

APPENDIX G

Payment Device Processing Agreement ("PDPA")

PAYMENT DEVICE PROCESSING AGREEMENT

This Payment Device Processing Agreement (“Agreement”) is entered into as of the Effective Date by and among the entity identified below as the Merchant (together with any affiliated entities listed on Schedule B to the Agreement), referred to collectively as the “Merchant,” **Key Merchant Services, LLC**, a joint venture between Elavon, Inc. (“Elavon”) and **Key Bank, National Association** (“Member”), as further designated on the EVTA-2 Work Order and includes the following Terms of Service (the “TOS”) and all Schedules and other attachments to the Agreement, each of which is incorporated in full by this reference. The Agreement governs the Merchant’s receipt and use of the Processing Services.

PAYMENT DEVICE PROCESSING SERVICES ELECTED BY MERCHANT. Merchant elects the following Payment Device Processing Services as described in the Agreement (including all applicable Schedules) and subject to the additional terms and conditions of the applicable provisions of the Merchant Operating Guide (the “MOG”):

- TOS, General Provisions and the MOG
- Schedule A, Schedule of Fees (replaced by Appendices D and F to the Contract)
- Substitute Form W-9 (required)

Payment Device Processing Services Available to Merchants Generally (check desired Processing Services):

- Credit Card Services
- Debit Card (signature-based) Services
- Debit Card (PIN-based) Services
- Bill Payment (Pinless Debit) Services
- DCC Services (not available)**
- Wireless Services
- Contactless Services
- Schedule D, Electronic Gift Card Services (not available)**
- Schedule E, Electronic Check Services (not available)**
- Schedule J, Processing Services for Convenience Fees
- Schedule K, Enterprise Billing Solutions Services (not available)**
- Schedule N, Internet PIN-Based, Debit Card Services (not available)**

Payment Device Processing Services Available to Merchants Operating in Certain Merchant Categories (check desired Processing Services):

- EBT Services (not available)**
- Hospitality Services (not available)**
- No Signature Required Program Services (not available)**
- Schedule F, Petroleum Services (not available)**
- Schedule I, Government/Public Institution Service Fees

Payment Device Processing Services Available to Merchants Operating in Certain Jurisdictions (check desired Processing Services):

- Schedule G, Processing Services in Canada (not available)**
- Schedule H, Processing Services in Puerto Rico (not available)**

** Services marked “not available” are not available to State Agency Authorized Users. Non-State Agency Authorized Users may contract for such services with KMS/Elavon directly.

TERMS OF SERVICE

In the event that any of the terms or conditions contained in this Agreement are found to conflict with any of the terms of conditions contained in the Contract entered into between the State of New York and Key Merchant Services pursuant to RFP #22419 for Electronic Value Transfer Services (the "Contract"), the terms and/or conditions of the Contract shall prevail. The provisions herein are intended to be in addition to the terms of the Contract.

Section A - General Provisions Applicable to All Services

- 1) **DEFINITIONS; RULES OF CONSTRUCTION.** Capitalized terms used in the Agreement and in any applicable Schedule shall have the meanings ascribed to such terms in the Glossary set forth in Section B of this TOS or in such Schedules. All Schedules are expressly incorporated in their entirety and made a part of the Agreement. Captions in the Agreement and in the attached Schedules are for convenience only and do not constitute a limitation of the terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. 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 applicable Schedule, the terms of the applicable Schedule shall prevail, subject to the order of precedence contained in Section II.2 of the Contract.
- 2) **ACCEPTANCE OF PAYMENT DEVICES.** Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices and Processing Services it will agree to accept as a form of payment from its Customers by selecting the applicable Processing Services on page 1 of the Agreement and/or on the appropriate Schedule. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant's use of the Processing Services are set forth in the Agreement and in the Merchant Operating Guide (the "MOG"), incorporated herein by this reference and located at our website https://www.merchantconnect.com/CWRWeb/tech_support.do, a current copy of which is included as Appendix H to the Contract. Each Schedule to the Agreement shall be governed by the TOS and the applicable provisions of the MOG, as well as by the terms set forth in the Schedule.
- 3) **TRANSACTIONS.**
 - a) **Merchant Compliance.** Merchant must comply with all the requirements under the Agreement. Merchant must also comply with the procedures set forth in the MOG and any other guides, manuals, or rules provided in writing by Elavon from time to time.

- b) **Settlement of Transactions.** Subject to the other provisions of the Agreement and subject to Merchant's compliance with the terms of the Agreement and the Payment Network Regulations, Elavon and Member will process Transactions daily, and if Merchant maintains its DDA with Member, provisional credit for Transactions may be available as soon as the next banking day after the banking day on which Elavon and Member process the Transactions. To the extent required, Merchant authorizes and appoints Elavon or Member to act as Merchant's agent to collect Transaction amounts from the Customer, the Issuer or the Customer's financial institution.
 - i) **Deposits.** Merchant 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. Merchant 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.** Merchant 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. Merchant further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Contract and this Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. If Merchant has selected direct debit or net settlement, Merchant 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 Merchant-issued Cardholder credits for up to five (5) business days for accounting verification. Cardholder credits issued by Merchant to PIN-Debit Cards will not be subject to this delay.
 - iii) **Chargebacks.** Merchant agrees to accept for Chargeback, and will be liable to Elavon and Member in the amount of any Transaction disputed by the Cardholder or Issuer for any reason under the Payment Network Regulations. Merchant authorizes Elavon and Member to offset from funds due Merchant (if net-billing is selected by the Authorized User

under the Contract) or to debit the DDA (if direct debit is selected by the Authorized User) or the Reserve Account for the amount of all Chargebacks. Merchant will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding all Chargebacks.

- iv) **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) **DDA and ACH Authorization.** Merchant will establish and maintain with Member (or with another ACH participating financial institution) one or more DDAs to facilitate payment for Transactions. Merchant will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all returns, adjustments, fines, penalties, and assessments from the Payment Networks. Elavon and Member have the right to delay, within their reasonable discretion, crediting the DDA with funds related to Transactions in order to investigate any Transactions related to suspicious or fraudulent activity or funds for Transactions for which Elavon or Member have not received funding from the applicable Payment Networks. Elavon and Member will endeavor to investigate or process any delayed Transactions expeditiously and will endeavor to notify Merchant if any Transactions are delayed for more than forty-eight (48) hours. Elavon has the right to rely upon written instructions submitted by Merchant requesting changes to the DDA. In the event Merchant changes the DDA, the ACH debit and credit authorization established hereunder, if any, will apply to the new account and Merchant shall provide Elavon and Member such information regarding the new DDA as they deem necessary to effect payments to and from the DDA as provided under the Agreement. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA.
- d) **Depository Institution.** Merchant authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA reasonably requested by Elavon and/or Member to credit the DDA and to otherwise exercise their rights under the Agreement with respect to the DDA.
- e) **Actions.** Merchant will not make any claims against (i) Elavon or Member for any authorized action they take against the DDA or Reserve Account in accordance with the Contract and this Agreement, and (ii) the depository institution at which Merchant maintains its DDA for acting in accordance with any instruction from Elavon and/or

Member regarding the DDA authorized under this Agreement, in each case except to the extent such actions are attributable to Elavon's or Member's negligence, willful misconduct, or their breach of the Contract or this Agreement.

4) **SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.**

a) **Security Interests.** Deleted.

b) **Reserve Account.**

i) **Establishment.** Elavon may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing security and a source of funds to pay Elavon and Member for any and all amounts that may be owed by Merchant hereunder. Elavon and Member shall have sole control of the Reserve Account.

ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the product is shipped to the Cardholder (if the goods are being shipped) or the date the Cardholder receives the product or service. Further, for purposes of this calculation, Elavon will determine, in its sole reasonable discretion, the applicable period considering factors such as Merchant's Transaction volume and seasonality.

(A) **Reserve Event – State Agency Authorized Users.** The following will constitute Reserve Events for State Agency Authorized Users: (a) fraudulent activity in any monthly period that equals or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed one percent (1%) of the total dollar value of incoming items to Elavon, (c) Elavon's reasonable belief that a Merchant not approved by Elavon to engage in delayed delivery transactions has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against Merchant, and (e) the occurrence of a material adverse change in Merchant's financial condition,

