the Company Application, in the bid process if applicable, or otherwise in the Agreement is true and complete and properly reflects the business, financial condition and principal partners, owners, officers, or ownership of Company. Company must promptly notify Elavon in writing of any changes to such information, including, without limitation, any additional location or new business at which Company desires to accept Payment Devices, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided, and how Transactions are completed (i.e., by telephone, mail, electronic commerce, or in person at Company's place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Company will provide any additional information requested by Elavon within a reasonable time. Elavon has the right to rely upon written instructions submitted by Company to request changes to Company's business information. Company may request written confirmation of Elavon's consent to the changes to Company's business information. Company will defend, indemnify, and hold harmless Member and Elavon for all losses and expenses incurred by Member or Elavon arising out of any such change, whether or not reported to Elavon, or Company's failure to provide requested information. Company will not submit Transactions for processing to Elavon or Member for any businesses, products, or methods of selling other than those set forth in the Company Application at the time Company applies for services without the prior written consent of Elavon. Elavon may immediately terminate the Agreement upon notification by Company of a change to the information in the Company Application. Company authorizes Elavon and Member to contact credit reporting agencies and Company's creditors to make inquiries and obtain reports regarding Company's credit standing upon Elavon's or Member's receipt of the Company Application.
- b. **Indemnification.** Company will be liable for and indemnify, defend, and hold harmless Elavon, Member and their respective employees, officers, directors, and agents against all claims, including claims made by third parties, losses, damages, liabilities or expenses arising out of the Agreement and for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or Elavon in the enforcement of the Agreement, including those resulting from any Transaction processed under the Agreement or any breach by Company of the Agreement and those related to any Bankruptcy Proceeding.
- c. **Limitation of Liability.** Company acknowledges that Elavon's and Member's fees for the Processing Services provided to Company by Elavon and Member are very small in relation to the funds advanced to Company for Transactions and consequently Elavon's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to Company or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by Company during the last three (3) months. In no event will Elavon, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.
- d. **Performance.** Elavon and Member will perform all services in accordance with the Agreement. Elavon makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **Elavon and Member disclaim all implied warranties, including those of merchantability and fitness for a particular**

purpose. Neither Elavon nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of Elavon or Member and without the fault or negligence of Elavon or Member.

9. REPRESENTATIONS AND WARRANTIES. Company represents and warrants to Elavon and Member as of the time the Agreement is effective, and reaffirm to Elavon and Member each time a Transaction is effected during the Initial Term or any Renewal Term of the Agreement, the following:

- a. **Organization.** Company is a corporation, company, limited liability company, unlimited liability company, limited liability partnership, limited partnership, general partnership, business trust, association or sole proprietorship validly existing and organized in the United States, or validly existing and federally organized in Canada or in a province or territory of Canada, as applicable.
- b. **Corporate Power.** Company and the persons signing the Agreement have the power to execute and perform the Agreement. Company represents and warrants that the person executing the Agreement is duly authorized to bind Company and each affiliated entity identified in the Agreement to all provisions of the Agreement and that such person is authorized to execute any document and to take any action on behalf of Company which may be required by Elavon, now or in the future. Further, Company represents and warrants that signing and/or performing in accordance with the Agreement will not violate any Law, 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 Company's business substantially as now conducted or which would adversely affect Company's financial condition or operations. Company has never (i) been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), (ii) been named to the Consortium Merchant Negative File maintained by Discover, or (iii) been placed on or named to any other negative or terminated merchant file of any other Payment Network, or, if Company has, Company has disclosed that fact to Elavon in writing.
- d. **Transactions.** All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from Company or a return or adjustment related to such purchase. Company will not submit unlawful or illegal Transactions. Company has all power and authority to provide all Customer information, Cardholder Data and Transaction information that Company provides to Elavon and Member. No Transaction involves a Customer obtaining cash from Company unless allowed by the Payment Network Regulations and agreed to in writing with Elavon.
- e. **Compliance with Laws and Regulations.** Company will comply with all Laws and Payment Network Regulations.
- f. **Business Use.** Company is obtaining and using the Processing Services from Elavon for business purposes only and to facilitate lawful business Transactions between Company and Company's Customers. Company will not submit Transactions for processing to Elavon or Member for any businesses, materially different products, or methods of selling other than those set forth in the Company Application without the prior written consent of Elavon. Company also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.
- g. **Responsibility for Actions.** Company is responsible for any violations of the Agreement that result from the actions of or failure to act by Company's officers, directors, employees, agents, Service Providers, business invitees, and those of any other Person who, with or without

Company's consent or cooperation, obtains access to information related to Transactions from Company or access to systems under Company's control.

10. AUDIT AND INFORMATION.

- a. **Audit.** Company authorizes Elavon and Member to perform an audit of its business to confirm compliance with the Agreement. 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 or Member. 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.
- b. **Information.**
 - i. **Authorizations.** Company authorizes Elavon and Member to make, from time to time, any business and personal credit or other inquiries they consider 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.
 - ii. **Financial Information.** Upon the request of either Elavon or Member, Company will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Company. Company further agrees to provide to Elavon and Member such other information regarding Company's financial condition as Elavon and/or Member may request from time to time. Within one-hundred twenty (120) days after the end of each fiscal year, Company will furnish Elavon or Member, 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.
 - iii. **Company Information.** Company agrees that any Company financial information, Transaction Data, and other information regarding Company, its principles, affiliates, or agents that Company or Company principle provides to Elavon or Member on the Company Application or otherwise obtained by Elavon or Member in connection with the Agreement may be: (i) used by Elavon, Member, and their respective service providers, affiliates, agents, and referral partners, (a) in order to provide the Processing Services and related functions to Company and to respond to any further application for services, or (b) for administrative purposes and to maintain Company's account pursuant to this Agreement; (ii) disclosed and shared for reporting purposes to credit rating agencies, under the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (iii) utilized to enhance or improve Elavon's products or services, generally; (iv) used or disclosed in the course of any actual or potential sale, reorganization or other change to Elavon's or Member's business; (v) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (vi) retained for such periods of time as required by Elavon and Member to perform their obligations and exercise their rights under the Agreement. Elavon may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Elavon's customers or specific segments of Elavon's Customers.
- c. **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Company must provide certain information and identifying documents to allow Elavon and Member to identify Company.

11. **FRAUD MONITORING.** Company is solely responsible for monitoring its Transactions and the actions of its officers, directors, employees, agents, business invitees, third party vendors, including

Service Providers, and those of any other Person who, with or without Company's consent or cooperation, obtains access to Company's Transactions, for fraudulent or other suspicious activity. Elavon and Member are under no duty to monitor Company's transactions for fraudulent or other suspicious activity.

12. **BUSINESS CONTINUITY.** Company is solely responsible for developing and maintaining a disaster recovery plan. Company should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing disaster recovery capability to Company. Company is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by Elavon. Company will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. Neither Elavon nor Member has a duty to recreate lost Transactions.

13. **PERSONAL GUARANTY.** As a primary inducement to Elavon and Member to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by Elavon or Member to or for the benefit of Company, the designated Guarantor(s), jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance by Company of each of its duties and obligations to Elavon and Member pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice. No act or thing, except full payment and discharge of all of Company's duties and obligations to Elavon and Member, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), shall in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives any and all defenses of Company pertaining to Company's duties and obligations to Elavon and Member, any evidence thereof, and any security therefore, except the defense of discharge by payment. Guarantor(s) understands further that Elavon and/or Member may proceed directly against Guarantor(s) without first exhausting their respective remedies against Company or any other person or entity responsible therefore or any security held by Elavon, Member, or Company. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guaranty and of the creation and existence of Company's duties and obligations to Elavon and Member; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing Company's duties and obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); and (iv) **the right to trial by jury in action in connection with this Personal Guaranty.** This Personal Guaranty will not be discharged or affected by the death of the Guarantor(s), will bind all heirs, administrators, representatives, and assigns, and may be enforced by or for the benefit of any successors in interest to Elavon or Member. Guarantor(s) understands that the inducement to Elavon and Member to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Company, is consideration for the Personal Guaranty and that each Personal Guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guaranty.

14. **THIRD PARTIES.**
 - a. **Products or Services.** Company may desire to use a Service Provider to assist Company with its Transactions. Company shall not utilize any such third parties unless Company has disclosed such use to Elavon previously in writing, and unless such Service Provider is fully compliant with all Laws and Payment Network Regulations. Any Service Provider used by Company must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Company. Further, as between the parties to the Agreement, Company will be bound by the acts and omissions of any Service Provider and Company will be responsible for compliance by such Service Provider with all Laws and Payment Network Regulations. Company will indemnify and hold harmless Elavon and Member from and against any loss,

cost, or expense incurred in connection with or by reason of Company's use of any third parties, including Service Providers. Company's use of any Service Provider is at Company's risk. Neither Elavon nor Member is responsible for any Service Provider or for the products or services offered by such Service Provider, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon. A Service Provider's access to or ability to integrate with the products, services, and systems of Elavon may terminate at any time and Elavon shall have no obligation to advise Company of such termination.

- b. **Use of POS Devices Provided by Others.** In addition to the foregoing, if Company uses a Service Provider for the purposes of data capture and/or authorization, Company agrees: (i) that the third party providing such services will be Company's agent in the delivery of Transactions to Elavon and Member via a data processing system or network compatible with Elavon's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor Elavon will be responsible for any losses or additional fees incurred by Company as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither Elavon nor Member is responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.
- c. **Liability for Direct Agreement with Third Party.** Elavon and Member have no responsibility for, and shall 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.

15. TERM AND TERMINATION.

- a. **Term.** Unless terminated as set forth below, the Agreement will remain in effect for a period of three (3) years ("Initial Term") following the date of acceptance of the Company Application by Elavon and Member, which date shall be the date upon which the Agreement becomes effective. Thereafter, the Agreement will renew for successive two (2) year terms (successive six (6) month terms with respect to Canada) ("Renewal Term") unless terminated as set forth below. If Company processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement shall govern such Transaction processing.
- b. **Termination.**
 - i. **Company.**
 - aa. The Agreement may be terminated by Company effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Elavon at least thirty (30) days prior to the expiration of the then current term.
 - bb. The Agreement may be terminated by Company in the event of a material breach of the terms of the Agreement by Member or Elavon, provided Company gives Member and Elavon written notice of any alleged breach and such breach remains uncured for a period of thirty (30) days following receipt of written notice by the party Company claims to be in breach of the Agreement.
 - ii. **Elavon or Member.**
 - aa. The Agreement may be terminated by Elavon or Member, in whole or in part, at any time with or without cause during the Initial Term or any Renewal Term.
 - bb. Elavon's and Member's rights of termination under the Agreement are

cumulative. A specific right of termination in this Section shall not limit any other right of Elavon or Member to terminate the Agreement expressed elsewhere.

- iii. **Notice of Termination.** Notice of termination by Company, Elavon, or Member may be given orally or in writing, but if given orally, must be confirmed in writing as soon as practical. Company's termination request shall be completed on a form available from Elavon, but at a minimum, must include the name of the Company and Merchant Identification Number, and must be signed by the principal owner(s) of Company. Termination shall be effective on the date specified by the oral or written notice; provided, however Company agrees that closing Company's account with Elavon may take up to thirty (30) days following Elavon's receipt of written notice of termination. In those limited instances where Company's account is reinstated by Elavon following termination by either Company or Elavon in the Initial or any Renewal Term, all of Company's obligations under the Agreement are likewise reinstated and will renew for successive two (2) year Renewal Terms effective on the date of reinstatement.

c. **Action Upon Termination.**

- i. **Accounts.** All Company's obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until Company pays all amounts Company owes Elavon or Member or amounts for which Company is liable under the Agreement. Company must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other amounts due under the Agreement for a reasonable time, but in any event, not less than one-hundred-eighty (180) days from termination. If a Reserve Account is established by Elavon, then any balance remaining after Chargeback rights have expired and all other amounts owed by Company has been paid will be disbursed to Company.
- ii. **Leased Equipment.** If Company's equipment is leased, Company is obligated to honor the terms and conditions of Section (A)(20) below. If Company's Leased Equipment is owned by Elavon, Company must return all equipment owned by Elavon within ten (10) business days after termination of the Agreement and immediately pay Elavon any amounts Company owes for such Leased Equipment.
- iii. **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 ten (10) business days after termination of the Agreement. Company will be fully liable for any and all loss, cost, and expense suffered or incurred by Elavon arising out of any failure to return or destroy such materials following termination.

16. **COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE.**

- a. **Compliance with Laws and Payment Network Regulations.** Company agrees to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or Elavon. The Payment Network Regulations, as further referenced in Section 3, are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. Company further agrees to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic funds transfers; (iii) confidential treatment of information; and (iv) the Fair and Accurate Credit Transactions Act of 2003 (FACTA), including its requirements relating to the content of Transaction Receipts provided to

Customers. Company will assist Member and Elavon in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. Company will execute and deliver to Member and Elavon all documents they may from time to time reasonably deem necessary to verify Company's compliance with this provision. Company websites that are not in compliance with the Payment Network Regulations may result in Company's settlement funding being directed to a Reserve Account pursuant to Section 6(b).