- (B) **Reserve Event – Non-State Agency Authorized Users.** The following will constitute Reserve Events for non-State Agency Authorized Users: (a) fraudulent activity in any monthly period that equals or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed one percent (1%) of the total dollar value of incoming items to Elavon, (c) Elavon's reasonable belief that a Merchant not approved by Elavon to engage in delayed delivery transactions has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against Merchant, (e) termination of the Agreement for any reason or the occurrence of an event listed in Section (A)(12)(b)(ii)(B) or (C) giving Elavon or Member the right to terminate the Agreement, (f) nonpayment of amounts owed by Merchant to Elavon or Member, (g) fines or assessments imposed or reasonably expected to be imposed by the Payment Networks, (h) the occurrence of a material adverse change in Merchant's financial condition, (i) assignment of the Agreement by, or a change in control of, Merchant without Elavon's consent, and (j) revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or any other Alternate Security provided in connection with the Agreement, if applicable.
- iii) **Funding.** Elavon and Member may fund the Reserve Account (in each case up to the Reserve Amount) by any one or more of the following means:
- (A) Elavon and Member may require Merchant to deposit funds into the Reserve Account;
 - (B) Elavon and Member may debit the DDA if authorized; and/or
 - (C) Elavon and Member may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant.
- iv) **Use of Funds in Reserve Account.** Elavon or Member may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes under the Agreement. Also, Elavon or Member 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 Elavon or Member. Further, Merchant 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.
- v) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account, and shall be used only to pay amounts due to Elavon and Member (except as otherwise provided in the Agreement), until the Merchant has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and any other payments due under the Agreement. In no event shall Merchant 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. Notwithstanding the foregoing, if Elavon and Member determine that the Reserve Event that gave rise to the establishment of the Reserve Account has been sufficiently cured, Elavon and Member may, in their sole discretion, terminate the Reserve Account and/or release funds from the Reserve Account prior to the termination of the Agreement.
- vi) **Alternate Security.** In lieu of or in addition to establishing and funding a Reserve Account, Elavon may, in its sole and absolute discretion, accept an alternative form of security ("Alternate Security") for the purpose of providing a source of funds to pay Elavon and Member for any and all amounts owed by Merchant. Elavon retains the right, at any time, to reject Alternate Security previously accepted by Elavon and/or to require funding of a Reserve Account so that the amount of funds held in a Reserve Account, taken together with amounts represented by any Alternate Security accepted by Elavon, equal the Reserve Amount.
- c) Merchant acknowledges that in the event of a Bankruptcy Proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 to Elavon and/or Member hereunder, Elavon and Member may require the creation of a Reserve Account and either of them shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to Elavon and Member, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.
- d) **Remedies Cumulative.** The rights conferred upon Elavon and Member in this section are not intended to be exclusive of each other or of any other rights and remedies of Elavon and Member under the Agreement, at law or in equity. Rather, each and every right of Elavon and Member under the

Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

5) **PROCESSING SERVICES; FEES; OTHER AMOUNTS OWED; TAXES.** Elavon and Member will provide Merchant with Processing Services in accordance with the Contract and this Agreement. Merchant will compensate Elavon and Member for Processing Services as indicated in Section VI of the Contract and Appendix D, Rate Schedules.

a) **Fee Collection Models.** Merchant will pay Elavon pursuant to the Fee Collection Model selected on the EVTA-2 Work Order form, and as further described in Section VI of the Contract and below (and for Non-State Agency Authorized Users, if no selection is made, then the Direct Debit Fee Collection Model will apply):

i. **Direct Debit Fee Collection Model** (also called Direct ACH Debit in Section VI of the Contract). Merchant will pay Elavon and Member fees in the ordinary course of business for all Processing Services, supplies, and equipment in accordance with Appendix D of the Contract and the EVTA-2 Work Order form. 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 Merchant under the Agreement.

ii. **Monthly Net Settlement Fee Collection Model** (also called Deduction Net-Billing in Section VI of the Contract). Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Appendix D of the Contract and the EVTA-2 Work Order form. Such fees will be calculated daily and will be offset by Elavon and Member against amounts owed by Elavon and Member to Merchant for: (i) Transaction Receipts, on the first day of each month for the prior month's activity, (ii) fees and other amounts owed to Elavon and Member pursuant Appendix D of the Contract and the EVTA-2 Work Order form that are not available or reasonably calculable as of the last day of a particular month, such amounts will be offset the following month. In the event that the funds owed by Elavon and Member to Merchant on the first day of a calendar month are insufficient to offset amounts Merchant owes to Elavon and Member for Processing Services provided during the prior month, Elavon and Member may offset any unpaid balance owed by Merchant against future amounts Elavon and Member owe or will

owe to Merchant until Merchant's financial obligations are fully satisfied.

iii. **Invoice Fee Collection Model.** Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance Appendix D of the Contract and the EVTA-2 Work Order form. Such fees will be calculated once each month for the previous month's activity. Elavon will send Merchant an invoice reflecting the fees due, in accordance with Section VI of the Contract.

iv. **Convenience Fees** (also called Government/Public Institution Service Fees). See Section III.13 of the Contract and Schedules I or J to this Agreement, as applicable.

b) **Research Deleted.**

c) **Change of Fees.** The fees set forth in the Agreement and any additional application or set up form will not be amended by Elavon for the Initial Term of the Agreement except as provided in the Contract or to pass through to Merchant increases in interchange, assessments, or fees imposed by a third party. Notwithstanding the previous sentence, the Card Processing Fees set forth in Appendix D or F may be adjusted during the Initial Term or any Renewal Term in Elavon's or Member's discretion, without further consent or agreement from Merchant, to pass through any new fees imposed upon Elavon or Member by any third parties (including any Payment Network) in connection with the Processing Services.

d) **Other Amounts Owed.** Merchant will promptly pay Elavon or Member any amount incurred by Elavon or Member attributable to the Contract, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties, assessments (including all fines, penalties, or assessments by the Payment Networks or any other third party as a result of Merchant's Transaction processing), and any other payments due under the Agreement.

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

6) **ACCURACY OF INFORMATION; RESPONSIBILITIES; LIMITATION OF LIABILITY.**

a) **Accuracy of Information.** Merchant must promptly notify Elavon in writing of any material changes to the information provided in the EVTA-2 Work

Order form or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services, the form of entity, change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by Elavon.

b) Responsibilities.

i) **Merchant Responsibilities.** In addition to Authorized User's obligations in the Contract, as between Merchant, Elavon and Member, Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of or in connection with any dispute with a Customer, Cardholder or any third party relating to any Transaction or any breach by Merchant of any obligation under this Agreement ("Merchant Disputes"). Merchant will not make any claims against Elavon or Member for any liabilities, claims losses, costs, expenses and demands of any kind or nature, arising out of or in connection with the Merchant Disputes, but excluding all actions to the extent attributable to Elavon's or Member's breach of the Agreement, negligence or willful misconduct.

ii) **Indemnity. For State Agency Authorized Users.** Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, the State shall hold Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment

iii) **Elavon Responsibilities.** See Appendix B § 74-75.

c) **Limitation of Liability.** Elavon and Member's Limitation of Liability is governed by Appendix B § 76.

d) **Performance; Disclaimer of Warranties.** Elavon and Member's Warranties are governed by Appendix B § 72.

7) REPRESENTATIONS AND WARRANTIES; COVENANTS.

a) **Merchant Representations and Warranties.** Merchant represents and warrants to Elavon and Member the following as of the Effective Date:

i) **Information.** Merchant is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all

necessary authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Merchant conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the EVTA-2 Work Order form or any other document submitted to Elavon or Member is true and complete and properly reflects the business, financial condition and ownership of Merchant in all material respects to the best of Merchant's knowledge.

ii) **Authority and Power.** Merchant and the person signing the Agreement on Merchant's behalf have the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in the EVTA-2 Work Order form, to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Elavon to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.

iii) **MasterCard MATCH™ System and Consortium Merchant Negative File.** Merchant has never been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), or been named to the Consortium Merchant Negative File maintained by Discover or, if it has, it has disclosed this fact to Elavon in writing.

iv) **No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened that would reasonably be expected to materially impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would materially and adversely affect Merchant's financial condition or operations.

b) **Merchant Covenants.** Merchant covenants the following to Elavon and Member during the Initial Term and any Renewal Term:

i) **Compliance with Laws and Payment Network Regulations.** Merchant will comply with all Laws and Payment Network Regulations.

ii) **Business Use.** Merchant is obtaining and using the Processing Services from Elavon and Member for business or official government purposes only and to facilitate lawful business Transactions between Merchant and its Customers. Merchant 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 EVTA-2 Work Order form without the prior written consent of Elavon. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business or official government purposes only.

- iii) **Transactions.** To the best of Merchant's knowledge, all Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the payment to Merchant or a return or adjustment related to such payment. No Transaction involves a Cardholder obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing by Elavon. All Transactions will be accepted at entities properly identified to Elavon and Member on Schedule B attached hereto.
- iv) **Responsibility for Actions.** Solely between the parties to this Agreement, Merchant is responsible for any breach of this Agreement by Merchant's officers, directors, employees, agents, Value Added Servicicers, business invitees, and those of any other Person directly associated with Merchant's receipt of services pursuant to this Agreement, but excluding all actions or failures to act to the extent attributable to Elavon's or Member's breach of the Contract, negligence or willful misconduct. Nothing herein shall create or give to any third party any claim or right of action against Merchant.
- c) **Elavon and Member Representations and Warranties.** Elavon and Member, each on their own behalf and not on behalf of the other, represent and warrant to Merchant the following as of the Effective Date of the Agreement:
 - i) **Information.** Elavon is a corporation validly existing and organized under the laws of the State of Georgia. Member is a banking association validly existing and organized in the United States.
 - ii) **Corporate Power.** Elavon, Member and the persons signing the Agreement on behalf of each of them have the power to execute and perform the Agreement. The persons executing the Agreement are duly authorized to bind Elavon and Member, as applicable, to all provisions of the Agreement and such persons are authorized to execute any document and to take any action on behalf of Elavon and Member, respectively, which may be required to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict

with any other agreement to which they are respectively subject.