- b. **Privacy Laws in the United States (if applicable).** In addition to Section (A)(17)(b), Company must take all commercially reasonable steps to protect the confidentiality of Customer and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Customer and Transaction information and in a manner that complies with applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act, the federal Gramm-Leach-Bliley Act, FACTA or other applicable privacy laws.
- c. **Privacy Laws in Canada (if applicable).** Company represents, covenants and agrees that it is in compliance with all applicable privacy laws, including without limitation the Personal Information Protection and Electronic Documents Act (Canada), and that any personal information of a Customer that may be communicated or disclosed to Elavon under or in connection with the Agreement or any services to be provided by Elavon to Company has been obtained in compliance with such laws and that Elavon will not be in breach of any such laws by receiving and using such information in connection with performing its obligations under or in connection with the Agreement or any services to be provided by Elavon to Company.
- d. **MATCH™ and Consortium Merchant Negative File.** Company acknowledges that Member and/or 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 and updated 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 the fulfillment of the obligations related to the listing by Elavon and Member, the listing itself and Company waives and holds harmless Elavon and Member from all claims and liabilities Company may have as a result of such reporting.
- e. **Security Program Compliance.** Company must comply with the requirements of the Payment Card Industry Data Security Standard (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 regarding which Company accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, "Security Programs"). Company also shall ensure that all Service Providers and third parties from whom Company procures third party POS Devices comply with the requirements of the Security Programs. Upon request, Elavon will provide Company with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Company is responsible for Company's own actions or inactions, those of Company's officers, directors, shareholders, employees and agents, including any Service Provider (collectively, "Company's Agents"). Company shall indemnify and hold Elavon and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by any of Company's Agents. Should Company participate in a program with any other Credit Card Association or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, Company must comply therewith and ensure that Company's officers, directors, shareholders, employees, and agents, including Service Providers or third party POS Devices, also comply with the program requirements of such Payment Network.

f. **Data Compromise.**

- i. **Notice and Investigation.** Company acknowledges and agrees that Cardholder Data and bank account information obtained by Company in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Company must notify Elavon and Member within twenty-four (24) hours (and if notice is given orally, it must be confirmed in writing within the same twenty-four hour period), if Company knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used, including from systems within Company's or any Agent's control, without authorization from Company or Company's Agents (a "Data Incident"). The notice must include: (a) a detailed written statement about the Data Incident including the contributing circumstances; (b) the form, number and range of compromised account information; (c) specific account numbers compromised; and (d) details about the ensuing investigation and Company's security personnel who may be contacted in connection with the Data Incident. Company must fully cooperate with the Payment Networks, Elavon and Member in the forensic investigation of the Data Incident. Within seventy-two (72) hours of becoming aware of the Data Incident, Company must engage the services of a data security firm acceptable to the Payment Networks and/or to Elavon and Member to assess the vulnerability of the compromised data and related systems. Company must provide weekly written status reports to Elavon and Member until the forensic audit is complete. Company must promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks and/or Elavon and Member may request. In addition, Company must provide all audit reports to Elavon and Member, and such audits must be completed to the satisfaction of the Payment Networks and/or of Elavon and Member. If Company fails to supply the forensic audits or other information required by the Payment Networks and/or by Elavon and Member, Company will allow Elavon or Member to perform or have performed such audits at Company's expense.
- ii. **Preservation of Records.** In the event of a Data Incident, Company must take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Company shall cooperate with Elavon and Member to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon and Member 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 and Member's rights and remedies, Company is liable for all fraudulent transactions related to any Data Incident and all costs Elavon or Member incur as a result of such Data Incident, including any fees, fines, penalties, assessments or other amounts levied or collected by the Payment Networks, claims from third parties, all costs related to the notification of Cardholders or Customers and cancellation, re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI DSS review for a report of compliance.
- iv. **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: (x) be enrolled in Elavon's PCI Compliance Program and (y) 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 \$20,000.

- g. **Office of Foreign Assets Control Compliance.** Elavon and Member are entities governed by the Laws of the United States of America and as such, neither Elavon nor Member may provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including, without limitation, the Laws promulgated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") or any successor thereto.

17. USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.

- a. **Use of Trademarks.** Company will prominently display the promotional materials provided by Elavon in Company's place of business as may be required or requested by the Payment Networks. Company's use of Visa, MasterCard, and Discover Network marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Company's right to use all such marks will terminate upon termination of the Agreement or upon notice by a Payment Network to discontinue such use. Company's use of promotional materials, provided by Visa, MasterCard, Discover Network, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, Discover Network, or such other Payment Networks endorse any goods or services other than their own and Company may not refer to Visa, MasterCard, Discover Network, or any other Payment Networks in stating eligibility for Company's products or services.
- b. **Confidentiality.**
 - i. **Customer and Transaction Information.** Company shall, at all times protect the confidentiality of Customer and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Company will not disclose Customer or Transaction information to any third party, except to an agent of Company approved by Elavon that is assisting in completing a Transaction, or as required by Laws or Payment Network Regulations. Company must maintain all systems and media containing Customer and Transaction information in a secure manner to prevent access by or disclosure to anyone other than Company's authorized personnel. Company must maintain Customer and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy in a manner that will render the data unreadable all such media that Company no longer deems necessary or appropriate to maintain. Further, Company must take all steps reasonably necessary to ensure that Customer and Transaction information is not disclosed or otherwise misused. Company may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose, including record keeping or additional authorization processing. After authorization, Company may only retain 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. Company may not print on any Transaction Receipt or other document that is given to the Customer, retained by Company, or transferred to a third party, the entire contents of the magnetic stripe or the CVV2/CVC2/CID data elements. In accordance with Section (A)(16)(e), Company shall immediately notify Elavon if Company knows or suspects that any Customer or Transaction information has been accessed by unauthorized persons or has been used for any purpose not permitted herein whether such access or use occurred at: (i) Company; (ii) a Service Provider; (iii) Elavon or Member; or (iv) elsewhere.
 - ii. **Bankruptcy.** In the event of failure or other suspension of Company's business operations, including bankruptcy or insolvency, Company must not sell, transfer, or disclose any materials that contain Customer or Transaction information to third parties, and Company must:

- aa. Return this information to Elavon; or
- bb. Provide acceptable proof of destruction of this information to the Elavon.
- iii. **Elavon or Member Confidential Information.** Company agrees to protect Elavon's and Member's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate Elavon's or Member's Confidential Information, except in connection with the performance of its obligations under this Agreement. The obligations of non-disclosure provided hereunder shall continue during the term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.
- c. **Passwords.** If Company receives a password from Elavon to access any of Elavon's databases or services Company will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Elavon if Company believes the Elavon's databases or services or Company's information has been compromised by use of the password. If Company receives passwords from a third party, Company must protect such passwords in the manner required by such third party and indemnify, defend, and hold Elavon and Member harmless from any losses, costs, or expenses that arise from Company's use or misuse of such third party passwords.
- d. **Proprietary Interest.** Company has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Elavon. Nothing in the Agreement shall be construed as granting Company any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon's services, software, or equipment. Company will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Elavon's services, equipment, or software.

18. MISCELLANEOUS PROVISIONS.

- a. **Entire Agreement.** The Agreement (including all attachments, exhibits, addenda and other documents incorporated by reference into the Agreement, attachments, exhibits or addenda), Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement; provided, however the Agreement shall not supersede any Personal Guaranty signed by a Guarantor, which Personal Guaranty shall be deemed to remain an agreement separate and distinct from the Agreement. In the event of a conflict between the documents comprising the Agreement, excluding any Personal Guaranty, the following order of priority will apply: (i) any amendment to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Company Application; (v) any Company Agreement or Company Processing Agreement; (vi) the Operating Guide; and (vii) any other guides or manuals provided to Company from time to time.
- b. **Governing Law in the United States (if applicable).** The Agreement will be governed by and construed in accordance with the Laws of the State of Georgia with respect to Transactions occurring in the United States, except that Section (A)(18)(g) shall be governed by the Federal Arbitration Act. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Georgia and that Company's entry into and

performance of the Agreement will be deemed to be the transaction of business within the State of Georgia. Any challenge to the enforceability of the agreement to arbitrate contained in Section (A)(18)(g) of the Agreement, on any ground, shall be brought in either the Superior Court of Fulton County, Georgia or in the United States District Court for the Northern District of Georgia, and in no other court, and each of the parties to the Agreement consents to the exercise of personal jurisdiction by these courts and waives all objections based on a lack of personal jurisdiction, venue or the inconvenience of the forum. Company, hereby waives any and all right to trial by jury in any action or proceeding relating to the Agreement. Company represents that this waiver is knowingly, willingly and voluntarily given.

- c. **Jurisdiction and Venue; Governing Law in Canada (if applicable).** All matters arising out of or related to the Agreement 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 with respect to Transactions occurring in Canada, except for the hypothec created pursuant to Section (A)(6)(a)(i) (the “Québec Hypothec”) which will be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada applicable in the Province of Québec. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the Province of Ontario and that Company’s entry into and performance of the Agreement will be deemed to be the transaction of business within the Province of Ontario. Any action or proceeding relating to or arising from the Agreement (other than collection actions by Elavon or Member relating to amounts owed by Company under the Agreement) must be brought, held, or otherwise occur exclusively in Toronto, Canada, and the parties hereby attorn to the exclusive jurisdiction of the courts of Ontario (or of the courts of Québec with respect to the Québec Hypothec). Company, Member and Elavon hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. Company, Member and Elavon each represents to the other that this waiver is knowingly, willingly and voluntarily given.
- d. **Exclusivity.** During the Initial Term and any Renewal Term of the Agreement, Company will not enter into an agreement with any other entity that provides processing services similar to those provided by Elavon and Member as contemplated by the Agreement without Elavon’s written consent.
- e. **Construction.** Any alteration or strikeover in the text of the Agreement will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.
- f. **Assignability.** The Agreement may be assigned by Member or Elavon, but may not be assigned by Company, directly or by operation of law, without the prior written consent of Elavon. If Company, nevertheless, assigns the Agreement without Elavon’s consent, the Agreement will be binding on the assignee as well as Company. If Company sells its business and the new owners incur Chargebacks, the original owner(s) and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.
- g. **Arbitration.** All claims or controversies, or other matters in question, between the parties arising out of or related to the Agreement or the relationship between the parties that are not otherwise settled by agreement of parties will be submitted to and decided by arbitration held in Atlanta, Georgia in accordance with the rules of the American Arbitration Association as modified by the Agreement. The arbitration proceeding shall be conducted before one (1) neutral arbitrator, who shall be a member of the bar of the State of Georgia, actively engaged in the practice of law for at least ten (10) years. The arbitrator will have the authority to award any remedy or relief that a court in Georgia could order or grant, including, without limitation, specific performance, issuance of an injunction or imposition of sanctions for abuse or frustration of the arbitration process. The arbitrator shall have no authority to decide claims on a class action basis. An arbitration can only decide our or Company’s claim and may not

consolidate or join the claims of other persons who may have similar claims. Company may not 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. The parties agree that anything communicated, exchanged, said, done, or occurring in the course of the arbitration, including any private caucus between the arbitrator and any party before or after any joint arbitration session, will be kept confidential. The parties agree that the underlying agreement between the parties involves interstate commerce and that, notwithstanding the choice of law provision in Section (A)(18)(b), any arbitration shall be governed by the Federal Arbitration Act.

- h. **Notices.** Any written notice to Company under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of Elavon. Any written notice to Elavon, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 7300 Chapman Highway, Knoxville, TN 37920, and shall be deemed received only upon actual receipt.
- i. **Bankruptcy in the United States (if applicable).** 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 the Bankruptcy 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 shall allow the pursuit of any other action available to Elavon under applicable Payment Network Regulations or Laws. Company acknowledges that the Agreement constitutes a contract to extend credit or other financial accommodations to, or for the benefit of Company, and, as such, cannot be assumed or assigned in the event of Company's bankruptcy. Such financial accommodations include, but may not be limited to, the incurrence by Elavon from time to time of credit risk associated with funds transfers and Elavon's compliance with Payment Network Regulations relating to Chargebacks. Company further acknowledge that such financial accommodations constitute an integral part of the Agreement.
- j. **Bankruptcy in Canada (if applicable).** 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 shall 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 hereby acknowledges but that for the agreement in the immediately preceding sentence, Member and Elavon would not have entered into the Agreement.
- k. **Attorneys' Fees.** 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.
- l. **Customer Contact.** Company authorizes Member and Elavon to contact its Customers or their Issuer if Member or Elavon determines that such contact is necessary to obtain information about any Transaction between Company and a Customer.
- m. **Telephone Recording.** Company authorizes Elavon to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The

decision to record any conversation shall be solely in Elavon's discretion.

- n. **Information Sharing.** Company understands and agrees that Elavon may disclose any information gathered by Elavon to (i) Elavon's "affiliates" (i.e., companies related to Elavon by common control or ownership) that offer financial products or services, including those identified in the Agreement and to Elavon's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist Elavon in providing the products and services Company has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).
- o. **Communication with Company.** Company agrees that Elavon and Member may provide Company with information about their services including, without limitation, information about new products and/or services by telephone, electronic mail, and/or 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.
- p. **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 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.
- q. **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 shall not in any way be affected or impaired thereby if the essential terms and conditions of the Agreement for each party remain valid, legal and enforceable. Neither the failure, the delay by Elavon or Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by Company must be signed by Elavon.
- r. **Independent Contractors.** Elavon, Member, 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 provided herein. The Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
- s. **Survival.** All of Company's obligations to Elavon and Member shall survive termination of the Agreement, including, without limitation, Sections (A)(4)(a)-(d), (A)(5)(a)-(d), (A)(6)(a)-(d), (A)(7)(a)-(c), (A)(8)(a)-(d), (A)(9)(g), (A)(13), (A)(14), (A)(15), (A)(17)(a)-(d), (A)(18)(b), (A)(18)(g), and (A)(18)(k) of the TOS.
- t. **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed

facsimile or copy shall constitute a signed original.

- u. **Force Majeure.** None of the parties hereto shall be considered in default in performance of its obligations to the extent such performance is delayed by force majeure affecting the party's ability to so perform. Force majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion or riots, strike, lockout, epidemic, accident, fire, flood, earthquake, windstorm, explosion, lack of or failure of telecommunication facilities, regulation or ordinance, demand or requirement of any government or governmental agency, or any court, tribunal or arbitrator(s), having or claiming to have jurisdiction over the subject matter of the Agreement or over the parties hereto, or any act of God or any act of government or any cause whether of the same or different nature existing now or in the future which is beyond the reasonable control of the parties hereto.
- v. **Expenses.** Except as otherwise specifically provided in the Agreement, each party shall 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.
- w. **No Third Party Beneficiaries.** No provisions of the Agreement shall be construed to confer any rights or benefits on any Person not a party to the Agreement or a permitted assignee or successor of a party to the Agreement, unless such rights or benefits are expressly extended to third parties.

19. PROVISIONS APPLICABLE TO COMPANY'S ACCEPTANCE OF TRANSACTIONS IN CANADA

- a. **Pre-Authorized Debits (PADs).** Company authorizes Member, Elavon, and their respective vendors and agents to initiate debit and credit entries to the DDA, the Reserve Account, or any other account maintained by Company at any institution that is a member of the CPA, all in accordance with the Agreement. Company agrees that any withdrawal by Member, Elavon and their respective vendors and agents in accordance with the Agreement are PADs for business purposes, as defined under Rule H1 of the CPA. **Company hereby waives the right to receive advance notice from Member, Elavon and their respective vendors and agents of any and all such debits.** This authorization will remain in effect after termination of the Agreement and until all of Company's obligations to Elavon and Member have been paid in full. If Company changes the DDA, this PAD authorization will apply to the new account and Company shall provide Elavon and Member in writing such information regarding the new DDA as they deem necessary. It may take Elavon up to ten (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 incurred by Member and/or Elavon in connection with Company's decision to change the DDA. Company may revoke the PAD authorization upon thirty (30) days' prior written notice to Elavon, but any such revocation shall constitute a material breach of the Agreement. Company may obtain a sample cancellation form, as well as further information on Company's right to cancel a PAD authorization by contacting Company's financial institution or by visiting www.cdnpay.ca. Company has certain recourse rights if any debit does not comply with the Agreement. For example, Company has the right to receive reimbursement for any debit that is not authorized or is not consistent with this PAD Agreement. To obtain more information on Company's recourse rights, Company may contact its financial institution or visit www.cdnpay.ca.
- b. **Amendments.** This Section applies to companies in Canada in lieu of Section (A)(18)(p) above. 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.