- iii) **No Litigation.** There is no action, suit, or proceeding pending, or to Elavon's or Member's knowledge threatened, which if decided adversely would impair Elavon's or Member's ability to carry on their business substantially as now conducted or which would adversely affect Elavon's or Member's financial condition or operations.
- d) **Elavon and Member Covenants.** Elavon and Member, each on their own behalf and not on behalf of the other, covenants to Merchant the following during the Initial Term and any Renewal Term:
 - i) **Compliance with Laws and Payment Network Regulations.** Elavon and Member will comply with all Laws and Payment Network Regulations including the requirements of the Payment Card Industry ("PCI") Data Security Standard, as applicable to them and their respective systems, for the Processing Services provided under the Agreement. The Merchant may review Elavon's current PCI compliance status on the Payment Network websites as available.
 - ii) **Responsibility for Actions.** Elavon and Member are responsible for any violations of this Agreement that result from the actions of or failure to act by their officers, directors, employees and agents; but excluding actions or failures to act to the extent attributable to Merchant's breach of the Agreement, negligence or willful misconduct.
- 8) **AUDIT AND INFORMATION.**
 - a) **Audit.**
 - i) **Elavon or Member Audit.** In the event that Elavon or Member reasonably suspects that they are subject to a financial or reputational risk due to Merchant's actions or omissions, and consistent with the Contract, Merchant authorizes Elavon and Member to perform an audit or inspection of Merchant's operations to confirm compliance with the Agreement upon reasonable advance notice and at Elavon's or Member's expense. Merchant agrees to cooperate, in good faith, with any such audit conducted by Elavon or Member.
 - ii) **Data Compromise, Security, and Payment Network Audit.** In addition to Merchant's obligations under Section 13(e)(i), in the event of a known or suspected data compromise, security incident, the occurrence of suspicious activity, or otherwise if required by the Payment Networks, Merchant will obtain, at the request of Elavon, Member or any Payment Network, and submit a copy of a forensic audit from a qualified incident response assessor of the information security of Merchant's business

at Merchant's expense. Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's operations to confirm compliance with the Payment Network Regulations.

b) Information.

- i) **Authority.** Merchant authorizes Elavon and Member to make, upon receipt of a Non-State Agency Authorized User's EVTA-2 Work Order form and from time to time, any business credit or other inquiries they consider reasonably necessary to review the Non-State Agency Authorized User EVTA-2 Work Order form or continue to provide Processing Services under the Agreement to Non-State Agency Authorized Users. Non-State Agency Authorized Users also authorize any Person or credit reporting agency to compile information to answer those business credit inquiries and to furnish that information to Elavon.
- ii) **Financial Information.** Upon the request of either Elavon or Member, Merchant will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Merchant, or if Merchant is audited by a governmental authority, then Merchant will provide financial statements from such governmental authority. Within one hundred twenty (120) days after the end of each fiscal year (or in the case of a government entity, when available), Merchant will furnish Elavon and 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, each audited as provided above. Merchant shall also provide Elavon and Member such interim financial statements and other information as Elavon or Member may request from time to time.
- iii) **Merchant Information.** Merchant agrees that any information about Merchant or any of its principals, affiliates or agents that is provided to Elavon or Member on the EVTA-2 Work Order or otherwise legally obtained by Elavon or Member in connection with the Agreement (except for personal information as defined in N.Y. Gen. Bus. § 899-aa(a), which may only be used for (A) or (B) below) may be (A) used by Elavon and Member, and their respective affiliates and agents, in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services; (B) disclosed in accordance with the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (C) used or disclosed in the course of any actual or potential sale, reorganization or other change to

Elavon's or Member's business; (D) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (E) retained for such periods of time as required by Elavon and Member to perform their obligations and exercise their rights under the Agreement.

- 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, Merchant must provide certain information and identifying documents to allow Elavon and Member to identify Merchant.
- 9) **FRAUD MONITORING.** While Elavon monitors Merchant Transactions, by doing so it is not guaranteeing that fraudulent or suspicious transactions will not occur. Merchant also remains responsible for monitoring its Transactions.
- 10) **BUSINESS CONTINUITY.**
 - a) **Merchant.** Merchant is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by Elavon. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions and will provide such information and data to Elavon or Member upon request in order to reconstruct any information or data lost due to any malfunction of Merchant's or Elavon's or Member's systems. Elavon is under no duty to recreate lost Transactions or Transaction Receipts unless such loss results from Elavon's breach of the Agreement.
 - b) **Elavon and Member.** Elavon and Member are required, pursuant to federal banking regulations, to establish, maintain, and test an effective and comprehensive business continuity plan ("BCP"). Elavon and Member maintain BCPs that are commercially reasonable within the industry for the Processing Services. Elavon and Member will continue to adhere to their respective BCPs and will modify those plans from time to time to meet the objectives and requirements of their respective businesses.
- 11) **THIRD PARTIES.**
 - a) **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any Value Added Servicer unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all applicable Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties

to this Agreement, Merchant will be bound by the acts and omissions of its Value Added Servicer and Merchant will be responsible for ensuring compliance by such Value Added Servicer with all applicable Laws and Payment Network Regulations. Merchant will be responsible for any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any Value Added Servicer. Neither Elavon nor Member is responsible for the Value Added Servicer, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.

- b) **Third Party Contractors.** Merchant acknowledges and understands that Elavon or Member may use the services of third party service providers in connection with the performance of their non-FSP services (pursuant to Section II.4 of the Contract) obligations under the Agreement, including any Schedule to the Agreement. Except as otherwise provided in the Agreement, Elavon and Member shall be responsible for the performance of their obligations hereunder notwithstanding any use of or delegation of any responsibility to a third party service provider.

12) TERM AND TERMINATION.

- a) **Term.** See Section I.2 of the Contract. If Merchant processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement shall govern such Transaction processing.
- b) **Termination.**
- i) **By Merchant.** See Appendix B § 60.
- ii) **By Elavon or Member.** See Appendix B § 63. In addition, Elavon or Member have the following termination rights:
- (A) The Agreement may be terminated by Elavon or Member immediately upon the occurrence of one or more of the following:
- (1) The occurrence of a material adverse change in a Non-State Agency Authorized User's financial condition.
 - (2) The garnishment or attachment of a Non-State Agency Authorized User's deposit accounts with Member, the DDA, the Reserve Account, or any of Merchant's property in the possession of Elavon or Member.
 - (3) The commencement of a Bankruptcy Proceeding by or against Merchant.
 - (4) Any representation, warranty or covenant by a Non-State Agency Authorized User is false or misleading in any material respect as of the date made, or becomes false or misleading in any material respect at any time during the term of the Agreement.
 - (5) Any Payment Network requires Elavon or Member to terminate the

Agreement or cease processing transactions for Merchant.

- (6) Any change, not approved by Elavon, that constitutes a material change in the types of goods and services a Non-State Agency Authorized User sells or in the methods by which a Non-State Agency Authorized User sells them, or any change that results in a Non-State Agency Authorized User's violation of Elavon's or Member's underwriting policy.
- (7) Assignment of the Agreement or a change in control of a Non-State Agency Authorized User without Elavon's written consent.
- (8) Revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or other Alternate Security executed in connection with the Agreement, if applicable.

The parties' rights of termination under the Agreement are cumulative. A party may exercise its termination rights with respect to an individual Schedule to the Agreement or the participation of any affiliate without terminating other Processing Services or Schedules, provided that any termination of the Agreement in whole shall automatically terminate all related Processing Services and Schedules. A specific right of termination in this section shall not limit any other right of the party to terminate the Agreement or any Schedule expressed elsewhere.

c) Notice of Termination.

- i) Notice of termination by Merchant, Elavon, or Member must be given in writing as required by Appendix B §§ 60 and 63. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant'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 Merchant's account is reinstated by Elavon following termination by either Merchant or Elavon in the Initial or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

d) Action upon Termination.

- i) **Accounts.** All obligations of a party 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 Merchant pays all amounts Merchant owes Elavon or Member or for which Merchant is liable under the Agreement. If Merchant has

selected Direct Debit or Net Settlement payment methods, then Merchant 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 180 days from termination.

ii) **Equipment.** If Merchant's equipment is leased, Merchant is obligated to honor the terms and conditions of Merchant's leasing contract. If Merchant's equipment is owned or supplied by Elavon, Merchant must return all equipment to Elavon and pay Elavon any amounts Merchant owes for such equipment within thirty (30) days.

iii) **Early Termination Fee.** Deleted.

13) COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE.

a) **Compliance with Laws and Payment Network Regulations.** Merchant, Elavon and Member agree to comply with all applicable Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from or charges to a consumer account, as applicable, and with any policies and procedures provided by Elavon or Member. Merchant, Elavon and Member further agree to comply with all Laws applicable to the selected Processing Services, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic fund 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 Cardholders. Merchant will execute and deliver to Elavon and Member all documents they may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.

b) **Privacy Laws.** In addition to Section (A)(14)(b), each party hereto must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder 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) **MATCH™ and Consortium Merchant Negative File.** Merchant acknowledges that Member and/or Elavon is required to report Merchant's business name and the name of Merchant's principals to the

MATCH™ listing maintained by MasterCard and accessed by Visa or to the Consortium Merchant Negative File maintained by Discover, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to Elavon's and Member's fulfillment of the obligations related to the listing of Merchant in such databases.

d) **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry (PCI) 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 as to which Merchant 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"). Upon request, Elavon will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. All Value Added Servicers from whom Merchant procures services must comply with the requirements of those Security Programs. Merchant, and not Elavon or Member, is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer.

e) **Data Compromise.**

i) **Notice and Investigation.** Merchant acknowledges and agrees that Cardholder data and bank account information obtained by Merchant in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Merchant 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 Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used without authorization from Merchant, Merchant's Agents or systems within Merchant's or its agent's control (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 Merchant's security personnel who may be contacted in connection with the Data Incident.

Merchant 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, Merchant 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. Merchant must provide weekly written status reports to Elavon and Member until the forensic audit is complete. Merchant 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, Merchant 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 Merchant fails to supply the forensic audits or other information required by the Payment Networks and/or by Elavon and Member, Merchant will allow Elavon or Member to perform or have performed such audits at Merchant's expense.

- ii) **Preservation of Records.** In the event of a Data Incident, Merchant must take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Merchant 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 Merchant'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, Merchant 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 (unless due to Elavon or Member's negligent act or failure to act) including any fees, fines, penalties and/or assessments 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) **Elavon Data Compromise.** If Elavon suffers a data incident and Cardholder, Customer, or Transaction information has been accessed from Elavon, its employees or agents, or systems within Elavon's control, then Elavon will follow all applicable Payment Network Regulations with respect to such data incident including providing the required reporting and forensic audits to the Payment Networks. In the event Elavon suffers a data incident and private information is disclosed, Elavon will comply with N.Y. Gen. Bus. Law § 899-aa(3), as applicable.
- 14) **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.**
- a) **Use of Trademarks.** Merchant may use and display the Payment Networks' marks, and shall display such marks in accordance with the standards for use established by the Payment Networks. Merchant'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, and Merchant must thereafter promptly return any materials displaying the marks. Merchant's use of promotional materials provided by the Payment Networks will not indicate, directly or indirectly, that such Payment Networks endorse any goods or services other than their own and Merchant may not refer to any Payment Networks in stating eligibility for Merchant's products or services.
 - b) **Confidentiality.**
 - i) **Cardholder and Transaction Information.** Merchant, Elavon and Member shall, at all times, protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant, Elavon and Member must maintain Cardholder and Transaction information for such time periods as may be required by the Contract, Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that they no longer deem necessary or appropriate to maintain. Further, Merchant, Elavon and Member must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed to unauthorized parties or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2 data after authorization for record keeping or additional authorization processing.
 - ii) **Bankruptcy.** In the event of failure or other suspension of Merchant's business operations, including any Bankruptcy Proceeding, Merchant must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. Merchant must:
 - (A) Return this information to Elavon, or
 - (B) Provide acceptable proof of destruction of this information to Elavon.

- iii) **Confidential Information Generally.** Each party shall at all times protect the other parties' Confidential Information. The Receiving Party will not use a Disclosing Party's Confidential Information in any way directly or indirectly detrimental to the Disclosing Party. Each party recognizes that the disclosure or unauthorized use of Confidential Information will injure the Disclosing Party. Each party further recognizes and agrees that the injury that the Disclosing Party will suffer for any actual or threatened breach by the Receiving Party of the covenants or agreements contained herein cannot be compensated by monetary damages alone, and the Receiving Party therefore agrees that the Disclosing Party, in addition to and without limiting any other remedies or rights which it may have under the Agreement or otherwise, shall be entitled to equitable relief, including injunction and specific performance. The Receiving Party further agrees to waive any requirement for the securing or posting of any bond in connection with such equitable remedy.
- c) **Passwords.** If Merchant receives a password from Elavon to access any of Elavon's databases or services, Merchant 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 responsible for all action taken by any user of the password that obtained access to the password from Merchant; and (iv) promptly notify Elavon if Merchant believes Elavon's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party for products or services related to Transaction processing, Merchant must protect such passwords in the manner required by such third party and be responsible any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords.
- d) **Proprietary Interest.** Merchant 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, unless specifically agreed to in a separate license or use agreement between Merchant and Elavon. Nothing in the Agreement shall be construed as granting Merchant any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon's services, software, or equipment. Merchant 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.
- e) **Actions upon Termination.** Upon the request of the Disclosing Party or upon the termination of the Agreement, and subject to any limitations imposed by law, the Receiving Party shall promptly return all Confidential Information and all copies of such Confidential Information in the Receiving Party's possession or in the possession of its agents and/or will deliver to the Disclosing Party, destroy or irreversibly erase, as the Disclosing Party shall request, all originals and copies prepared by the Receiving Party or its agents or prepared for the Receiving Party's use containing or reflecting any Confidential Information of the Disclosing Party. In the event a dispute arises between the parties in relation to the Confidential Information (or a part thereof) or the Agreement, the Receiving Party may retain a copy of such Confidential Information (or part thereof) as, in the Receiving Party's discretion, reasonably exercised, is necessary for its defense of the dispute and its retention and use of such Confidential Information shall continue to be subject to the terms of the Agreement.
- f) **Disclosure of Confidential Information.** In the event that the Receiving Party and/or its agents become legally required or compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party shall provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section 14. In the event that such protective order or other remedy is not obtained, and regardless of whether the Disclosing Party waives compliance with the terms of this Section 14, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party, as advised by the written opinion of counsel, is legally required to be disclosed and to exercise best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information.
- 15) **MISCELLANEOUS PROVISIONS.**
- a) **Entire Agreement.** See Section II.2 of the Contract.
- b) **Jurisdiction and Venue; Governing Law.** Deleted.
- c) **Exclusivity.** Deleted.
- d) **Construction.** Any alteration or strikeover in the text of the Agreement or any Schedule thereto will have no binding effect and will not be deemed to amend the Agreement. The headings used in the Agreement 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.

- e) **Assignability.** The Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Elavon, which consent will not be unreasonably withheld, and except where required by governmental reorganization or necessity. If Merchant, nevertheless, assigns the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as Merchant. Elavon will not transfer or assign the Agreement without the prior written consent of Merchant, except as provided in Appendix A § 2.
- f) **Notices.** See Section VII.10 of the Contract.
- g) **Bankruptcy.** Merchant will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Merchant. Merchant 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..
- h) **Customer Contact.** Merchant authorizes Elavon and Member to contact Merchant's Customers or their Issuer if Elavon or Member determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.
- i) **Telephone Recording.** For quality assurance and training purposes Merchant authorizes Elavon to monitor and record telephone conversations at any time. The decision to record any conversation shall be solely in Elavon's discretion and pursuant to applicable Law.
- j) **Communication with Merchant.** Merchant agrees that Elavon and Member may provide Merchant with information about their services including, without limitation, information about new products and/or services by telephone and/or electronic mail.
- k) **Amendments.** Except as otherwise provided in the Agreement, amendments to the Agreement shall be in writing and signed by the parties, and approved by the New York State Office of the Attorney General and the New York State Office of the State Comptroller. Elavon and Member may amend or modify the Agreement, to the extent such changes are required by or attributable to changes in the Payment Network Regulations or other Laws, upon written notice to Merchant. Elavon or Member will inform Merchant of such a change in a periodic statement or other written notice, and such change will become effective not less than thirty (30) days following the issuance of the notice unless Merchant objects in writing within such thirty (30) day period. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided.
- l) **Severability and Waiver.** If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalid or unenforceable provision shall be deemed to be curtailed or revised to the extent necessary to make such provision valid and enforceable and all other provisions of the Agreement shall remain enforceable and unaffected thereby. None of the failure, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by a party must be signed by the waiving party.
- m) **Independent Contractors.** Elavon, Member, and Merchant 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.
- n) **Survival.** All of the obligations of each party hereto that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including, without limitation, Sections 3, 4, 5, 6, 7, 10, 12, 13, 14, and 15(b) of the TOS, shall so survive and remain binding upon and for the benefit of the parties hereto.
- o) **Counterparts; 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.
- p) **Force Majeure.** See Appendix B § 61.