- c. **Termination.** In addition to Company's other termination rights in the Agreement, the Agreement may be terminated by Company without penalty in the event that Elavon or Member notifies Company of a fee increase or the introduction of a new fee; provided that Company's may not terminate the Agreement in connection with new fees or fee increases made in accordance with pre-determined fee schedules. Company must notify Elavon and Member of its intent to terminate the Agreement within ninety (90) days of receiving notice of the new fee or fee increases from Elavon or Member.
- d. **Personal Guaranty.** As a primary inducement to Elavon and Member to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by Elavon or Member to or for the benefit of Company, the designated Guarantor(s), jointly and severally, and in Quebec solidarily, unconditionally and irrevocably, guarantee the continuing full and faithful payment and performance by Company of all duties, debts, liabilities and obligations of Company to Elavon or Member, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by Company to Elavon or Member in any currency, and wherever incurred, and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by Company to Elavon or Member in any currency pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice (collectively, the "Obligations"). The Guarantor(s) also unconditionally agrees that, if Company does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Guarantor(s) for any reason under the guarantee set forth above, the Guarantor(s) shall indemnify Elavon and Member immediately on demand against any cost, loss, damage, expense or liability suffered by Elavon or Member as a result of Company's failure to do so. The liability of the Guarantor(s) hereunder is unlimited. No act or thing, except the indefeasible and full payment and discharge in cash of all of the Obligations, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), shall in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives any and all defenses of Company pertaining to the Obligations, any evidence thereof, and any security therefore, except the defense of discharge of the Obligations by full and indefeasible payment in cash. Guarantor's(s') liability to pay or perform the Obligations shall arise immediately after demand has been made in writing on Guarantor(s). Guarantor(s) understands further that Elavon and/or Member may proceed directly against Guarantor(s) without first exhausting their respective remedies against Company or any other person or entity responsible therefore or any security held by Elavon, Member, or Company. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guarantee and of the creation and existence of the Obligations; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing the Obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); (iv) without limiting in any way any other waivers of defenses set out herein, any and all defenses available at equity or common law to the fullest extent permitted under applicable law; and (v) **the right to trial by jury in action in connection with this Personal Guarantee.** Guarantor(s) agrees that this is a continuing guarantee and that Guarantor's(s') liability under this Personal Guarantee will not be discharged, affected or released by: (a) any variation, renewal, extension or replacement of the Agreement, other agreements or any security (including any other guarantees) held by Elavon or Member; (b) any extension of time or other indulgence given to Company or others under the Agreement or any

security; (c) any delay or refusal by Elavon to require or enforce payment of the Obligations or any security; (d) the taking, non-perfecting, or giving up of any security or by any dealings with Company or others respecting the Obligations, the Agreement or any security; (e) the death or legal incapacity of the Guarantor(s) or the dissolution, amalgamation, other fundamental change, death or legal incapacity, as the case may be, of Company; or (f) any event which results in Company not being under a legal obligation to make any payment or perform any obligation under the Agreement. Guarantor(s) renounces the benefit of discussion and division. This Personal Guarantee will bind all heirs, administrators, estate trustees, representatives, permitted successors, and assigns of Guarantor(s), and may be enforced by or for the benefit of any successors in interest to Elavon or Member. Guarantor(s) understands that the inducement to Elavon and Member to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Company, is consideration for the Personal Guarantee and that each Personal Guarantee remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guarantee. **Guarantor hereby authorizes any credit reporting agency or bureau to furnish Elavon and Member upon request with a credit bureau report that relates to the Guarantor.** To the extent that any limitation period applies to any claim for payment of obligations or remedy for enforcement of obligations under this Personal Guarantee, each Guarantor agrees that: (a) any limitation period is expressly excluded and waived entirely if permitted by applicable law; (b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law; (c) any limitation period applying to this Personal Guarantee expressed to be payable on demand shall not begin before an express demand for payment of the relevant obligations is made in writing by Elavon or Member to the Guarantor; (d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment by the Guarantor of its obligations; and (e) each of this Personal Guarantee and the Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies to it. This Personal Guarantee has been negotiated by the Guarantor or reviewed by the Guarantor with the benefit of independent legal counsel and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Personal Guarantee.

- e. **Language.** The parties hereby 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.
- f. **Equipment Leasing in Canada.** If Lessee has elected to lease any Leased Equipment from Lessor, the terms and conditions set forth in Sections (A)(19)(g) through (w) below apply in lieu of Section (A)(20) below.
- g. **Non-Cancellable Lease.** This lease cannot be cancelled by Lessee during the term hereof. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Leased Equipment on terms and conditions set forth herein. The parties agree that the lease of the Leased Equipment in the lease is, for all purposes, a financial lease under a financial lease agreement (as such terms are used in the Bank Act (Canada) and the regulations thereunder). Lessee acknowledges acceptance and receipt of the Leased Equipment and certify that the Leased Equipment shall be used for business purposes only. **Lessee hereby authorizes any credit reporting agency or bureau to furnish to Lessor upon Lessor's request a credit bureau report that relates to Lessee.**
- h. **No Warranties by Lessor.** Lessor has made and makes no representations or warranties of any kind or nature, directly or indirectly, expressed or implied, as to any matter whatsoever, including the suitability of the Leased Equipment, its durability, its condition, and/or its quality. Lessee leases the Leased Equipment "as-is." Lessor disclaims any warranty of merchantability or fitness for use or purpose whether arising by operation of law or otherwise. Lessor shall not be liable to Lessee or others for any loss, damage or expense of any kind or nature caused directly or indirectly by any Leased Equipment however arising, or the use or maintenance

thereof or the failure of operation thereof, or the repairs, service or adjustment thereto. No representation or warranty as to the Leased Equipment or any other matter by the supplier of the Leased Equipment (the "Vendor"), the manufacturer or others shall be binding on Lessor nor shall the breach of such relieve Lessee of, or in any way affect, any of Lessee's obligations to Lessor herein. If the Leased Equipment is not satisfactory for any reason, Lessee shall make any claim on account thereof solely against the Vendor and/or manufacturer and Lessee shall nevertheless perform all of Lessee's obligations under the lease. Lessee will not assert any claim whatsoever against Lessor for any loss whatsoever including without limitation any loss of anticipatory profits or any other indirect, special, or consequential damages. Lessor makes no warranty as to the treatment of the lease for accounting or tax purposes. Neither Vendor nor any agent of Vendor is an agent of Lessor or is authorized to waive or alter any term or condition of the lease.

- i. **Ordering Leased Equipment; Lessor's Right to Terminate.** Lessee has selected the Leased Equipment and the Vendor and requested that Lessor purchase the Leased Equipment from the Vendor and arrange for delivery to Lessee at Lessee's expense. If within forty-five (45) days from the date Lessor orders the Leased Equipment, it has not been delivered, installed and accepted by Lessee in form satisfactory to Lessor, Lessor may on ten (10) days written notice to Lessee terminate the lease and Lessor's obligations to Lessee.
- j. **Term and Payments.** The sum of all periodic monthly installment payments indicated herein or on any application shall constitute the aggregate payments under the lease. The term of the lease shall commence as of the date that the lease is accepted by Lessor (the "Commencement Date"), and shall continue until all of Lessee's obligations under the lease have been fully performed. The installment payments shall be payable monthly in advance, the first payment being due on the Commencement Date, or such later date as Lessor designates in writing, and subsequent payments shall be due on the same day of each successive month thereafter until all of the balance of the payments and any additional payments or expenses payable by Lessee under the lease have been paid in full. All payments shall be made to Lessor by pre-authorized debit as contemplated herein or at the address set forth herein or such other address as Lessor may designate in writing. Lessee hereby authorizes Lessor and its agents to withdraw without advance notice to Lessee, which notice Lessee waives, any amounts, including without limitation any and all taxes now due or imposed, owed by Lessee in conjunction with the lease, by initiating periodic debit entries to the DDA all in accordance with and subject to the terms of Section (A)(19)(a) above. Upon a Default (as defined below), Lessee authorizes debit of the DDA for the full amount due under the lease. Lessee agrees that any withdrawals authorized above are pre-authorized debits for business purposes, as defined under Rule H1 of the CPA. Lessee represents, warrants and guarantees that all persons whose signatures are required to sign on the DDA have signed the lease and that the DDA is a business purpose account. By providing and delivering this authorization to Lessor, this constitutes delivery to the financial institution that maintains the DDA. A lease payment (whether paid by debit or other means) that is not honored by Lessee's financial institution for any reason will be subject to a returned item service fee in the amount of \$20 payable by Lessee to Lessor, the amount of which may be debited from the DDA. Should it be necessary to switch to statement billing from pre-authorized debits, Lessor is authorized to add a \$10.00 per month service charge to the monthly payment amount as reimbursement for the added service and processing expenses. Lessee's obligation to make all payments hereunder shall be absolute and unconditional and is not subject to any abatement, set-off, compensation, defense or counterclaim for any reason whatsoever. If a security deposit is required, the same shall be held by Lessor to secure the faithful performance of the lease and returned or applied in accordance with the terms of the lease. If Lessee fails to make any monthly payment or other amount required herein to be paid to Lessor within five (5) days of when due, Lessee agrees to pay Lessor, in addition to the required payment, a late fee of 15% of the amount past due (but at least \$7.50) for each late payment. Each month the past due payment remains unpaid, an additional late fee will be assessed. Payments are applied to late fees and service charges first and then to payments in respect of lease obligations. These amounts shall be payable in addition to all amounts payable by Lessee to Lessor as a result of

exercise of any of the remedies herein provided. If Lessee requests and Lessor provides any services not set out herein, Lessee agrees to pay additional applicable fees. In addition to the payment of monthly rent, Lessee agrees to pay Lessor an annual fee in an amount not to exceed \$50.00 for the administration, billing, reconciliation, and tracking of payments due under the lease, which may generate a profit to Lessor.

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

Lessee shall not take any tax filing position inconsistent with the foregoing.

- o. **Indemnity.** Lessee agrees to indemnify and save Lessor, Lessor's agents, servants, successors and assigns harmless from any and all liability, damage or loss, including without limitation reasonable legal fees, arising out of the ownership, selection, possession, leasing, operation, control, use, condition (including but not limited to latent and other defects, whether or not discoverable by Lessee), maintenance, delivery and return of the Leased Equipment. The indemnities and obligations herein provided shall continue in full force and effect notwithstanding the termination of the lease.
- p. **Insurance.** Lessee shall keep the Leased Equipment insured against all risks of loss or damage from any cause whatsoever for not less than the full replacement value thereof. The amount of such insurance shall be sufficient so that neither Lessor nor Lessee will be considered a co-insurer. Lessee shall carry public liability insurance, both personal injury and equipment damage, covering the Leased Equipment. All such insurance shall be in form and with insurers satisfactory to Lessor, and shall name Lessor and any assignee as first loss payee as its interest may appear with respect to equipment damage coverage and as additional insured with respect to public liability coverage. Lessee shall pay the premiums for such insurance and upon request deliver to Lessor satisfactory evidence of insurance coverage required hereunder. The proceeds of such insurance payable, as a result of loss or damage to any item of Leased Equipment, shall be applied to satisfy Lessee's obligation as set forth in Section (A)(19)(q) below. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact, to make a claim for, receive payment of and execute and endorse all documents, cheques or drafts, received in payment for loss or damage under any such insurance policy. This appointment is coupled with an interest and is irrevocable.
- q. **Loss or Destruction of Leased Equipment.** Lessee shall notify Lessor immediately and shall bear the entire risk and be responsible for loss, theft, damage or destruction of the Leased Equipment from any cause whatsoever after taking possession of the Leased Equipment. In such event, Lessee shall at Lessee's expense (except to the extent of any proceeds of insurance provided by Lessee which shall have been received by Lessor as a result thereof), and at Lessor's option, shall either (a) repair such item, returning it to its previous condition, unless damaged beyond repair; or (b) pay Lessor all accrued and unpaid monthly payments and late charges payable hereunder, plus an amount (the "Loss Amount") equal to (i) the value of all monthly payments to become due during the remaining term of the lease, plus (ii) the amount of any purchase option or obligation with respect to the Leased Equipment or, if there is no such option or obligation, the fair market value of the Leased Equipment, as estimated by Lessor in Lessor's sole reasonable discretion; or (c) replace such item with a like item acceptable to Lessor, in good condition and of equivalent value, which shall be and become Lessor's property, shall be included within the term "Leased Equipment" as used herein and shall be leased from Lessor herewith for the balance of the full term of the lease.
- r. **Loss or Destruction Waiver.** Lessor may in Lessor's sole and absolute discretion waive Lessee's responsibility for loss or destruction of the Leased Equipment and for keeping the Leased Equipment fully insured during the lease term (a "Loss or Destruction Waiver"). Should Lessee fail to provide proof of insurance, Lessor may invoke the Loss or Destruction Waiver and charge a monthly fee at current rates in order that Lessor may fully insure the Leased Equipment. In the event of loss or destruction of the Leased Equipment, Lessor shall provide for its replacement with Leased Equipment of comparable value at that time, provided (i) Lessee took reasonable care in preventing the loss or destruction of the Leased Equipment and (ii) Lessee has paid in a timely manner the required monthly fee for the Loss or Destruction Waiver. Lessee shall cooperate with Lessor in making any claim with respect to the Leased Equipment.
- s. **Default.** If any one of the following events (each a "Default") shall occur, then to the extent permitted by applicable law, Lessor shall have the right to exercise any one or more remedies set forth herein: (i) Lessee fails to pay any payments hereunder, monthly or otherwise, when due; or (ii) Lessee fails to pay, when due, any indebtedness owed to Lessor or any of Lessor's

affiliates arising independently of the lease, and such default shall continue for five (5) days; or (iii) Lessee fails to perform any of the terms, covenants, or conditions of the lease, other than as provided above, after ten (10) days written notice; or (iv) Lessee becomes insolvent or make an assignment for the benefit of creditors; or (v) a receiver, trustee or liquidator of Lessee or of all or a substantial part of Lessee's assets are appointed with or without Lessee's application or consent; or (vi) an application for a bankruptcy order is filed, or any other proceedings are commenced by or against Lessee, or Guarantor, under the Bankruptcy and Insolvency Act (Canada), or under any other bankruptcy, arrangement, dissolution, liquidation or insolvency law(s) providing for relief of debtors.

- t. **Remedies.** If a Default shall occur, Lessor may, at Lessor's option, at any time (i) declare immediately due and payable and recover from Lessee, as liquidated damages for the loss of a bargain and not as a penalty, an amount equal to all accrued and unpaid installment payments and late charges, taxes, and other fees, plus the Loss Amount; provided, however, that if a Default shall occur as described in any of Sections (A)(19)(s)(iv) through (vi) above, Lessor without any notice or action shall be deemed to have made such a declaration; (ii) automatically charge any or all of Lessee's credit cards or accounts, other lines-of-credit or the DDA or other bank accounts for all money amounts owed; (iii) to the extent permitted by applicable Law, without demand or legal process, enter into the premises where the Leased Equipment may be found and take possession of and remove the Leased Equipment, without liability for such retaking; (iv) hold, sell or otherwise dispose of any such Leased Equipment at a private or public sale; or (v) exercise any other remedies available under applicable Law. If Lessor takes possession of the Leased Equipment, Lessor shall give Lessee credit for any sums received by Lessor from the sale or rental of the Equipment after deduction of the expenses of sale or other disposition and Lessee shall remain liable to Lessor for any deficiency. Notwithstanding the foregoing, to the extent any software forming part of the Leased Equipment is nontransferable or its transfer restricted, Lessee agrees that Lessor and/or the licensor of such software shall have no duty to remarket such software or otherwise mitigate any damages relating to such software. Lessee shall also be liable for and shall pay to Lessor (i) all expenses incurred by Lessor in connection with the enforcement of any of Lessor's remedies including without limitation all collection expenses, that includes, but is not limited to, charges for collection letters and collection calls, charges of collection agencies, sheriffs, etc.; and all expenses of repossessing, storing, shipping, repairing and selling the Leased Equipment; and (ii) reasonable legal fees and court costs. Lessee and Lessor acknowledge the difficulty in establishing a value for the unexpired lease term and, owing to such difficulty, agree that the provisions of this paragraph represent an agreed measure of damages and are not to be deemed a forfeiture or penalty. All of Lessor's remedies hereunder are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on Lessor's part to exercise and no delay in exercising any right to remedy shall operate as a waiver thereof or modify the terms of the lease.
- u. **END OF LEASE TERM. (I) UPON EXPIRATION OF THE LEASE TERM, LESSEE SHALL HAVE THE OPTION TO PURCHASE THE LEASED EQUIPMENT FOR AN AMOUNT EQUAL TO 10% OF THE AGGREGATE LEASE PAYMENTS ON 12 MONTH, 24 MONTH, 36 MONTH, 48 MONTH OR 60 MONTH LEASES. WRITTEN NOTICE OF THE EXERCISE OF THIS OPTION MUST BE SENT TO LESSOR AT LEAST THIRTY (30) DAYS PRIOR TO EXPIRATION OF THE LEASE TERM; (II) IF LESSEE DOES NOT ELECT TO PURCHASE THE LEASED EQUIPMENT, THEN UPON EXPIRATION OR EARLIER TERMINATION OF THE LEASE, LESSEE SHALL RETURN THE LEASED EQUIPMENT TO LESSOR IN GOOD OPERATING CONDITION AND REPAIR, SHIPPED BY PREPAID AND INSURED FREIGHT TO A LOCATION DESIGNATED BY LESSOR. IF THE LEASED EQUIPMENT IS RETURNED DAMAGED, INCOMPLETE OR SHOWS SIGNS OF EXCESSIVE WEAR, LESSEE AGREES TO PAY THE REPLACEMENT COST AND/OR THE REPAIR,**

REFURBISHING AND CLEANING COST IN AN AMOUNT DESIGNATED BY LESSOR WHICH IS PAYABLE WITHIN TEN (10) DAYS OF LESSOR'S DEMAND; (III) IF LESSEE DOES NOT ELECT TO PURCHASE OR RETURN THE LEASED EQUIPMENT AS PROVIDED IN (I) OR (II) ABOVE, THE LEASED EQUIPMENT SHALL CONTINUE TO BE HELD AND LEASED HEREUNDER AND THE LEASE SHALL BE EXTENDED INDEFINITELY AS TO TERM AT THE THEN CURRENT MONTHLY PAYMENT UNTIL LESSOR HAS RECEIVED PAYMENT AT LEAST EQUAL TO LESSOR'S FULL INVESTMENT IN THE LEASED EQUIPMENT, AS CALCULATED BY LESSOR, FOLLOWING WHICH, AND UPON NOTICE FROM LESSOR TO LESSEE, LESSEE SHALL BE DEEMED TO HAVE PURCHASED THE LEASED EQUIPMENT FROM LESSOR ON AN "AS IS, WHERE IS" BASIS, SUBJECT TO THE RIGHT OF EITHER LESSEE OR LESSOR TO TERMINATE THE LEASE UPON THIRTY (30) DAYS WRITTEN NOTICE, WHEREUPON LESSEE SHALL DELIVER THE LEASED EQUIPMENT TO LESSOR AS SET FORTH IN THIS PARAGRAPH; AND (IV) PROVIDED LESSEE HAS FULFILLED ALL OF LESSEE'S OBLIGATIONS HEREUNDER, LESSEE'S SECURITY DEPOSIT, IF ANY, (1) SHALL BE REFUNDED AT THE EXPIRATION OF THE LEASE WITHOUT INTEREST OR (2) AT LESSEE'S DIRECTION, SUCH SECURITY DEPOSIT MAY BE APPLIED TO THE PURCHASE OF THE LEASED EQUIPMENT BY LESSEE.

- v. **Privacy.** Each of Lessee and Guarantor consents and agrees that Lessor may (i) collect and use any personal information provided by Lessee or Guarantor or obtained under any provision of the lease for the purpose of furthering the objects of the lease and to respond to any further application for services by Lessee; (ii) **use such information to conduct credit checks from time to time with credit bureaus;** (iii) disclose such information and any information regarding late payments, missed payments or Defaults hereunder to Lessor's affiliates and third party service providers, payment networks, credit bureaus or agencies, financial institutions and similar parties for the purposes stated herein; (iv) use such information to investigate potentially fraudulent or questionable activities regarding the Leased Equipment or services for which the Leased Equipment is used; (v) use or disclose such information in the course of any actual or potential sale, reorganization, amalgamation or other change to Lessor's business or assignment under Section (A)(19)(k) above; (vi) collect, use and disclose such information when required or permitted by applicable law, regulation or legal process; and (vii) retain all such information for such periods of time as required by Lessor to perform Lessor's obligations and exercise Lessor's rights under the lease.
- w. **Miscellaneous.** Lessee shall inform Lessor of any change in Lessee's name, address, billing address, telephone numbers, location of the Leased Equipment, or the DDA. If Lessee fails to comply with any provision of the lease, Lessor shall have the right, but not be obligated, to effect such compliance on Lessee's behalf upon ten (10) days prior written notice to Lessee. In such event, all monies expended by Lessor and all Lessor's expenses in effecting such compliance, shall be deemed to be additional obligations hereunder, and shall be paid by Lessee at the time of the next monthly payment hereunder. All notices under the lease shall be sufficient if given personally or mailed postage prepaid to the party intended at the respective address set forth herein, or at such other address as said party may provide in writing from time to time. The lease inures to the benefit of and is binding upon the personal representatives, successors, heirs and assigns of the parties hereto. Time is of the essence of the lease. Lessee and Lessor intend the lease to be a valid and subsisting legal instrument, and agree that no provision of the lease that may be deemed unenforceable in any jurisdiction shall in any way invalidate any other provision or provisions of the lease in that jurisdiction, all of which shall remain in full force and effect. References to any legislation, statutory instrument, regulation, rule or a section thereof, unless otherwise specified, is a reference to the legislation, statutory instrument, regulation, rule or section as amended, restated or re-enacted from time to time. The lease and the personal guarantee set forth herein shall be binding on Lessee and Guarantor when accepted in writing by Lessor and shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable in such Province, except in the event that the Leased

Equipment is situated in the Province of Québec, in which case the lease shall be governed by the laws of the Province of Québec and the federal laws of Canada applicable in such Province. The limitation period in the lease is extended to the greater of six years or any longer period permitted by applicable law. For greater certainty, each of the parties hereto acknowledges that the lease is a “business agreement” as defined under Section 22 of the Limitations Act, 2002 (Ontario).

- x. **Security Agreement.** The following sentence is hereby added to the end of Section (A)(6)(a)(i): “The hypothec created pursuant to this Section (A)(6)(a)(i) is granted for the sum of \$1,000,000 with interest at the rate of twenty-five percent (25.0%) per annum.”

20. EQUIPMENT LEASING

If Company has elected to lease any Leased Equipment from Lessor, the following terms and conditions apply to Company as Lessee of the Leased Equipment:

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

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

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

- c. **Authorization for Automatic Withdrawal of Monthly Payments.** Lessee hereby authorizes Lessor, or its designee, successor or assign to withdraw the monthly lease amount and any additional amounts, including any and all taxes now due or imposed, owed by Lessee in

connection with the Leased Equipment, by initiating debit entries to the DDA indicated on the Company Application or the Agreement, or such other DDA as the Lessee may from time to time use. In the event of default of Lessee's obligations hereunder, Lessee authorizes the debit of its DDA for the full amount due under the lease. Lessee agrees to contest transactions that might be invalid within ninety (90) days of the transaction date, or the transaction will be deemed valid. A rental payment (whether paid by debit or other means) that is not honored by Lessee's financial institution for any reason will be subject to a returned item service fee imposed by Lessor, the amount of which may be debited from Lessee's DDA. Should it be necessary to switch to statement billing, Lessor is authorized to add a \$10.00 per month service charge to Lessee's monthly payment amount as reimbursement for the added service and processing expenses. In the event that Lessor withdraws funds erroneously from Lessee's DDA, Lessee authorizes Lessor to credit Lessee's DDA for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor and Lessee's financial institution have received written notice from Lessee of its termination in such time and in such manner as to afford Lessor and Lessee's financial institution a reasonable opportunity to act. **LESSEE REPRESENTS AND WARRANTS THAT ITS DDA HAS BEEN ESTABLISHED AS A BUSINESS-PURPOSE CHECKING ACCOUNT.**

- d. **Finance Lease.** Lessor and Lessee agree that the lease is a "Finance Lease" as defined by Section 11-2A-103(g) of the GA UCC. Lessee acknowledges either (i) that Lessee has reviewed and approved any written "Supply Contract" as defined by GA UCC Section 11-2A-103(y) covering the Leased Equipment purchased from the "Supplier" as defined by GA UCC Section 11-2A-103(x) thereof for lease to Lessee or (ii) that Lessor has informed or advised Lessee, in writing, either previously or by the lease of the following: (1) the identity of the Supplier; (2) that the Lessee may have rights under the Supply Contract; and (3) that the Lessee may contact the Supplier for a description of any such rights Lessee may have under the Supply Contract.
- e. **Ordering Equipment; Lessor's Right to Terminate.** Lessee requests Lessor to purchase the Leased Equipment from Equipment Vendor and arrange for delivery to Lessee at Lessee's expense. If within forty-five (45) days from the date Lessor orders the Leased Equipment, the same has not been delivered, installed and accepted by Lessee in form satisfactory to Lessor, Lessor may on ten (10) days written notice to Lessee terminate the lease and its obligations to Lessee.
- f. **Term and Rent.** The sum of all periodic installments of rent indicated in the Company Application or the Agreement shall constitute the aggregate rent reserved under the lease. The lease term shall commence as of the date that the lease is accepted by Lessor, (the "Commencement Date"), and shall continue until the obligations of the Lessee under the lease shall have been fully performed. The installments of rent shall be payable monthly in advance as stated above or on a schedule, the first such payment being due on the Commencement Date, or such later date as Lessor designates in writing, and subsequent payments shall be due on the same day of each successive month thereafter until the balance of the rent and any additional rent or expenses chargeable to Lessee under the lease shall have been paid in full. All payments of rent shall be made to Lessor at the address set forth in the Company Application or the Agreement or such other address as Lessor may designate in writing. Lessee's obligation to pay such rentals shall be absolute and unconditional and is not subject to any abatement, set-off, defense of counterclaim for any reason whatsoever. Lessee hereby authorizes Lessor to insert into the lease the serial numbers and other identification data of the Leased Equipment when determined by Lessor and dates or other omitted factual matters and to correct any typographical or spelling errors. If a security deposit is indicated in the Company Application, or in any additional application and setup forms, the same shall be held by Lessor to secure the faithful performance of the terms of the lease and returned or applied in accordance with Section (A)(20)(q)(iv) below. In addition to the payment of monthly rent, Lessee agrees to pay Lessor an annual fee in an amount not to exceed \$50.00 for the administration, billing, reconciliation, and tracking of payments due under the lease, which may generate a profit to Lessor.

- g. **Assignment.** (i) **LESSOR MAY ASSIGN OR TRANSFER THE LEASE OR LESSOR'S INTEREST IN THE LEASED EQUIPMENT WITHOUT NOTICE TO LESSEE.** Any assignee of Lessor shall have all of the rights, but none of the obligations, of Lessor under the lease and Lessee agrees that it will not assert against any assignee of Lessor any defense, counterclaim or offset that Lessee may have against Lessor. Lessee acknowledges that any assignment or transfer by Lessor shall not materially change Lessee's duties or obligations under the lease nor materially increase the burdens or risks imposed on Lessee. Lessee agrees that Lessor may assign or transfer the lease or Lessor's interest in the Leased Equipment even if said assignment or transfer could be deemed to materially affect the interest of Lessee. (ii) **LESSEE SHALL NOT ASSIGN OR IN ANY WAY DISPOSE OF ALL OR ANY PART OF ITS RIGHTS OR OBLIGATIONS UNDER THE LEASE OR ENTER INTO ANY SUBLEASE OF ALL OR ANY PART OF THE LEASED EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR.** (iii) Lessee shall not create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Leased Equipment or the lease or any of Lessor's interests thereunder.
- h. **Title; Quiet Enjoyment.** Lessor shall at all times retain title to the Leased Equipment. All documents of title and evidence of delivery shall be delivered to Lessor. Lessee hereby authorizes Lessor, at Lessee's expense, to cause the lease or any statement or other instrument in respect to the lease showing the interest of Lessor in the Leased Equipment including Uniform Commercial Code Financing Statements, to be filed or recorded and/or refiled and rerecorded, and grants Lessor the right to execute Lessee's name thereto. Lessee agrees to execute and deliver any statement or instrument requested by Lessor for such purpose, and agrees to pay or reimburse Lessor for any filing, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement. Lessee shall at its expense, protect and defend Lessor's title against all persons claiming against or through Lessee, at all times keep the Leased Equipment free from legal process or encumbrance whatsoever and, shall give Lessor immediate notice thereof and shall indemnify Lessor from any loss caused thereby. Lessee agrees to procure for Lessor, such estoppel certificates, landlord's or mortgagees' waiver or other similar documents as Lessor may reasonably request. Provided Lessee is not in default hereunder, Lessee shall quietly use and enjoy the Leased Equipment subject to the terms hereof.
- i. **Care, Use and Location.** Lessee shall maintain the Leased Equipment in good operating condition, repair and appearance, and protect the same from deterioration other than normal wear and tear; shall use the Leased Equipment in the regular course of its business, within its normal operating capacity, without abuse, and shall comply with all Laws with respect to the use, maintenance and operation of the Leased Equipment; shall use the Leased Equipment solely for business purposes; shall not make any modification, alteration or addition to the Leased Equipment, without the written consent of Lessor, which shall not be unreasonably withheld; shall not at any time so affix the Leased Equipment to realty as to change its nature to real equipment or to a fixture regardless of how attached or installed; shall keep the Leased Equipment at the location shown in the Company Application or the Agreement, and shall not remove the Leased Equipment without written consent of Lessor, which shall not be unreasonably withheld.
- j. **Net Lease; Taxes.** Lessee intends the rental payments hereunder to be net to Lessor, and Lessee agrees to pay all sales, use, excise, personal equipment, stamp, documentary and ad valorem taxes, license and registration fees, assessment, fines, penalties and similar charges imposed on the ownership, possession or use of the Leased Equipment during the term of the lease; shall pay all taxes (except Lessor's federal or state net income taxes) imposed on Lessor or Lessee with respect to the rental payments hereunder or the ownership of the Leased Equipment; and, shall reimburse Lessor upon demand for any taxes paid by or advanced by Lessor. Lessee agrees that the reimbursement of equipment tax calculation is based on an average tax rate. Unless otherwise agreed to in writing, Lessee shall file personal equipment tax returns with respect to the Leased Equipment.