Section B - Glossary

- 16) **ACH Rules:** The NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.
- 17) **Agreement:** The Payment Device Processing Agreement, including the TOS, MOG, any Schedules, attachments, exhibits, addenda, the EVTA-2 Work Order form, amendments, or additions as permitted under the terms of the Agreement.
- 18) **Alternate Security:** The security described in Section (A)(4)(b)(vi).
- 19) **American Express:** American Express Travel Related Services Company, Inc.
- 20) **ACH:** Automated Clearing House.
- 21) **ACH Network:** The funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically.
- 22) **Bankruptcy Proceeding:** With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (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 a petition seeking to take advantage of any other applicable 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 Person 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 law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) 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 (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.
- 23) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
- 24) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
- 25) **Cardholder:** (i) the individual in whose name a Payment Device has been issued; or (ii) any individual who possesses or uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or who purports to be an authorized user of the Payment Device.
- 26) **Chargeback:** A Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- 27) **Confidential Information:** All information or items proprietary to any party to the Agreement, of which another party to the Agreement obtains knowledge or access as a result of the relationship formed as a result of the Agreement, 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.
- 28) **Convenience Fee:** A fee charged by Merchant for an added convenience to the Cardholder for the use of a Payment Device in a Transaction in accordance with the Payment Network Regulations.
- 29) **Credit Card:** A card or device associated with a revolving line of credit that may be used to purchase goods and services from Merchant or to pay an amount due to Merchant. A "Credit Card" includes any of the following cards or devices that are associated with a line of credit extended to the Person to whom the card or device is issued: (i) a Visa card or other card or device bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card or device bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); (iii) a Discover Network card or other card or device bearing the symbol(s) of Discover Network; or (iv) any card or device bearing the symbol of any other Credit Card Association.
- 30) **Credit Card Associations:** (i) Visa.; (ii) MasterCard; (iii) American Express; (iv) Discover Network; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards or signature-based Debit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.
- 31) **Customer:** A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder).
- 32) **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 Merchant or to pay an amount due to Merchant 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.
- 33) **Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to Elavon and Member designated by Merchant to facilitate payment for Transactions, Chargebacks,

- returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement.
- 34) **Diners:** Diners Club International Ltd.
- 35) **Disclosing Party:** The party providing the Confidential Information to the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).
- 36) **Discover:** DFS Services LLC.
- 37) **Discover Network:** The payment network operated and maintained by Discover.
- 38) **EBT Card:** A card utilized for electronic benefits transfers.
- 39) **ECS Association:** Visa (in its operation of the Visa POS Check Service), 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 used by Elavon and/or Member in connection with the ECS that is hereafter designated as an ECS Association by Elavon from time to time.
- 40) **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.; and (ii) any other organization or association that hereafter authorizes 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.
- 41) **Effective Date:** The date set forth in the signature block of Elavon on page 1 of the Agreement.
- 42) **Elavon:** As applicable, Key Merchant Services, LLC, a joint venture between Key Bank, National Association and Elavon, Inc., a Georgia corporation, and any affiliate or subsidiary of Elavon, Inc. that provides Processing Services to a Merchant 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 MOG or other documents provided to Merchant in connection with the Processing Services.
- 43) **Electronic Check Services (ECS):** The service offering by Elavon pursuant to which Transactions effected via an ACH Payment Device are presented for clearing and settlement by or through an ECS Association.
- 44) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant.
- 45) **Electronic Gift Card (EGC):** A special stored value card provided by Merchant that is redeemable for merchandise, services or other Transactions.
- 46) **Excessive Activity:** The occurrence, during any monthly period, of Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of Merchant's Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of Transactions.
- 47) **Interchange:** The clearing and settlement system for Visa, MasterCard and, where applicable, Discover Credit Cards and Debit Cards, where data is exchanged between Elavon and the Issuer through the applicable Payment Network.
- 48) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
- 49) **JCB:** JCB International Co., Ltd.
- 50) **Laws:** All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.
- 51) **Mail Order/Telephone Order (MO/TO) Transaction:** For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.
- 52) **MasterCard:** MasterCard International Incorporated.
- 53) **Member:** The sponsoring Member designated on the Contract signature or on a particular Schedule hereto, as applicable. Any Member may be changed by Elavon at any time and the Merchant will be provided notice of same.
- 54) **Merchant:** The entity set out in the first page of the Agreement and each Authorized User of the Contract.
- 55) **EVTA-2 Work Order form:** The application form attached hereto as Appendix F of the Contract and any additional document containing information regarding Merchant's business that is submitted to Elavon and Member in connection with Merchant's application for Processing Services, including documents submitted by Merchant as a part of the bid process, if applicable.
- 56) **Merchant Operating Guide (MOG):** Elavon's operating manual that prescribes rules and procedures governing Transactions and Merchant's use of the Processing Services. The MOG may be amended from time to time by Elavon in its sole discretion, which amendments will be effective upon notice to Merchant.
- 57) **NACHA—The Electronic Payments Association:** The national association that establishes standards, rules, and procedures governing the ACH Network, including the ACH Rules.
- 58) **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, that is now or hereafter effected through Transactions with Merchants.

- 59) **Payment Network:** Any Credit Card Association, EFT Network, ECS Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.
- 60) **Payment Network Regulations:** Individually and collectively, as the context may dictate, all rules and operating regulations of the EFT Networks, Credit Card Associations and ECS Associations, and all rules, operating regulations, and guidelines for Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.
- 61) **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.
- 62) **POS Device:** A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Elavon and the applicable Payment Network.
- 63) **Processing Services:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- 64) **Receiving Party:** The recipient of Confidential Information from the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the other party).
- 65) **Reserve Account:** The account established pursuant to Section (A)(4).
- 66) **Reserve Amount:** The amount established pursuant to the calculation set forth in Section (A)(4).
- 67) **Reserve Event:** The events designated in Section (A)(4).
- 68) **Retrieval Request:** A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.
- 69) **Servicer:** See "Elavon."
- 70) **TOS:** These Terms of Service and all additions, amendments, modifications and replacements to the TOS, as applicable.
- 71) **Transaction:** Any action between a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).
- 72) **Transaction Receipt:** The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.
- 73) **Value Added Servicer:** Any entity that stores, processes, transmits or accesses Payment Device data or Transaction data on behalf of Merchant or that provides software to Merchant for transaction processing, storage, or transmission, except to the extent such services are performed by the entity in its capacity as an agent of Elavon performing Elavon's obligations under the Agreement.
- 74) **Visa:** Visa U.S.A., Inc.



**ADDITIONAL SERVICES ADDENDUM TO PAYMENT DEVICE PROCESSING AGREEMENT
ADDENDUM TO APPENDIX G TO THE CONTRACT**

This Additional Services Addendum ("Addendum") to the Payment Device Processing Agreement ("Agreement"), which is Appendix G to Agreement #PS65792 (Centralized Contract for the Acquisition of Electronic Value Transfer (EVT)) (the "Contract") is entered into as of the Addendum Effective Date set forth below by and among the People of the State of New York, acting by and through the Commissioner of the Office of General Services (OGS), referred to collectively as the "Merchant," Key Merchant Services, LLC, a joint venture between Elavon, Inc. ("Elavon") and Key Bank National Association ("Member"), and sets forth the Additional Services or Additional Service Components (each as defined below) selected by Merchant to be provided by Elavon and Member pursuant to the Agreement. This Addendum and the Agreement, together with the Contract and any related schedules, attachments, exhibits, applications and enrollments, govern the Merchant's receipt and use of the Additional Services or Additional Service Components.

PAYMENT DEVICE PROCESSING SERVICES ELECTED BY MERCHANT. In the event that Merchant elects to receive additional Payment Device Processing Services (each an "Additional Service") in addition to the Processing Services selected in the Agreement and any prior addenda executed by Merchant, Merchant shall so indicate below and shall, if applicable, abide by any further schedule, addendum, or agreement required by Elavon in order to receive such Additional Service. In the event that Merchant is currently receiving a Processing Service (an "Existing Service") pursuant to the Agreement or a prior addendum executed by Merchant and wishes to receive additional components, features, products, or services offered by Elavon in conjunction with such Existing Service (each, an "Additional Service Component"), Merchant shall so indicate below and shall, if required by Elavon, execute a new cover page to the relevant schedule or addendum that reflects the addition of the Additional Service Components to the Existing Services received by Merchant. Merchant agrees to comply with the Agreement, this Addendum, the Merchant Operating Guide ("MOG"), and all applicable schedules, attachments, exhibits, applications and enrollments with respect to the Processing Services identified on this Addendum. Merchant will compensate Elavon and Member for the Additional Services or Additional Service Components elected by Merchant under the Agreement and this Addendum as indicated on the Amended Appendix D, Rate Schedule or the EVTA-2 form, as applicable. Capitalized terms used and not otherwise defined in this Addendum shall have the meanings ascribed to them in the Agreement or the MOG.

The Existing Services and Additional Services that are a part of the Contract are notated by the checked boxes as follows:

Payment Device Processing Services Available to Merchants Generally (check desired additional or amended Processing Services):

- Credit Card Services
- Debit Card (signature-based) Services
- Debit Card (PIN-based) Services
- Bill Payment (Pinless Debit) Services
- DCC Services
- Multi-Currency Pricing Services
- Wireless Services
- Contactless Services
- Schedule D, Electronic Gift Card Services
- Schedule E, Electronic Check Services
- Amended Schedule J, Processing Services for Convenience Fees (revised 2016, replaces previous Schedule J, Appendix J to Contract)
- Schedule K, Biller Direct Services
- Schedule L, Safe-T Services
- Schedule N, Internet PIN-Based, Debit Card Services
- Schedule O, Global eCommerce Gateway Services
- Schedule P, Payment Service Provider Processing Services
- Schedule R, Converge Services (revised 2016-previously Virtual Merchant- Appendix O to Contract)

Payment Device Processing Services Available to Merchants Operating in Certain Merchant Categories (check desired additional or amended Processing Services):

- EBT Services
- Hospitality Services
- No Signature Required Program Services
- Schedule F, Petroleum Services
- Amended Schedule I, Processing Services for Government Entities and Institutions (revised 2016, replaces previous Schedule I, Appendix I to Contract)

Payment Device Processing Services Available to Merchants Operating in Certain Jurisdictions (check desired additional or amended Processing Services):

- Schedule G, Processing Services in Canada
- Schedule H, Processing Services in Puerto Rico

ATTACHMENTS:

- Amended Schedule I, Processing Services for Government Entities and Institutions, Appendix I to Contract
- Amended Schedule J, Processing Services for Convenience Fees, Appendix J to Contract
- Schedule R, Converge Services, Appendix O to Contract
- Amended Appendix F – EVTA-2 Work Order Form

APPENDIX H

Merchant Operating Guide (“MOG”)

Merchant Operating Guide:

Please refer to Exhibit A, Section II.12. "Amendments to Appendix H, Merchant Operating Guide" in the Notice of Contract Award and Merchant Operating Guide at https://www.merchantconnect.com/CWRWeb/tech_support.do

AMENDED SCHEDULE I TO PAYMENT DEVICE PROCESSING AGREEMENT
GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES

If Merchant is both eligible to charge or to have Elavon charge Government/Public Institution Service Fees (as defined below) and has elected on the EVTA-2 Work Order form to manage or to have Elavon manage Government/Public Institution Service Fees ("GPISF"), then Merchant shall comply with the Government/Public Institution Service Fee Terms and Conditions set forth below.

TERMS AND CONDITIONS FOR ASSESSMENT OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES

- 1) **Applicability of Agreement.** If Merchant has requested authority to charge or to have Elavon charge a GPISF to its Customers for Eligible Transactions (as defined below), the following provisions apply to such Eligible Transactions and the related GPISF charged. Any other Transactions or fees, including Convenience Fees, are governed by the standard provisions set forth in the Agreement, as modified by the applicable Schedules thereto. Merchant agrees to the following provisions, as and to the extent applicable, in addition to the terms and conditions of the Agreement.
- 2) **Rules of Construction.** In the event of a conflict between these terms and conditions and other terms of the Agreement or the MOG, the terms and conditions of this Amended Schedule I shall prevail.
- 3) **Definition of Government/Public Institution Service Fee.** The fee charged by Elavon or Merchant, at Merchant's election, to Customers conducting Eligible Transactions (as described herein, as applicable) that are effected where Merchant is operating in an eligible merchant category code ("MCC"). For the avoidance of doubt, fees referred to as a "service fee" or "convenience fee" (in the context of the eligible MCCs described herein) as used in the applicable rules of the Payment Networks, where the fee is processed as a separate Transaction from the underlying purchase or payment Transaction, are included within the definition of, and are referred to herein, as a "GPISF."
- 4) **GPISF Services.**
 - a) **GPISF Services.** At Merchant's election, Merchant may choose to charge a GPISF (a Merchant-managed GPISF) or to have Elavon charge a GPISF (an Elavon-managed GPISF) to its Customers for Eligible Transactions, in each case provided that Merchant is in compliance with the Payment Network Regulations and Laws, including the Electronic Fund Transfer Act and Regulation E. If Merchant elects an Elavon-managed GPISF, Merchant agrees that any GPISF collected in connection with an Eligible Transaction will be retained by Elavon and Member and that such amount constitutes Elavon's and Member's property, and Merchant has no right, title or interest in such amounts. Further, if Merchant elects an Elavon-managed GPISF, Merchant agrees that Elavon may adjust the GPISF amount from time to time as necessary or appropriate to accommodate changes in Payment Network fees (including Interchange fees), material changes in average ticket size and/or monthly Transaction volume, Interchange classification or downgrades, changes in Chargeback rates, or changes in Payment Devices accepted and/or payment channels offered by Merchant. Additionally, Elavon may immediately terminate the Processing Services for GPISFs if Merchant's Chargeback rates in any monthly period equal or exceed one percent (1%) of the total dollar value of incoming items to Elavon. If Merchant elects a Merchant-managed GPISF, Merchant will receive and retain the GPISF collected in connection with Eligible Transactions and will pay regular per transaction fees to Elavon and Member for the Processing Services provided by Elavon and Member with respect to such Transactions.
 - b) **Conflict of Laws.** To the extent Merchant's state or other governing body has passed legislation that requires assessment of GPISFs or other fees or charges by government agencies as a component of Payment Device acceptance, such laws will control in the event of any conflict with Payment Network Regulations. To the extent that assessment of any GPISFs or other fees or charges by government agencies as a component of Payment Device acceptance is not required by law, Merchant bears all responsibility and liability associated with the assessment of such fees in connection with the Agreement, including all assessments, fees, fines and penalties levied by the Payment Networks.
- 5) **Requirements for GPISFs.** This Section 5 sets forth the requirements of the Credit Card Associations applicable to GPISFs. Where a Merchant accepts both Visa and MasterCard-branded Credit Cards and/or signature Debit Cards for Eligible Transactions (as defined herein), the Merchant must comply with the most restrictive of these Credit Card Association requirements for all Transactions so as not to discriminate among different Payment Devices or Payment Networks. A Merchant may assess or have Elavon assess a GPISF to Transactions involving Discover Network Payment Devices on the same terms as GPISFs are assessed to the other Payment Devices the Merchant accepts. Elavon may update or revise the provisions of this Section 5 upon written notice to Merchant.

- a) **Merchants Accepting Visa Cards for Eligible Transactions.** The following requirements apply to Merchants accepting Visa Credit Cards and/or Visa signature Debit Cards that desire to charge or to have Elavon charge a GPISF on certain Transactions.
- i) **Eligible Merchants.** Merchants operating in MCCs 8211 (Elementary and Secondary Schools), 8220 (College Tuition), 8244 (Business and Secretarial Schools), 8249 (Trade Schools), 9211 (Court Costs), 9222 (Fines), 9311 (Tax) and 9399 (Miscellaneous Government Services) are eligible to charge or to have Elavon charge a GPISF to Customers in connection with Eligible Transactions listed in Section (5)(a)(ii) below.
 - ii) **Eligible Transactions.** Eligible Merchants may charge or have Elavon charge a GPISF only in connection with the following "Eligible Transactions":
 - 1) Payments to elementary and secondary schools for tuition and related fees, and school-maintained room and board;
 - 2) Payments to colleges, universities, professional schools, junior colleges, business schools and trade schools for tuition and related fees, and school-maintained room and board;
 - 3) Payments to federal courts of law that administer and process court fees, alimony and child support payments;
 - 4) Payments to government entities that administer and process local, state and federal fines;
 - 5) Payments to local, state and federal entities that engage in financial administration and taxation; or
 - 6) Payments to Merchants that provide general support services for the government.
 - iii) **Transaction Requirements.** The following requirements apply to Eligible Transactions under this Section (5)(a).
 - 1) Merchant must provide Elavon with the necessary documentation to facilitate Elavon's registration of Merchant in the "Visa Government and Higher Education Payment Program" and the convenience fee program of Discover Network, in each case to the extent applicable and required.
 - 2) The GPISF must be disclosed to the Cardholder prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not wish to pay the GPISF.
- 3) Merchant may not also assess a separate Convenience Fee or U.S. Credit Card Surcharge (as such terms are defined in Visa's Payment Network Regulations).
- 4) The GPISF must be disclosed as a fee assessed by Merchant or Elavon.
- 5) Merchant must accept Visa as a means of payment in all channels (i.e., face-to-face, mail/telephone, and Internet environments, as applicable).
- 6) Merchants accepting Visa cards for Eligible Transactions must include the words "Service Fee" in the "Merchant name" field of the Visa Transaction clearing record for the collection of the GPISF.
- b) **Merchants Accepting MasterCard Cards for Eligible Transactions.** The following requirements apply to Merchants accepting MasterCard Credit Cards and/or signature Debit Cards that desire to charge or to have Elavon charge GPISFs on Eligible Transactions.
- i) **Eligible Merchants.** Merchants operating in MCCs 8211 (Elementary Schools), 8220 (Colleges/Universities), 8299 (Schools and Education Services), 9211 (Courts), 9222 (Fines), 9223 (Bail and Bond Payments), 9311 (Taxes), 9399 (Miscellaneous Government Services), and 9402 (Postal Services) are eligible to charge or to have Elavon charge a GPISF to Customers in connection with Eligible Transactions listed in Section (5)(b)(ii) below.
 - ii) **Eligible Transactions.** Eligible Merchants may charge or have Elavon charge a GPISF only in connection with the following "Eligible Transactions":
 - 1) Payments to elementary and secondary schools for tuition and related fees, and school-maintained room and board;
 - 2) Payments to colleges, universities, professional schools and junior colleges for tuition and related fees, and school-maintained room and board;
 - 3) Payments to federal courts of law that administer and process court fees, alimony and child support payments;
 - 4) Payments to government entities that administer and process local, state and federal fines;