- k. **Indemnity.** Lessee shall and does hereby agree to indemnify and save Lessor, its agents, servants, successors, and assigns harmless from any and all liability, damage or loss, including reasonable attorney's fees, arising out of the ownership, selection, possession, leasing, operation, control, use, condition (including but not limited to latent and other defects, whether or not discoverable by Lessee), maintenance, delivery and return of the Leased Equipment. The indemnities and obligations herein provided shall continue in full force and effect notwithstanding the termination of the lease.
- l. **Insurance.** During the term of the lease, Lessee agrees to maintain, at Lessee's expense, (i) "Special Form" property insurance protecting the Leased Equipment for its replacement value, naming Lessor as a loss payee on a "Lender's Loss Payable" endorsement; and (ii) public liability insurance, in amounts acceptable to Lessor, naming Lessor as an additional insured (together, "Required Insurance"). Lessee must provide Lessor satisfactory written evidence of Required Insurance within thirty (30) days of the Commencement Date or any subsequent written request. If Lessee does not do so, Lessor may obtain insurance from an insurer of Lessor's choosing in such forms and amounts as Lessor deems reasonable to protect Lessor's interests ("Lease Insurance"). Lease Insurance covers the Leased Equipment and the Lessor; it does not name the Lessee as an insured and may not cover all of the Lessee's interest in the Leased Equipment. Lessee agrees to pay Lessor periodic charges for Lease Insurance ("Insurance Charges") that include: a premium that may be higher than if the Lessee maintained the Required Insurance separately; a finance charge of up to 1.5% per month on any premium advances made by the Lessor or Lessor's agents; and billing and processing fees; each of which may generate a profit to Lessor and Lessor's agents. Unless Lessee provides satisfactory evidence of Required Insurance by the Insurance Charge due date, Lessor will pay such Insurance Charge by debiting Lessee's DDA under the withdrawal provision of the lease. Lessor shall discontinue billing Insurance Charges upon receipt of satisfactory evidence of Required Insurance. Lessee agrees to arbitrate any dispute with Lessor or Lessor's agents regarding Lease Insurance or Insurance Charges under the rules of the American Arbitration Association in Atlanta, Georgia; provided however, such agreement does not authorize class arbitration.
- m. **Loss or Destruction of Leased Equipment.** Lessee shall bear the entire risk and be responsible for loss, theft, damage or destruction of the Leased Equipment from any cause whatsoever after taking possession of the Leased Equipment. Lessee shall notify Lessor immediately if the Leased Equipment is lost, destroyed, stolen or taken by any other person. In the event of loss, damage or destruction of any item of Leased Equipment, Lessee at its expense (except to the extent of any proceeds of insurance provided by Lessee which shall have been received by Lessor as a result of such loss, damage or destruction), and at Lessor's option, shall either (i) repair such item, returning it to its previous condition, unless damaged beyond repair; (ii) pay Lessor all accrued and unpaid rental payments and late charges, plus an amount (the "Loss Amount") equal to (1) the value of all rental payments to become due during the remaining term of the lease, plus (2) the amount of any purchase option or obligation with respect to the Leased Equipment or, if there is no such option or obligation, the fair market value of the Leased Equipment, as estimated by Lessor in its sole reasonable discretion; or (iii) replace such item with a like item acceptable to Lessor, in good condition and of equivalent value, which shall become equipment of Lessor, included within the term "Leased Equipment" as used herein, and leased from Lessor herewith for the balance of the full term of the lease.
- n. **Loss or Destruction Waiver.** Lessor may waive Lessee's responsibility for loss or destruction of the Leased Equipment and for keeping the Leased Equipment fully insured during the lease term (a "Loss or Destruction Waiver"). Should Lessee fail to provide proof of insurance, Lessor may invoke the Loss or Destruction Waiver and charge a monthly fee at current rates in order that Lessor may fully insure the Leased Equipment. In the event of loss or destruction of the Leased Equipment, Lessor shall provide for its replacement with Leased Equipment of comparable value at that time provided (i) Lessee took reasonable care in preventing the loss or destruction of the Leased Equipment and (ii) Lessee has paid in a timely manner the required

monthly amount for the Loss or Destruction Waiver. Lessee shall cooperate with Lessor in making any claim with respect to the Leased Equipment.

- o. **Event of Default.** If any one of the following events (each an “Event of Default”) shall occur, then to the extent permitted by applicable Law, Lessor shall have the right to exercise any one or more remedies set forth in Section (A)(20)(p) below: (i) Lessee fails to pay any rental or any other payment hereunder when due; (ii) Lessee fails to pay, when due, any indebtedness of Lessee to Lessor arising independently of the lease, and such default shall continue for five (5) days; (iii) Lessee fails to perform any of the terms, covenants, or conditions of the lease, other than as provided above, after ten (10) days written notice; (iv) Lessee becomes insolvent or makes an assignment for the benefit of creditors; (v) a receiver, trustee, conservator, or liquidator of Lessee, of all or a substantial part of its assets, is appointed with or without the application or consent of Lessee; or (vi) a petition is filed by or against Lessee under the Bankruptcy Code of 1978, as amended, or under any other insolvency law(s), providing for relief of debtors.
- p. **Remedies.** If an Event of Default shall occur, Lessor may, at its option, at any time (i) declare immediately due and payable and recover from Lessee, as liquidated damages for the loss of a bargain and not as a penalty, an amount equal to all accrued and unpaid rental payments and late charges, taxes, and other fees, plus the Loss Amount; provided, however, that if an Event of Default shall occur as described in Section (A)(20)(o)(iv) through (vi) above, Lessor without any notice or action shall be deemed to have made such a declaration; (ii) automatically charge any or all of Lessee’s credit cards or accounts, other lines of credit or the DDA or other bank accounts for all money amounts owed; (iii) to the extent permitted by applicable Law, without demand or legal process, enter into the premises where the Leased Equipment may be found and take possession of and remove the Leased Equipment, without liability for such retaking; (iv) Lessor may hold, sell or otherwise dispose of any such Leased Equipment at a private or public sale; or (v) exercise any other remedies available under applicable Law. In the event Lessor takes possession of the Leased Equipment, Lessor shall give Lessee credit for any sums received by Lessor from the sale or rental of the Leased Equipment after deduction of the expenses of sale or rental and Lessee shall remain liable to Lessor for any deficiency. Notwithstanding the foregoing, to the extent any software included with the Leased Equipment is nontransferable or its transfer restricted, Lessee agrees that Lessor and/or the licensor of such software shall have no duty to remarket or otherwise mitigate any damages relating to such software.

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

- q. **END OF LEASE TERM. (i) UPON EXPIRATION OF THE LEASE TERM, LESSEE SHALL HAVE THE OPTION TO PURCHASE LEASED EQUIPMENT FOR ITS RESIDUAL FAIR MARKET VALUE OR RETURN THE LEASED EQUIPMENT TO LESSOR.**

(ii) THE EXERCISE OF THIS OPTION MUST BE COMMUNICATED TO LESSOR IN WRITING AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE

LEASE TERM. THE LEASED EQUIPMENT IS SOLD “AS IS” “WHERE IS” “WITH ALL FAULTS.” EXCEPT AS PROVIDED IN THE LEASE, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED EQUIPMENT PURCHASED.

(iii) IN THE EVENT LESSEE DOES NOT ELECT TO PURCHASE THE LEASED EQUIPMENT, THEN UPON EXPIRATION OR EARLIER TERMINATION OF THE LEASE, LESSEE SHALL RETURN THE LEASED EQUIPMENT TO LESSOR IN GOOD OPERATING CONDITION AND REPAIR, SHIPPED BY PREPAID AND INSURED FREIGHT TO A LOCATION DESIGNATED BY LESSOR. IF, IN THE JUDGMENT OF LESSOR, THE LEASED EQUIPMENT IS RETURNED DAMAGED, INCOMPLETE, OR SHOWS SIGNS OF EXCESSIVE WEAR, LESSEE AGREES TO PAY THE REPLACEMENT COST AND/OR THE REPAIR AND REFURBISHING COST (INCLUDING CLEANING), FOR AN AMOUNT DESIGNATED BY LESSOR AND PAYABLE WITHIN TEN (10) DAYS OF LESSOR’S DEMAND.

(iv) IF LESSEE DOES NOT ELECT TO PURCHASE OR RETURN THE LEASED EQUIPMENT UPON EXPIRATION OR TERMINATION OF THE LEASE AS PROVIDED HEREIN, THE LEASED EQUIPMENT SHALL CONTINUE TO BE HELD AND LEASED HEREUNDER, AND THE LEASE SHALL BE EXTENDED FOR A PERIOD OF UP TO TWELVE (12) MONTHS UPON THE EXISTING TERMS AND CONDITIONS OF THIS LEASE AGREEMENT AND AT THE SAME MONTHLY RENTAL, SUBJECT TO THE RIGHT OF EITHER THE LESSEE OR THE LESSOR TO TERMINATE THE LEASE UPON THIRTY (30) DAYS WRITTEN NOTICE, WHEREUPON THE LESSEE SHALL FORTHWITH DELIVER THE LEASED EQUIPMENT TO LESSOR AS SET FORTH IN THIS SECTION. ONCE THE LESSEE HAS FULLY PAID THE ADDITIONAL TWELVE (12) MONTHS OF EXTENDED LEASE RENTAL, SUCH PAYMENT SHALL OPERATE AS PAYMENT OF THE RESIDUAL FAIR MARKET VALUE OF THE EQUIPMENT AND LESSEE WILL BE DEEMED TO HAVE PURCHASED THE LEASED EQUIPMENT.

(v) PROVIDED LESSEE HAS FULFILLED ALL OF ITS OBLIGATIONS TO LESSOR HEREUNDER, LESSEE’S SECURITY DEPOSIT OR SECURITY RESERVE, IF ANY, AS INDICATED IN THE COMPANY APPLICATION, OR IN ANY ADDITIONAL APPLICATION AND SETUP FORMS, (1) SHALL BE REFUNDED TO LESSEE AT THE EXPIRATION OF THE LEASE WITHOUT INTEREST OR (2) AT LESSEE’S DIRECTION, SUCH SECURITY DEPOSIT MAY BE APPLIED TO THE PURCHASE OF THE LEASED EQUIPMENT, IN WHICH EVENT THE LEASED EQUIPMENT NEED NOT BE RETURNED TO LESSOR.

- r. **Entire Agreement; Changes.** The lease contains the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by an executive officer of Lessor and by the Lessee.
- s. **Miscellaneous.** If Lessee fails to pay any rent or other amount required herein to be paid to Lessor within five (5) days of when due, Lessee agrees to pay Lessor, in addition to the payment, a late charge of 15% of the amount past due (but at least \$7.50) for each late payment. Each month the past due payment remains unpaid, an additional late fee in the amount defined will be assessed. Payments are applied to late fees and service charges first and then to the lease obligation. Amounts shall be payable in addition to all amounts payable by Lessee to Lessor as a result of exercise of any of the remedies herein provided. If Lessee requests any services not provided for herein, Lessee agrees to pay an applicable fee for delivery of such services. Lessee shall inform Lessor of any change in Lessee’s name, address, billing address, telephone numbers, location of the Leased Equipment, or DDA. In the event Lessee fails to comply with any provision of the lease, Lessor shall have the right, but not be obligated, to affect such compliance on behalf of Lessee upon ten (10) days prior written notice to Lessee. In such event,

all monies expended by, and all expenses of Lessor in effecting such compliance, shall be deemed to be additional rental, and shall be paid by Lessee at the time of the next monthly payment of rent. All notices under the lease shall be sufficient if given personally or mailed postage prepaid to the party intended at the respective address set forth herein, or at such other address as said party may provide in writing from time to time. The lease inures to the benefit of and is binding upon the personal representatives, successors and assigns of the parties hereto. Time is of the essence of the lease. Lessor and Lessee intend the lease to be a valid and subsisting legal instrument, and agree that no provision of the lease that may be deemed unenforceable shall in any way invalidate any other provision or provisions of the lease, all of which shall remain in full force and effect. The lease shall be binding when accepted in writing by Lessor and shall be governed by the laws of the State of Georgia, provided however, in the event the lease or any provision hereof is not enforceable under the laws of the State of Georgia then the laws of the state where the Leased Equipment is located shall govern. Lessee consents and submits to the jurisdiction of the federal and state courts located in the State of Georgia and within Fulton County (the "Courts"), and expressly agree to such forum for the bringing of any suit, action or other proceeding arising out of the Lessee's obligations hereunder, and expressly waive any objection to venue in any such Courts and waive any right to a trial by jury so that trial shall be by and only to the Court. Lessee agrees that any process served for any court action or proceeding shall be valid if mailed by certified mail, return receipt requested.

- t. **Important Information about Credit Reporting.** Lessor may report information about this account to credit bureaus. Late payments, missed payments, or other defaults on this account may be reflected in the credit report of Lessee and/or Guarantor.

SECTION B – ELECTRONIC CHECK SERVICES (ECS)

If Company has selected Electronic Check Services (“ECS”), Company shall be subject to this Section B in addition to the terms and conditions of Section A of this TOS. The terms and conditions for ECS are set forth in the Agreement and the ECS Merchant Operating Guide (the “ECS MOG”), incorporated herein and located at our website <https://www.merchantconnect.com/CWRWeb/ElectronicCheckService.do>. In the course of its acceptance and use of ECS, Company represents, warrants and covenants the following:

1. Company shall comply with and be bound by (a) the ECS Rules, including the ACH Rules, the ECS MOG and the ECS Primer, and (b) Laws, including, but not limited to, the Check Clearing for the 21st Century Act and Regulation CC, Article 3 and Article 4 of the Uniform Commercial Code as in effect in the applicable state(s), 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 shall pay the fees for ECS as set forth in the Company Application, and in any additional application and setup forms.
3. In the event Company accepts for ECS certain types of Customer payments that are ineligible as specified in the ECS MOG for any reason, such Transaction is subject to Chargeback. Company may be liable for the face value of the Transaction and any actual damages related to or arising out of processing a Transaction that has been charged back.
4. Company shall cause a Check Reader/Imager to be readily available for use at all Company locations where Company will accept Paper Checks for ECS processing.
5. Company must use commercially reasonable procedures to verify the identity of each Customer that submits a payment.
6. Company shall be solely responsible for providing Customers with notifications and disclosures in connection with ECS, including, but not limited to, 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.
7. Company may use the ECS only in connection with the presentment and acceptance of certain types of Customer payments in payment for goods or services sold by Company, or in payment for an obligation owed to Company, and only in compliance with the ECS Rules. Company shall be the sole user of the ECS, and Company may not resell or otherwise transfer any portion of ECS (or any associated information) in whole or in part to any other Person.
8. Company represents and warrants, with respect to all ECS Transactions submitted for processing by Elavon, that (i) the Customer has duly authorized the debiting of the Customer’s account for the amount of the ECS Transaction in accordance with Laws and ECS Rules, (ii) the Transaction represents an obligation of the Person who is submitting a Customer payment, and (iii) the ECS 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. Company represents and warrants that no portion of any ECS Transaction involves any element of Company’s extension of credit.
9. Company may not use ECS for merchandise returns or refunds, as ECS does not support this function. Merchandise returns or refunds must be handled outside ECS 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 agrees to immediately pay to Elavon or its agent (by means of debit or set-off initiated by Elavon or its agent, submission of payment by Company, or otherwise, at the sole option of Elavon),

an amount equal to the amount of any ECS Transaction that is stopped, not settled, or charged back, as well as any related fees and charges.

- 11.** Company must fully cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representments, and errors in accordance with the ECS Rules and Laws.
- 12.** Company is responsible for and will ensure that all information, including MICR data and payment amounts, are 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, but not limited to, Customer DDA information, driver's license number, telephone number, or social security number except as specified in the Agreement, including the ECS MOG. Company shall keep all such information confidential and secure, in accordance with the Agreement and Laws.
- 14.** Company does not have the right to use ECS data for any purpose other than to support the ECS itself.
- 15.** Company must treat all ECS documents, including, but not limited to, the Agreement, including the ECS Rules, the ECS MOG and ECS collateral material or related guides, as confidential and proprietary information and must protect it with the same degree of care as Company would protect its own confidential and proprietary information and as further specified in the Agreement.
- 16.** Company's Agreement and use of the ECS may be terminated immediately by Elavon for failure to comply with the terms of the TOS, the Agreement or Laws.

SECTION C – TOKENIZATION SERVICES

If Company has selected Tokenization Services, Company shall be subject to this Section C in addition to the terms and conditions of Section A of this TOS. The terms and conditions for Tokenization Services are set forth in the Agreement and the Operating Guide, incorporated herein. In the course of its acceptance and use of the Tokenization Services, Company hereby agrees to the following terms and conditions governing the Tokenization Services:

1. For the payment of fees for the Tokenization Services, Elavon shall provide Tokenization Services to Company, which shall consist of a tokenization feature pursuant to which Elavon will provide Company with Tokens in substitution for Credit Card and Debit Card account numbers. More specifically, under the Tokenization Services, when a Credit Card or Debit Card account number associated with a Transaction is transmitted from Company to Elavon, Elavon will:
 - a. generate a Token;
 - b. associate the Token with the account number; and
 - c. send the Token, instead of account number, back to Company in the Transaction authorization response message.
2. The account number associated with each Token under the Tokenization Services will be available to Company until three (3) years after the expiration or termination of the Agreement (the “Token Validity Period”). During the Token Validity Period, the Token, rather than the associated account number, may be submitted by Company to Elavon to process additional Transactions to the Credit Card or Debit Card associated with such Token across all Company locations. Company acknowledges that the Tokens will be formatted in Elavon’s reasonable discretion and may not be compatible with other Company systems, equipment, communications devices, databases and/or services.
3. Company shall cause the appropriate Hardware, including POS Devices and any hardware provided by or on behalf of Elavon from time to time, to be readily available for use at all Company locations that are the recipients or users of the Tokenization Services.
4. 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 account number) together with the expiration date for the original Credit Card or Debit Card.
5. Company may request a reversal of the Tokenization process as follows:
 - a. To reverse the Tokenization process on an individual Token basis, Company may access an Elavon web portal and, with appropriate authentication credentials, retrieve the account number associated with any Token.
 - b. 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 with an encrypted file containing the account numbers associated with such Tokens within thirty (30) days of receiving the request.
6. **DISCLAIMER OF WARRANTIES. WITH RESPECT TO THE TOKENIZATION SERVICES, THE HARDWARE, AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. THE TOKENIZATION SERVICES, HARDWARE AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, PROVIDED TO COMPANY ARE PROVIDED “AS IS”. COMPANY ACKNOWLEDGES AND AGREES THAT IT IS NOT RELYING ON ANY STATEMENT, PROMISE, OR**

REPRESENTATION, EITHER ORAL OR WRITTEN, MADE BY OFFICERS, SALES PERSONNEL, OR AGENTS OF ELAVON OR MEMBER, EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, INCLUDING THIS SECTION C, WHICH WOULD SUPPLEMENT, EXPLAIN, INTERPRET, MODIFY OR EXPAND THE TERMS AND CONDITIONS OF THIS AGREEMENT, THIS SECTION C, OR ANY SALES LITERATURE OR WRITTEN PROPOSALS. COMPANY ACKNOWLEDGES AND UNDERSTANDS THAT NO EXPRESS WARRANTY WITH RESPECT TO THE TOKENIZATION SERVICES, THE HARDWARE AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, IS CONTAINED OR CREATED IN ANY ORAL STATEMENT OR IN ANY WRITING OTHER THAN THE EXPRESS WRITTEN PROVISIONS OF THIS SECTION C.

7. **LIABILITY.** Except as otherwise expressly provided herein, in no event shall Elavon be liable hereunder for (a) any loss of profits or other economic loss of whatever nature, or any indirect, special, consequential, incidental or other similar damages arising out of any claim of whatever nature relating to the Tokenization Services provided pursuant to this Agreement or to any obligations, acts, events, or occurrences pursuant to, preliminary to or incidental to the Tokenization Services provided pursuant to this Agreement, or (b) any liabilities of Company to third parties resulting from any failure of Elavon, any Hardware or any software, documentation or other related materials (whether provided by Elavon or a third party) to perform as required under the terms of this Section C to the Agreement. In no event shall Elavon's licensors, contractors, service providers or third party beneficiaries have any indemnification obligations or be liable pursuant to this Section C for any damages, including, without limitation, any indirect, special, consequential, incidental or other similar damages arising out of any claim of whatever nature relating to the Tokenization Services provided pursuant to this Agreement or to any obligations, acts, events, or occurrences pursuant to, preliminary to or incidental to the Tokenization Services provided pursuant to this Agreement.

SECTION D – FANFARE SERVICES

If Company has selected Fanfare Services, Company shall be subject to, and shall comply with, this Section D in addition to the terms and conditions of Section A of this TOS. The terms and conditions for Fanfare Services are set forth in the Agreement and the Operating Guide, incorporated herein. In the course of its acceptance and use of the Fanfare Services, Company hereby agrees to the following terms and conditions governing the Fanfare Services:

1. GENERAL PROVISIONS

- a. Elavon will host and make available to Company the Fanfare Web Portal.
- b. Company must use Supported Hardware in order to make full use of the Fanfare Services, and certain or all Fanfare Services may be unavailable or may function improperly if Company does not use them in connection with Supported Hardware. Company may obtain a current list of Supported Hardware from Elavon upon request, which Elavon may update from time to time. Elavon shall have no responsibility or liability in connection with the performance or non-performance of the Fanfare Services, including in connection with any errors or malfunctions that may occur in connection with the Fanfare Services, if Company uses the Fanfare Services with any POS Devices that are not Supported Hardware.
- c. Company shall not acquire any intellectual property rights and/or any goodwill, know-how or any other proprietary rights in any form whatsoever or howsoever in the Fanfare Platform or the Fanfare Services. Any and all intellectual property rights in and to the Fanfare Platform or the Fanfare Services, and related goodwill, know-how and other proprietary rights are and shall remain the absolute exclusive property of Elavon and/or its licensors.
- d. Company will (i) cooperate with Elavon in connection with the Fanfare Services, and (ii) provide Elavon with reasonably requested information and access (which may be remote access) to equipment and to Company's personnel for purposes of facilitating setup of POS Devices for use in connection with the Fanfare Services.
- e. Company shall use all reasonable means to prevent any unauthorized access to or use of the Fanfare Platform and the Fanfare Services, and if such access or use occurs, Company shall notify Elavon immediately.
- f. Company acknowledges and agrees that it is Company's sole responsibility to comply with all Laws related to its use of the Fanfare Services and all Laws governing its relationships with Customers and use of any Customer Data in connection with the Fanfare Services, including (i) the collection, storage and use of Customer Data for promotional or marketing purposes (including the compliance of any such storage or use with Company's applicable privacy policies and terms and conditions), (ii) the distribution (including by e-mail or short message service (SMS)) of marketing or promotional materials to Customers (including through any use of communication or marketing services made available to Company through the Fanfare Platform), and (iii) the issuance, sale, distribution, use and acceptance of gift cards, gift certificates, Loyalty Cards or Prepaid Cards that may be applicable to Fanfare Gift Cards (including all laws related to purchase, service and dormancy fees, Laws relating to expiration dates, Laws governing the treatment of unused or unclaimed funds or other property and Laws related to money transmission). Further, Company agrees to comply in a timely manner with any such Laws.
- g. Company acknowledges and agrees that Elavon has no responsibility for recording or storing any Customer Data or information related to the sale of any Fanfare Gift Card until such information has been received and validated by Elavon.
- h. Company understands and agrees that its data security obligations under the Agreement apply to any Customer Data it collects or receives in connection with the Fanfare Services, and Company agrees to comply with such data security obligations with respect to all Customer Data Company may collect, access or receive in connection with the Fanfare Services.

- i.** Company will exclusively use Elavon (including Elavon-designated service providers) for services similar to the Fanfare Services, and Company will not receive services similar to the Fanfare Services from any third parties not approved by Elavon in writing.
- j.** Company or Elavon may terminate the Fanfare Services for any of the reasons that Elavon or Company, as applicable, may terminate the Agreement.
- k.** **DISCLAIMER OF WARRANTIES.** COMPANY UNDERSTANDS AND AGREES THAT THE FANFARE PLATFORM AND THE FANFARE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WITHOUT LIMITING THE FOREGOING, ELAVON DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE FANFARE PLATFORM OR FANFARE SERVICES WILL COMPLY WITH ANY APPLICABLE LAWS GOVERNING THE COLLECTION OF CUSTOMER INFORMATION, THE USE OF CUSTOMER INFORMATION FOR MARKETING OR PROMOTIONAL PURPOSES, OR THE ISSUANCE, SALE DISTRIBUTION, USE OR ACCEPTANCE OF ANY FANFARE GIFT CARD. ELAVON WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY HARM TO COMPANY’S COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM COMPANY’S ACCESS TO OR USE OF THE FANFARE PLATFORM OR THE FANFARE SERVICES. ELAVON MAKES NO WARRANTY THAT THE FANFARE PLATFORM OR THE FANFARE SERVICES WILL MEET COMPANY’S REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM ELAVON OR THROUGH THE FANFARE SERVICES, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. ELAVON IS NOT RESPONSIBLE FOR THE UNAUTHORIZED ACCESS TO OR USE OF ANY PROMOTIONAL OFFER, REWARDS VALUE, OTHER FANFARE LOYALTY PROGRAM OFFER, OR ANY FANFARE GIFT CARD. FURTHER, ELAVON MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE SUITABILITY OR PROFITABILITY FOR COMPANY OF ANY (I) OFFER, PROMOTION OR REWARD ADOPTED BY COMPANY IN CONNECTION WITH ITS FANFARE LOYALTY PROGRAM, OR (II) FANFARE GIFT CARD ARRANGEMENT OR SOLUTION ADOPTED BY COMPANY IN CONNECTION WITH ITS FANFARE GIFT CARD PROGRAM, IN EACH CASE EVEN IF ELAVON PROMOTES SUCH A SOLUTION AS COMMON OR HISTORICALLY SUCCESSFUL IN COMPANY’S INDUSTRY OR MARKET.
- l.** **LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ELAVON AND EACH OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM COMPANY’S ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE FANFARE PLATFORM OR THE FANFARE SERVICES, OR RESULTING FROM COMPANY’S PROVISION OF PROMOTIONS, OFFERS, REWARDS OR FANFARE GIFT CARDS TO CUSTOMERS IN CONNECTION WITH THE FANFARE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT ELAVON HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE PROVISIONS OF THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR ANY TERMINATION OF THE AGREEMENT FOR ANY REASON WHATSOEVER AND EACH OF THE PROVISIONS OF THIS SECTION SHALL OPERATE SEPARATELY IN ITSELF AND SURVIVE INDEPENDENTLY OF OTHERS.
- m.** All Company locations, including chain locations, will be boarded on Elavon’s system pursuant to the paperwork submitted by Company to Elavon. However, in the event of an error or omission of fees payable by Company on the submitted paperwork, the setup fees and other monthly fees applied to the locations during the initial set up or subsequent negotiations will be applied to such locations.

- n. In the event that a particular location closes or changes its Merchant Identification Number (MID), Company agrees that Elavon may bill the Primary Fanfare Company for any fees associated with subsequent transactions processed on Fanfare Gift Cards activated by the closed MID. This would apply to any system generated transactions including, but not limited to, deduction and points conversion transactions. Monthly fees billed for Fanfare Services provided with respect to the closed location may also be billed to the Primary Fanfare Company.
- o. Fanfare Services are not available to Company's located in Canada or Puerto Rico.