- 5) Payments to local, state and federal entities that engage in financial administration and taxation; or
- 6) Payments to Merchants that provide general support services for the government.
- iii) **Transaction Requirements.** The following requirements apply to Eligible Transactions under this Section (5)(b).
- 1) Merchant must provide Elavon with the necessary documentation to facilitate Elavon's registration of Merchant in the "MasterCard Convenience Fee Program for Government and Education" and/or the convenience fee program of Discover Network, in each case to the extent applicable and required.
 - 2) The GPISF must be disclosed to the Cardholder prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not wish to pay the GPISF.
 - 3) The GPISF collected for other commercial Credit Cards or other consumer signature Debit Cards may be different than the GPISF assessed for MasterCard consumer Credit Cards and MasterCard commercial Credit Cards. This requirement does not apply to payments made by ACH, cash, check or PIN-based Debit Card.
 - 4) The GPISF for MasterCard consumer Credit Cards can be different than the GPISF for MasterCard commercial Credit Cards.
 - 5) The GPISF must not be advertised or otherwise communicated as an offset to the merchant discount rate.
- c) **Additional Requirements for Merchants Utilizing Proprietary Solutions or Value Added Servicers.**
- i) **POS Devices.** Merchant is responsible for ensuring that its software, POS Devices and Payment Device acceptance procedures fully comply with Elavon's instructions, including with respect to programming of software and POS Devices to handle Eligible Transactions to ensure proper assessment of GPISFs. If the GPISF is Elavon-managed, Merchant is further responsible for complying with all requirements as provided by Elavon from time to time to appropriately process the Eligible Transactions to qualify for optimal Interchange rates within five (5) days of Elavon's communication to Merchant of the same. If Merchant fails to make changes to its POS Devices or card acceptance procedures requested by Elavon within five (5) days of the request, Elavon may, in its discretion, discontinue the program or suspend a certain payment type. Further, if Merchant fails to make such changes and the GPISF is Elavon-managed, Elavon may adjust the GPISF amount and bill the Merchant for charges in excess of the GPISF to recover losses related to Transactions that did not qualify for optimal Interchange rates or for applicable Credit Card Associations' reimbursement programs.
 - ii) **Approval Required to Charge or Adjust GPISF.** Merchant may not charge or adjust a GPISF for any Transaction unless Merchant has disclosed such fees to Elavon previously in writing and Merchant has been approved by Elavon to charge or adjust such GPISF. If Merchant charges or adjusts a GPISF without having disclosed such fee or adjustment previously in writing and obtained Elavon's consent, Merchant will be in breach of the Agreement and Elavon may terminate the Agreement in accordance with Appendix B ¶63 and Appendix G Section 12, in addition to pursuing any other remedies available under the Agreement, Laws and Payment Network Regulations.
 - iii) **Value Added Servicer.** If the Merchant uses a Value Added Servicer to manage and assess the Merchant's GPISF, the "Merchant name" field of the Transaction clearing record must include the name of the Value Added Servicer (rather than the name of Merchant). The Value Added Servicer must be clearly identified to the Cardholder as the entity that is assessing the GPISF.
- 6) **Additional Processing Requirements.** If Merchant voids an underlying Eligible Transaction, the associated GPISF must be voided as well. If Merchant processes a refund for an underlying Eligible Transaction, Merchant must disclose to Customers that the associated GPISF is non-refundable. Merchants that desire to charge or to have Elavon charge the GPISF will be assigned separate MIDs for use in connection with Eligible Transactions and related GPISFs. MIDs assigned for use with Eligible Transactions and/or GPISFs may not be used to process Transactions that are not Eligible Transactions.
- 7) **Payment and Transaction Types Supported.** GPISF capability for Credit Cards and/or signature Debit Cards depends on the Merchant's MCC, as described above, and the Payment Network Regulations of the

applicable Payment Network. GPISF capability is supported only through Elavon products specified on the cover page hereto. Not all payment and transaction types are supported for all products. Additionally, Merchant's proprietary software, POS Devices, or Value Added Servicers must be certified to process Elavon-managed GPISF Transactions. Closed network prepaid cards, electronic benefits transfer, and dynamic currency conversion are not supported for GPISF processing.

AMENDED SCHEDULE J TO PAYMENT DEVICE PROCESSING AGREEMENT
PROCESSING SERVICES FOR CONVENIENCE FEES

PROCESSING SERVICES FOR CONVENIENCE FEES. If Merchant is both eligible to charge or to have Elavon charge Convenience Fees and has elected on the EVTA-2 Work Order form to manage or have Elavon manage Convenience Fees, then Merchant shall comply with the Terms and Conditions set forth below, and subject to the terms and conditions of the applicable provisions of the Agreement and the Contract entered into between the State of New York and Key Merchant Services pursuant to RFP #22419 for Electronic Value Transfer Services (the "Contract"). Except as expressly modified pursuant to this Schedule, all terms and conditions of the Contract, including all other Schedules to the Agreement, remain in full force and effect and shall govern the relationship among the parties to this Amended Schedule J.

Capitalized terms used and not otherwise defined in this Amended Schedule J shall have the meanings ascribed to them in the Agreement or in the Merchant Operating Guide ("MOG"), which is incorporated herein by this reference.

Terms and Conditions for the Assessment of Convenience Fees

1) **Definitions.**

a) **Merchant-Managed.** "Merchant-managed" means that Merchant establishes the amount of the Convenience Fee (subject to the requirements of this Schedule and applicable Payment Network Regulations) and retains the Convenience Fee. Merchant pays Elavon the per transaction fees as set forth in Appendix D to the Contract for all Convenience Fee Transactions.

b) **Elavon-Managed.** "Elavon-managed" means that Elavon establishes the amount of the Convenience Fee and retains the Convenience Fee in lieu of Merchant's obligation to pay Elavon the per transaction fees as set forth on Appendix D to the Agreement for Convenience Fee Transactions. The Convenience Fee is still charged by Merchant and included in the overall transaction amount charged to the Cardholder.

2) **Convenience Fees.**

a) **Merchant-Managed.** If Merchant is both eligible to charge Convenience Fees and has elected on the EVTA-2 Work Order Form to manage Convenience Fees (with or without use of a Value Added Servicer), then Merchant shall comply with the standard provisions regarding Convenience Fees set forth in the Agreement and the MOG.

b) **Elavon-Managed.** If Merchant is both eligible to charge Convenience Fees and has elected on the EVTA-2 Work Order Form to have Elavon manage Convenience Fees, Merchant agrees to the following provisions, as and to the extent applicable, in addition to requirements regarding Convenience Fees set forth in the Agreement and the MOG.

1. **General.** At Merchant's election, Merchant may choose to have Elavon manage the Convenience Fee Merchant will charge to its Customers for eligible Transactions, provided that Merchant is in compliance with Payment Network Regulations and Laws. In such circumstances, Elavon will communicate to

Merchant the amount of the Convenience Fee Merchant is required to charge for each eligible Transaction, and Merchant will assess the Convenience Fee amount communicated by Elavon. Merchant agrees that any Convenience Fee charged by Merchant for such Transactions will be retained by Elavon and Member and constitutes Elavon's and Member's property, and Merchant acknowledges that Merchant has no right, title or interest in such amounts, including in the event the underlying Transaction is charged back to Merchant. Elavon may adjust the Convenience Fee from time to time as necessary to accommodate changes in Payment Network fees (including Interchange fees), material changes in average ticket size and/or monthly Transaction volume, Interchange classification or downgrades, changes in Chargeback rates, or changes in Payment Devices accepted and/or payment channels offered by Merchant. Additionally, Elavon may immediately terminate the Processing Services for Convenience Fees if Merchant's Chargeback rates materially exceed industry averages.

2. **POS Devices and Convenience Fee Changes.** Merchant is responsible for ensuring that its software, POS Devices and Payment Device acceptance procedures fully comply with Elavon's instructions and Payment Network Regulations, including with respect to programming of software and POS Devices to handle eligible Transactions to ensure proper assessment of Convenience Fees and modifying the amount of Convenience Fees charged upon request from Elavon. Merchant is further responsible for complying with all requirements as provided by Elavon from time to time to appropriately process the eligible Transactions to qualify for

Group 79008-22419 Electronic Value Transfer (EVT) Contract Amended Appendix J

optimal Interchange rates within five (5) days of Elavon's communication to Merchant of the same. If Merchant fails to make changes to its POS Devices or Payment Device acceptance procedures, or fails to adjust the amount of the Convenience Fee charged per Transaction, within five (5) days of Elavon's request therefor, Elavon may, in its discretion, discontinue the program or suspend a certain payment type, or bill the Merchant for charges in excess of the Convenience Fee to recover losses related to Transactions that did not qualify for optimal Interchange rates or did not include the Convenience Fee amount requested by Elavon.

- 3) **Fees.** If Merchant has elected on the EVTA-2 Work Order Form that Convenience Fees will be "Merchant-managed," then Merchant will compensate Elavon and Member for the Processing Services for Convenience Fee Transactions as indicated on Appendix D to the Contract (i.e., Merchant will pay standard per

transaction fees for Convenience Fee Transactions). If Merchant has elected on EVTA-2 Work Order Form that Convenience Fees will be "Elavon-managed," then Elavon will net from the Transaction settlement paid to Merchant the full amount of the Convenience Fee established by Elavon. Subject to the provisions above, the Convenience Fee retained by Elavon where Merchant has elected "Elavon-managed" Convenience Fees will constitute full payment to Elavon and Member for Elavon's processing of such Transactions. For the avoidance of doubt, Elavon's retention of the Convenience Fee amount when the Convenience Fee is Elavon-managed will not relieve Merchant of any obligation to compensate Elavon and Member for any fines, penalties or other extraordinary fees assessed by Elavon or a Payment Network. In the event of a Chargeback, Elavon will not refund to the amount of the Convenience Fee to Merchant.