2. FANFARE LOYALTY SERVICES PROVISIONS

- a. Elavon will host the Fanfare Loyalty Website.
- b. Company acknowledges that, to enroll in the Fanfare Loyalty Program and receive promotional offers and/or rewards, a Customer must enroll with Company during a point-of-sale transaction at Company or by visiting Company's Fanfare Loyalty Program Website, in each case in accordance with the Customer enrollment procedures described in the Operating Guide.
- c. Company is responsible for creating (i) a set of terms and conditions governing its Fanfare Loyalty Program, and (ii) a privacy policy addressing Company's collection and usage of Customer Data. Elavon will post (which may be by cross-reference link) Company's terms and conditions and privacy policy, on Company's behalf, on the Fanfare Loyalty Website hosted by Elavon. Elavon will provide Company with Model Documents that Company may adapt and use to govern its Customers' participation in the Fanfare Loyalty Program. Elavon makes no warranties with respect to the legality or legal sufficiency of the Model Documents. In addition, Company acknowledges that it has sole responsibility for ensuring compliance with all applicable Laws and any pre-existing commitments or obligations of Company to Customers in connection with (i) Company's use of the Model Documents; (ii) the content of the Model Documents, and (iii) any adaptations that Company may make to the Model Documents in developing its own Customer-facing terms and conditions and privacy policy regarding the Fanfare Loyalty Program. Company acknowledges that Elavon will not review Company's privacy policy or terms and conditions governing its Fanfare Loyalty Program for any purpose, including specifically for purposes of assessing the legality or legal sufficiency of such disclosures, regardless of whether Company uses the Model Documents, in whole or in part. Company represents, warrants and covenants to Elavon that the Customer terms and conditions and privacy policy governing Company's Fanfare Loyalty Program will (i) establish sufficient rights for Company and Elavon to exercise all rights and perform all obligations contemplated under the Agreement, including the Operating Guide, (ii) prevent Company from sharing Customer Data with any third party, affiliated or unaffiliated, except as permitted by applicable Law and (iii) not be inconsistent with any provision included in the Model Documents provided by Elavon unless Elavon has granted its prior written consent to any such inconsistency. Company must notify Elavon, in writing prior to the launch of Company's Fanfare Loyalty Program, of the Customer-facing terms and conditions and privacy policy Company wishes Elavon to post (by cross-reference link) to Company's Fanfare Loyalty Website. If Company does not so notify Elavon of modified or different Customer-facing terms and conditions and/or privacy policy that should govern Company's Fanfare Loyalty Program prior to the launch of Company's Fanfare Loyalty Program, Company will be deemed to have instructed Elavon to post the Model Documents, in the form provided by Elavon to Company, as Company's Customer-facing terms and conditions and privacy policy. Company agrees that it has fully reviewed and approved, as appropriate for Company and its Customers, the Model Documents Elavon posts to Company's Fanfare Loyalty Website.
- d. Company represents and warrants that it will only use Customer Data in accordance with its Fanfare Loyalty Program privacy policy and terms and conditions. In addition, Company shall obtain for the benefit of Elavon and its licensor(s) any necessary consents, approvals or notifications required for Elavon or its licensor(s) to use any Customer Data for the purpose of providing Customers with services related to the Fanfare Loyalty Program. Company understands that Elavon will have the authority to use and share Customer Data as described in the Elavon Fanfare Privacy Policy available at www.elavon.com.

- e. Company understands and agrees that Elavon may use the Fanfare Loyalty Website for purposes of obtaining Customer consent to use Customer Data in accordance with the Elavon Fanfare Privacy Policy. Company further agrees that Elavon may use Customer Data for any of the purposes permissible under the Elavon Fanfare Privacy Policy.
- f. Company agrees that it will not share Customer Data with any third parties, including any Company affiliates, without Elavon's prior written consent.
- g. Company agrees that it will not collect or receive Customer Data from any source other than directly from the Customer (including as a result of any Customer transactions at Company) or Elavon, and Company agrees that it shall not supplement or enhance any Customer Data collected in connection with the Fanfare Loyalty Program with any data or information from sources other than the Customer or Elavon.

3. FANFARE GIFT CARD SERVICES PROVISIONS

- a. Company agrees that all Fanfare Gift Cards will be printed by Elavon or an Elavon-approved vendor.
- b. Company agrees to comply with the Graphic Specifications and Procedures provided by Elavon, as the same may be updated by Elavon in its sole discretion from time to time.
- c. Company authorizes Elavon to initiate credit and debit entries among Company's individual chain locations for any Transactions that change the balance of a Fanfare Gift Card. In the event Elavon is unable to accomplish a credit or debit entry to reflect the effect of a Transaction, Company further authorizes Elavon to credit and/or debit the designated Master Account or Primary Fanfare Company. Company also understands that Elavon may, in its sole discretion, offset any debits against the related credit Transactions of the applicable chain or Company location. Both Company and the individual chain locations agree to pay related direct settlement fees.

SECTION E – AMERICAN EXPRESS® ACCEPTANCE PROGRAM

If Company has elected to accept American Express Payment Devices through the OptBlue® Program, Company shall be subject to, and shall comply with, this Section E in addition to the terms and conditions of Section A of the TOS, and the Operating Guide. In the course of its acceptance of American Express Payment Devices, Company hereby agrees to the following terms and conditions:

1. GENERAL PROVISIONS

- a. Company hereby acknowledges and agrees that for purposes of acceptance of American Express in the United States, the American Express Merchant Operating Guide is hereby incorporated by reference into this Agreement and is available at www.americanexpress.com/merchantopguide. For the purposes of acceptance of American Express in Canada, the American Express Program Merchant Guide is hereby incorporated by reference into this Agreement and is available at www.americanexpress.ca/merchantguide. Company will comply with the terms of the American Express Merchant Operating Guide or American Express Program Merchant Guide, as applicable.
- b. Except as set forth herein, the terms of this Section E supplement, rather than displace, the terms of the remainder of the Agreement. To the extent there is any direct conflict between the terms of this Section E and the Operating Guide or TOS, the terms of this Section E shall govern solely with respect to the Company's acceptance of American Express Payment Devices and solely to the extent necessary to resolve the conflict. For the avoidance of doubt, in the event that compliance with this Section E would cause you to violate the American Express Merchant Operating Guide or American Express Program Merchant Guide, as applicable, and/or Laws, you should comply with the American Express Merchant Operating Guide and/or Laws.
- c. For all purposes of this Agreement, the American Express Merchant Operating Guide and the American Express Program Merchant Guide (as applicable) are considered to be part of the Credit Card Rules.
- d. Company authorizes Elavon to submit American Express transactions to, and receive settlement from, American Express on behalf of Company.
- e. Company acknowledges and agrees that (i) Elavon may disclose American Express Transaction Data (which for purposes of this Section E shall have the same definition as "Transaction Data" in the applicable American Express Guide), Company Data (as defined below), and other information about Company to American Express, (ii) American Express may use such information to perform its responsibilities in connection with the American Express OptBlue® Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purpose, including marketing purposes, and (iii) American Express may use the information obtained in this application at the time of setup to screen and/or monitor Company in connection with American Express Card marketing and administrative purposes. If Company has provided a wireless phone number in connection with this Agreement, Company hereby agrees that it may be contacted at that number and the communications sent may include autodialed text messages or automated prerecorded calls. If Company has provided a fax number, Company hereby agrees that it may be sent fax communications. To opt out of American Express-related marketing communications, Company may contact Elavon as described in this Agreement. For purposes of this Section E, "Company Data" means names, postal and email addresses and names of the authorized signer of Company and similar identifying information about Company.
- f. Company hereby agrees that, in the event that Company becomes a "High Charge Volume Merchant" (as defined below), Company may be converted from the OptBlue® Program to a direct American Express Card acceptance relationship with American Express, and upon such conversion, (i) Company will be bound by American Express's then-current card acceptance agreement, and (ii) American Express will set pricing and other fees payable by Company for American Express Card acceptance. "**High Charge Volume Merchant**" for purposes of this Section E means a Company

processing with either (i) greater than C\$500,000 in American Express charge volume in a rolling twelve (12) month period if Company is located in Canada or (ii) greater than US\$1,000,000 in American Express charge volume if Company is located in the United States. For clarification, if Company operates multiple establishments, the American Express charge volume from all establishments in the United States, or if a Canadian Company in Canada, shall be summed to together when determining whether Company has exceeded the thresholds above.

- g.** Company shall not assign to any third party any American Express-related payments due to it under this Agreement, and all indebtedness arising from American Express Charges (as defined below) will be for bona fide sales of goods and services (or both) at its establishments (as defined below) and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Company may sell and assign future American Express transaction receivables to Elavon, its Affiliates, or any other cash advance funding source that partners with Elavon or its affiliated entities, without consent of American Express.
- h.** Company hereby agrees that American Express shall have third party beneficiary rights, but not obligations, to enforce the Agreement against Company to the extent applicable to American Express processing. Termination of American Express card acceptance shall have no direct or indirect effect on Company's rights to accept other card brands. To terminate American Express acceptance, without penalty, Company may contact Elavon customer service as described in this Agreement.
- i.** Without limiting any other rights provided herein, Elavon shall have the right to immediately terminate Company's acceptance of American Express cards upon request of American Express.
- j. Glossary.** As used in this Section E, the capitalized terms set forth below shall have the following definitions:

 - i. American Express Payment Device:** (i) Any Card, account access device, or Payment Device or service bearing American Express or American Express Affiliate's Mark and issued by an Issuer or (ii) a Card Number.
 - ii. American Express Acceptance Program:** The American Express OptBlue[®] Program, pursuant to which a Company is permitted to accept Transactions initiated with American Express Payment Devices through Elavon.
 - iii. American Express Merchant Operating Guide:** The Merchant Operating Guide published by American Express containing the rules and regulations of American Express applicable to the American Express Acceptance Program in the United States, together with all technical specifications, documentation, and other policies or procedures incorporated therein and currently located at <http://www.americanexpress.com/merchantopguide>. For all purposes of this Agreement, the American Express Merchant Operating Guide is considered to be part of the Credit Card Rules.
 - iv. American Express Program Merchant Guide:** The American Express Program Merchant Guide published by American Express containing the rules and regulations of American Express applicable to the American Express Acceptance Program in Canada, together with all technical specifications, documentation, and other policies or procedures incorporated therein and currently located at www.americanexpress.ca/merchantguide. For all purposes of this Agreement, the American Express Program Merchant Guide is considered to be part of the Credit Card Rules.

SECTION F – SAFE-T FOR SMB SERVICES

If Company has elected to receive SAFE-T for SMB Gold or SAFE-T for SMB Silver, Company shall be subject to, and shall comply with, this Section F in addition to the terms and conditions of Section A of this TOS in connection with its receipt such services. For the avoidance of doubt, this Section F shall not apply to any tokenization or encryption solution offered by Elavon other than the SAFE-T for SMB Gold and SAFE-T for SMB Silver offerings, and to the extent terms governing any other such tokenization or encryption solution are separately provided to Company, those terms, rather than this Section F, shall apply. In the course of its acceptance and use of the SAFE-T for SMB Services (as defined below), Company hereby agrees to the following terms and conditions:

1. **DESCRIPTION OF SAFE-T FOR SMB SERVICES.** Subject to the terms and conditions of this Section F and the Agreement, Elavon shall provide Company with the following services (collectively, the “SAFE-T for SMB Services”):
 - a. **Encryption Services.** Transaction Receipts properly encrypted by Company using Elavon-provided encryption software and Elavon-approved Hardware (as defined below) will be decrypted by Elavon in accordance with the terms and conditions of this Section F and the Agreement (such services, the “Encryption Services”).
 - b. **Tokenization Services.** Elavon will provide Company with Tokens in substitution for Credit Card, Debit Card and Gift Card account numbers. More specifically, when a Credit Card, Debit Card or Gift Card account number associated with a Transaction is transmitted from Company to Elavon, Elavon will:
 - i. Generate a Token;
 - ii. Associate the Token with the account number in a secure manner; and
 - iii. Send the Token, instead of the account number, back to the Company in the Transactions authorization response message.

As long as Company is receiving the SAFE-T for SMB Services, Company may submit the Token, rather than the associated account number, to Elavon to process additional Transactions to the Credit Card, Debit Card or Gift Card associated with such Token at any of Company’s locations.

Note: The SAFE-T for SMB Services only apply to Card Present and mail order/telephone order Transactions, and do not apply for Electronic Commerce Transactions. For mail order/telephone order transactions, information must be hand-keyed into the POS Device for SAFE-T For SMB Services to apply.

2. **COMPANY RESPONSIBILITIES.**
 - a. Company shall cause the appropriate Hardware, including POS Devices and any other Hardware provided by or on behalf of Elavon from time to time, to be readily available for use at all Company locations that are the recipients or users of the SAFE-T for SMB Services. Company shall be solely responsible for ensuring that, for every Transaction, (i) it utilizes only such Hardware that is included on Elavon’s then-current list of Hardware compatible with the SAFE-T for SMB Services for every Transaction and (ii) the SAFE-T for SMB Services are enabled on such Hardware.
 - b. Company acknowledges that Elavon does not store Payment Device expiration dates. In order to use a Token to process a Transaction, Company must provide the Token (in lieu of an account number) together with the expiration date for the original Payment Device, if available.
 - c. Company must cooperate with Elavon to promptly take any action necessary to enable the SAFE-T for SMB Services on Company’s Hardware, including promptly downloading,

installing and implementing any software or updates thereto in accordance with Elavon's instructions. Company acknowledges and agrees that it may not be able to receive the benefits of the SAFE-T for SMB Services to the extent that it does not take such actions in accordance with Elavon's instructions.

3. **LIABILITY; DISCLAIMER OF WARRANTIES.**

- a. COMPANY EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES CONTAINED IN SECTION A OF THIS TOS SHALL APPLY WITH RESPECT TO THE SAFE-T FOR SMB SERVICES AND TO ANY HARDWARE AND SOFTWARE PROVIDED IN CONNECTION WITH THE SAFE-T FOR SMB SERVICES. ALL HARDWARE AND SOFTWARE PROVIDED IN CONNECTION WITH THE SAFE-T FOR SMB SERVICES IS PROVIDED "AS IS". NOTWITHSTANDING THE FOREGOING, THE TERMS OF ANY EXPRESS LIMITATION OF LIABILITY OR DISCLAIMER OF WARRANTIES CONTAINED IN ANY ADDENDUM TO THE AGREEMENT SHALL CONTROL WITH RESPECT TO THE SERVICES AND PRODUCTS (INCLUDING HARDWARE AND SOFTWARE), IF ANY, PROVIDED PURSUANT TO SUCH ADDENDUM TO THE AGREEMENT.
- b. Notwithstanding the forgoing, subject to the eligibility requirements provided in Section A of this TOS, companies that have selected the Silver level of the SAFE-T for SMB Services will be eligible for Data Breach Reimbursement up to a maximum amount of \$100,000, and companies that have selected the Gold Level of SAFE-T for SMB Services will be eligible for Data Breach Reimbursement of up to a maximum amount of \$250,000, provided that such companies have properly installed all software and updates made available by Elavon in connection with the SAFE-T for SMB Services and the SAFE-T for SMB Services are actually enabled on the Company's Hardware.

4. **TERM AND TERMINATION.**

- a. **Term.** Unless terminated as set forth below, the terms of this Section F will remain in effect from the date of acceptance of the Company Application or other form by which Company elects to receive the SAFE-T for SMB Services, as applicable, by Elavon and Member until the expiration or termination of the Agreement.

SECTION G: GLOSSARY

ABA Routing Number: The ABA number that uniquely identifies the bank on which a check is drawn.

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

ACH Network: The funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically.

ACH Rules: The NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.

Agreement: The TOS, including the Company Application, the Operating Guide, the Electronic Check Service Merchant Operating Guide (if applicable), any Company Agreement or Company Processing Agreement, 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: The American Express Company or Amex Bank of Canada and, to the extent applicable in Canada, The American Express Company.

Authorization Code: The code sent by the Issuer in response to an Authorization request that indicates whether the Transaction is approved. Responses may include: “Approved,” “Declined,” “Declined Pick-Up,” or “Referral” (“Call Auth”).

Bankruptcy Proceeding: 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.

Billers Direct Services: The services offered by Elavon described herein pursuant to which Transactions are presented for authorization, clearing and settlement in accordance with the Agreement.

Canadian Payments Association (CPA): 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 Present: The processing environment where the Payment Device is physically presented to the Company by the Cardholder as the form of payment at the time of Transaction.

Cardholder: 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.

Cardholder Information Security Program (CISP): Visa's data security regulations to protect Cardholder account data and other data security best practices. The exact requirements for CISP can be found at www.visa.com/cisp.

Chargeback: A Transaction disputed by a Customer or Issuer pursuant to the Payment Network Regulations. For purposes of Section B, "Chargeback" means (i) a sales Transaction disputed by a Customer or an Item not in compliance with Conversion with Guarantee warranty provisions or ECS Rules; (ii) for all Service Levels other than Conversion with Guarantee, the face amount of any Item that is returned by the Drawee Bank or an ECS Association to Elavon unpaid and that is ineligible for resubmission to the Drawee Bank or the ECS Association, including any Item returned for non-sufficient or uncollected funds after the third presentment; and (iii) for all Service Levels, an Item that is not in compliance with Company's obligations, representations and warranties under the Agreement or the TOS.

Check Reader/Imager: A device certified by Elavon that electronically captures the MICR line and/or an image of the Paper Check.

Company: The business entity indicated on the Company Application that provides goods and/or services to Customers, or that accepts payments from Customers.

Company Agreement (Company Processing Agreement): Any agreement that Company has entered into for Processing Services, which agreement is either with Elavon or another entity that, directly or indirectly, transferred its rights under such agreement to Elavon.

Company Application: 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 application for Processing Services, including any additional location form(s) and any documents submitted by Company as a part of the bid process, if applicable.

Confidential Information: All information or items proprietary to Elavon or Member, of which Company obtains knowledge or access as a result of Company's relationship with Elavon and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.

Credit Card: A card or device associated with a revolving line of credit that may be used to purchase goods and services from Company or to pay an amount due to Company or to obtain cash advances.

Credit Card Associations: (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.

Credit Card Rules: All applicable rules and operating regulations of the Credit Card Associations, and all rules, operating regulations, and guidelines for Credit Card Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.

Credit Transaction Receipt: A document, in paper or electronic form, evidencing a Company's refund or price adjustment to be credited to the Cardholder's account and debited from Company's DDA. This is also known as a credit slip or credit voucher.

Customer: 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.

Customer Data: Any information or data related to a Customer, including personal information, personally identifying information and information about a Customer's purchase Transactions at Company, collected by Company and provided to Elavon or received by Elavon from a Customer in connection with the Fanfare Loyalty Program or Elavon's provision of the Fanfare Loyalty Services.

DDA (Demand Deposit Account): The commercial checking account at a financial institution acceptable to Elavon designated by Company to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement. In the instance of a Debit Card or ATM Card, this refers to the Cardholder's deposit account.

Debit Card: 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.

Debit Card Rules: All applicable rules and operating regulations of the EFT Networks, and all rules, operating regulations, and guidelines for Debit Card Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.

Diners: Diners Club International Ltd.

Discover: DFS Services LLC.

Discover Network: Discover Network, Inc.

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

ECS Association: 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.

ECS Primer: 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: All applicable rules and operating regulations of or applicable to the ECS Associations (including the ACH Rules) and the ECS MOG, in each case including without limitation, all amendments, changes, and revisions made thereto from time to time.

ECS Transaction: Any purchase, reversal/void, decline, Chargeback, or representation/resubmit pursuant to the Electronic Check Service Rules.

EFT Networks: (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.; (ii) (i) Interac and the Interac Direct Payment service; and (iii) any other organization or association that hereafter authorizes the Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

Elavon: As applicable, Elavon, Inc., a Georgia corporation, Elavon Canada Company, a company validly existing and organized in Nova Scotia, and any affiliate or subsidiary of Elavon, Inc. that provides Processing Services to a Company related to Transactions. 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 Processing Services.

Elavon Fanfare Privacy Policy: Elavon’s privacy policy applicable to Elavon’s use of Customer Data obtained from consenting Customers in connection with Company’s Fanfare Loyalty Program.

Electronic Commerce Transaction: A Transaction that occurs when the Cardholder uses the Internet to make a purchase from a Company or Company uses the Internet to submit the Transaction for processing.

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

Electronic Gift Card Services: The Processing Services provided by Elavon to companies with respect to Electronic Gift Cards offered by such companies, as more fully described herein and the Operating Guide.

Fanfare Enrolled Customer: A Customer of Company that has enrolled (as further described herein) to participate in Company’s Fanfare Loyalty Program.

Fanfare Gift Card: A special card, code or device purchased by or provided to a Customer that is redeemable for merchandise, services or other Transactions with Company.

Fanfare Gift Card Program: A program established and managed by Company using the Fanfare Platform in accordance with the Agreement, including applicable provisions of the Operating Guide.

Fanfare Gift Card Services: Fanfare Gift Card Program setup and Processing Services provided by Elavon and Member to Company as described in the Agreement and in the Operating Guide.

Fanfare Loyalty Program: A program established and managed by Company, using the Fanfare Platform, through which Company may endeavor to promote Customer loyalty and increased spending by offering promotions, rewards and incentives to Fanfare Enrolled Customers.

Fanfare Loyalty Services: A loyalty program platform that supports Company establishment of a Fanfare Loyalty Program, Customer enrollment in the Fanfare Loyalty Program at Company’s point-of-sale, establishment and maintenance of the Fanfare Loyalty Website, the ability to generate marketing campaigns and offer promotions to Customers, and Processing Services related to redemption of Customer

rewards, in each case as described in the Agreement, including applicable provisions of the Operating Guide.

Fanfare Loyalty Website: A Customer-facing website hosted by Elavon and co-branded by Elavon (Fanfare) and Company through which (i) Customers that have not enrolled in Company's Fanfare Loyalty Program may enroll online as part of the registration process, (ii) Fanfare Enrolled Customers may access Company's Fanfare Loyalty Program disclosures, (iii) Fanfare Enrolled Customers may un-enroll in the Fanfare Loyalty Program, or (iv) Fanfare Enrolled Customers that have registered through the website may manage their Fanfare Loyalty Program accounts, in each case as described in the Agreement, including the Operating Guide.

Fanfare Platform: The systems hosted directly or indirectly by Elavon through which (i) Company establishes its Fanfare Loyalty Program and/or Fanfare Gift Card Program, and (ii) the Fanfare Services are provided to Company.

Fanfare Services: The Fanfare Loyalty Services and/or Fanfare Gift Card Services provided by Elavon and Member and used by Company in accordance with the Agreement.

Fanfare Web Portal: A web-based portal provided by Elavon through which Company may obtain information and guides pertaining to the Fanfare Services and Fanfare Platform, and may access Company-specific program metrics via dashboards, view information about a Customer's purchase Transactions at Company, create additional Customer offers and retrieve reports regarding Company's Fanfare Gift Card Program and/or Fanfare Loyalty Program, in each case as applicable to the Fanfare Services elected by Company.

GA UCC: Georgia Uniform Commercial Code.

Glossary: This Section G of the TOS.

Graphic Specifications and Procedures: The requirements, specifications and procedures applicable to standard and custom Electronic Gift Cards, including all artwork appearing or permitted to appear on Electronic Gift Cards, as may be provided by Elavon to Company from time to time.

Guarantor: A Person that executes a Personal Guaranty for the benefit of Elavon and Member.

Hardware: POS Devices and other similar Hardware used by Company to accept Payment Devices, including any Hardware provided by Elavon.

Interac: Interac Association.

Interac Direct Payment: The service provided by Interac to permit Customers 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.

Issuer: The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.

JCB: JCB International Co., Ltd.

Laws: All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.

Leased Equipment: The equipment and/or software and related license agreement(s) described in the Company Application or the Agreement with all replacement parts, repairs, additions and accessories included therein and/or affixed thereto.

Lessee: Company, when applicable.

Lessor: Elavon dba LADCO Leasing.

Loyalty Card: A device used to hold a currency and/or points value in a stored value program.

Master Account: The account (e.g. funds pool) that is used to hold the value of Electronic Gift Cards or Fanfare Gift Cards, as applicable, that have been issued among a group or chain of merchants. Alternatively, this may refer to the back-up account used to offset electronic payment, ACH or Canadian Payments Association rejects or returns, if applicable.

MasterCard: MasterCard International Incorporated.

MasterCard Merchant Agreement: The Company Agreement that is a part of the Agreement and is between Company, the Member of MasterCard and Elavon, if as part of the Program Company has requested the ability to accept MasterCard Credit Cards. The Member of MasterCard is a party to the MasterCard Merchant Agreement for purposes of compliance with the MasterCard Credit Card Rules while Elavon is a member service provider of MasterCard and as such is also a party to the MasterCard Merchant Agreement. The Member of Visa is not a party to the MasterCard Merchant Agreement and shall have no liability with respect to any matters relating to or arising out of the MasterCard Merchant Agreement, including any actions of Elavon or the Member of MasterCard thereunder. The MasterCard Merchant Agreement is contained within the Agreement and is identical to the Visa Merchant Agreement except as set out herein

Member: 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. References to “Member” in the MasterCard Merchant Agreement shall refer to the Member of MasterCard and references to “Member” in the Visa Merchant Agreement shall refer to the Member of Visa. For purposes of Transactions in Canada only, as of the date of distribution of the TOS, the Visa Member is U.S. Bank National Association, acting through its Canadian branch, the MasterCard Member is Elavon Canada Company, and the Discover Network Member is Elavon Canada Company. The Member may be changed by Elavon at any time and Company will be provided notice of same.

MICR: 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.

Model Documents: A sample set of customer terms and conditions and a privacy policy provided by Elavon to Company for Company’s use in developing its own Customer-facing terms and conditions and privacy policy governing Customer participation in the Fanfare Loyalty Program.

NACHA: The national association that establishes standards, rules, business practices, and procedures governing the ACH Network, including the ACH Rules.

Operating Guide: The operating manual provided by Elavon to its Company that prescribes rules and procedures governing the Transactions. The Operating Guide may be amended from time to time by Elavon in its sole discretion, which amendments will be effective upon notice to Company.

Paper Check: A Customer’s paper check presented to Company for payment to Company, which check will serve as the source document for Items.

Payment Card Industry Data Security Standard (PCI DSS): The data security regulations, including maintaining Cardholder account data in a secure environment, and other data security best practices endorsed by the major card associations including Visa, MasterCard and Discover, as such may be amended from time to time. Visa requires that companies and their agents comply with CISP, MasterCard requires that companies and their agents comply with SDP and the PCI DSS regulations of Discover Network.

Payment Device: 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: 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: The rules, operating regulations, guidelines, specifications and related or similar requirements of any Payment Network. The Visa operating rules are located at <https://usa.visa.com/dam/VCOM/download/about-visa/15-April-2015-Visa-Rules-Public.pdf>. MasterCard operating rules are located at <https://www.mastercard.com/ca/merchant/en/getstarted/rules.html>.

PCI Compliance Program: Elavon’s program for validation of Company compliance with the PCI-DSS requirements.

Person: Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.

Personal Guaranty: Any written guaranty of Company’s duties and obligations to Elavon and Member by a Person that is given in connection with the Agreement including, without limitation, as part of this TOS, the Company Application, any Company Agreement or Company Processing Agreement, or any other document signed by the Person in favor of Elavon and Member.

PIN: A number that must be entered by a Cardholder in order to complete certain types of Transactions (e.g., online debit, EBT).

POS Device: 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.

Prepaid Card: A card having available funds paid for in advance by the Cardholder.

Primary Company: The Merchant Identification Number (MID)/location originally enrolled for Electronic Gift Cards and set up to be billed for the card orders placed or designated as the corporate or headquarter location.

Primary Fanfare Company: The Merchant Identification Number (MID)/location originally enrolled for the Fanfare Services and set up to be billed for all Fanfare Services provided by Elavon.

Processing Services: The Payment Device processing services and other related products and services received by Company pursuant to the Agreement.

Program: The Payment Device processing services and other related products and services received by Company pursuant to the Agreement.

Reserve Account: The account established pursuant to Section (A)(6).

Retrieval Request: A request initiated by a Cardholder or Issuer that requires Company to produce a legible copy of the Cardholder’s signed Transaction Receipt within a specified period of time.

Service Provider: Any entity that stores, processes, transmits or accesses Payment Device data or Transaction data on behalf of Company or that provides software to Company for transaction processing, storage, or transmission.

Servicer: See “Elavon.”

Site Data Protection Program (SDP): MasterCard's data security regulations to protect Cardholder account data and other data security best practices. The exact requirements for SDP can be found at <https://sdp.mastercardintl.com>.

Supported Hardware: The equipment, systems and hardware, including POS Devices, necessary for Company to make use of Company's selected Fanfare Services.

Terms of Service (TOS): These Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.

Token: A numerical token provided by Elavon in substitution of a Payment Device account number.

Tokenization Services: Those services described in paragraph 1 of Section C of this Agreement.

Transaction: Any action between Company and a Cardholder using a Payment Device that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).

Transaction Receipt: 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.

Visa: As applicable, Visa U.S.A., Inc. and Visa Canada, Inc.

Visa Merchant Agreement: The Company Agreement that it a part of the Agreement and is between Company, the Member of Visa and Elavon, if as part of the Program Company has requested the ability to accept Visa Credit Cards. The Member of Visa is a party to the Visa Merchant Agreement for purposes of compliance with the Visa Credit Card Rules while Elavon is a registered independent sales organization of Visa and as such is also a party to the Visa Merchant Agreement. The Member of MasterCard is not a party to the Visa Merchant Agreement and shall have no liability with respect to any matters relating to or arising out of the Visa Merchant Agreement, including any actions of Elavon or the Member of Visa thereunder. The Visa Merchant Agreement is contained within the Agreement and is identical to the MasterCard Merchant Agreement except as set out herein.

WebSuite Services: An electronic commerce solution provided by Elavon's third party service providers that permits Customers to purchase or add value to Electronic Gift Cards through Company's WebSuite site. Customers submit payment for the Electronic Gift Card via a Payment Device via the Processing Services.