APPENDIX K

Contractor Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this "Agreement") is made and entered into as of this ____ day of _____ 201__ by and between _____, having its principal place of business at _____ (the "Authorized User") and **Elavon, Inc.**, having its principal place of business at One Concourse Parkway, Suite 300, Atlanta, GA 30328 ("Elavon").

WHEREAS, the Authorized User has requested that Elavon provide the Authorized User and its auditors with certain non-public information about Elavon's internal controls; and

WHEREAS, Elavon desires to protect such information from unauthorized disclosure as set forth in this Agreement;

NOW, THEREFORE, in consideration of disclosure by Elavon of its Confidential Information to the undersigned Authorized User subject the terms herein the undersigned Authorized User agrees as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Authorized User" shall have the meaning set forth in the initial paragraph of this Agreement and shall include the Authorized User's employees, officers, directors, agents, subsidiaries, affiliates, successors, assigns, and any Person (defined below) engaged by Authorized User on an independent contractor basis.

(b) "Confidential Information" shall include, but not be limited to, the SSAE 16 Report, any disaster recovery or business continuity plans, and other proprietary information regarding Elavon's business methods and practices (on behalf of Elavon or Key Merchant Services, LLC).

(c) "SSAE 16 Report" shall mean a Service Auditor's Report on controls issued to Elavon in accordance with the Statement on Standards for Attestation Engagements No. 16 promulgated by the American Institute of Certified Public Accountants, including all past and current versions of Elavon's SSAE 16 Report and (for avoidance of doubt, all copies of Elavon's prior SAS 70 Report of which the SSAE 16 Report is a replacement), and as amended and updated from time to time.

(d) "Elavon" shall have the meaning set forth in the initial paragraph of this Agreement and shall include Elavon's employees, officers, directors, agents, subsidiaries, affiliates, successors, assigns.

(e) "Person(s)" shall mean, without limitation, any corporation, company, partnership, individual or other entity.

(f) "Representatives" shall mean the Authorized User's directors, partners, officers, employees, trustees, agents, consultants and financial and legal advisors, who (a) reasonably need access to the Confidential Information for the purposes set out herein, and (b) have been advised of the confidential and proprietary nature of the Confidential Information.

2. Restrictions on Use. The Authorized User covenants and agrees that:

(a) The Authorized User will use the Confidential Information solely and exclusively for its own internal evaluation of Elavon as an actual or potential business partner and (ii) to comply with the Authorized User's internal and external audit and regulatory reporting obligations. The Authorized User will not use the Confidential Information in any way directly or indirectly detrimental to Elavon, and recognizes that unauthorized disclosure or misuse of the Confidential Information may injure Elavon.

(b) The Authorized User may disclose any or all of the Confidential Information (i) to the Authorized User's Representatives, provided, however, that its Representatives agree to be bound by this Agreement and will not

use or disclose the Confidential Information to any other Persons, and (ii) to such Persons to whom the Authorized User is required by law to disclose such information for external auditing or bank examination purposes, provided however that the Authorized User take all steps open to it that are reasonable in the circumstances to bind such Persons to obligations of confidentiality similar to those set out herein. Further, the Authorized User agrees to be responsible for any breach of this Agreement by its Representatives.

(c) In the event that the Authorized User and/or its Representatives become legally required or compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose any of the Confidential Information, then the Authorized User shall provide Elavon with prompt prior written notice of such legal requirement so that Elavon may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, and regardless of whether Elavon waives compliance with the terms of this Agreement, the Authorized User agrees to disclose only that portion of the Confidential Information which the Authorized User, as advised by the written opinion of counsel, is legally required to be disclosed and to exercise best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information.

(d) The Authorized User acknowledges that all intellectual property and other rights in the Confidential Information are and remain the property of Elavon absolutely and that this Agreement does not grant a license or option to Authorized User under any patent or other intellectual property rights.

(e) Authorized User acknowledges that neither Elavon nor any of its Representatives makes any express or implied representation or warranty, including without limitation, as to the accuracy, completeness or fitness for a particular purpose of any Confidential Information provided hereunder, and the Authorized User agrees that none of such persons shall have any liability to the Authorized User, any of its Representatives or any other Persons to whom the Authorized User discloses the Confidential Information, relating to or arising from the use of the Confidential Information by the Authorized User or its Representatives or such Persons or for any errors therein or omissions therefrom.

(f) The term of this Agreement shall commence upon Authorized User's initial possession, knowledge or acquisition of Elavon's Confidential Information and extend until five (5) years after the date of final disclosure hereunder. The protection afforded hereunder is in addition to and does not replace any prior confidentiality or nondisclosure obligation of Authorized User to Elavon.

3. Actions upon Termination.

Subject to any limitations imposed by applicable law, upon request of Elavon, whether during or upon the termination of any relationship between the parties, the Authorized User will promptly return to Elavon or destroy (in Elavon's sole discretion) all material provided by Elavon hereunder and any and all copies thereof, including those in electronic format, in the Authorized User's or any of its Representatives' possession.

4. General Provisions.

(a) The Authorized User acknowledges and agrees that in the event of a breach or threatened breach of this agreement Elavon, in addition to and without limiting any other remedies or rights which it may have under this Agreement or otherwise, shall be entitled to equitable relief, including injunction and specific performance. The Authorized User further agrees to waive any requirement for the securing or posting of any bond in connection with such equitable remedy.

(b) This Agreement is for the benefit of Elavon and its respective successors and assigns and will be governed by and construed in accordance with the laws of the State of New York. The parties irrevocably and unconditionally consent to submit to the jurisdiction of the courts of the State of New York and of the United

States of America located in New York County, New York which shall have the exclusive jurisdictions for any actions, suits or proceedings arising out of or relating to this Agreement. Service of any process, summons, notice or document by U.S. registered mail to the parties' respective addresses set forth below shall be effective service of process for any action, suit or proceeding arising out of or relating to this Agreement

If to Elavon:

Elavon, Inc.

One Concourse Parkway, Suite 300

Atlanta, Georgia 30328

Attention: General Counsel

If to the Authorized User:

Attention: _____

(c) Save for such agreements as currently exist between Elavon and the Authorized User, no agreement providing for any relationship is deemed to exist between Elavon and the Authorized User or the owners or stockholders of either party, unless and until a definitive agreement has been executed and delivered, and other than as specifically agreed to herein, the parties have no legal obligation to each other by virtue of this Agreement. If the parties hereto decide to enter into any business arrangement regarding any information disclosed hereunder, it shall only be done on the basis of a separate written agreement between them.

(d) No failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. Notwithstanding the foregoing, the furnishing or receipt of any information hereunder shall not obligate either party to enter any further agreement or negotiation with the other party or to refrain from entering into an agreement or negotiation with any other party.

(e) Neither party may assign this Agreement without prior written consent of the other party.

(f) A signed copy of this Agreement shall constitute a signed original.

(g) This Agreement embodies the entire understanding and agreement between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements, written or oral, between the parties relating thereto.

(h) If any provision or any part of any provision of this Agreement shall not be valid for any reason, such provision shall be entirely severable from, and shall have no effect upon, the remainder of this Agreement. Any such invalid provision shall be subject to partial enforcement to the extent necessary to protect the intent of the parties hereto. Any headings or section numbers used in this Agreement are for convenience of reference only and will not limit or otherwise affect any of the terms or provisions hereof. Use of the words "herein" and the like in this Agreement refer to this Agreement as a whole only and not to any particular subscription or provision of this Agreement, unless otherwise specifically noted.

IN WITNESS WHEREOF, the Authorized User has caused this Agreement to be executed by its respective duly authorized representative to be effective as of the date first written above.

AGREED

For: _____

“AUTHORIZED USER”

By: _____

Name: _____

Title: _____

APPENDIX L

Third Party Gateway Services

THIRD PARTY PAYMENT GATEWAY SERVICES

Payment Gateway Service Providers that are certified to Contractor at the time of execution of Amendment #1:

- A. Authorize.net
- B. Converge
- C. NCR – Aloha
- D. Micros
- E. Datacap Inc. – Datacap Net ePay
- F. PayPal – PayFlow Pro and PayFlow Link
- G. Microsoft – RMS (Retail Management Systems)
- H. Talech
- I. Ruby Systems (Petroleum)

Contractor has certified over 300 vendors to its host using proprietary specifications. Authorized Users should contact the Contractor to obtain a current list of certified vendors, which list changes periodically.

APPENDIX M

Merchant Connect Terms of Use

Note: Amendments to this Appendix M are in Section II of the Contract.

MERCHANT CONNECT TERMS OF USE

PLEASE READ THE FOLLOWING TERMS OF USE RELATING TO YOUR USE OF THIS SITE CAREFULLY.

By using this site, www.elavon.com/acquiring ("Site"), you are deemed to have agreed to these terms of use ("Terms"). We reserve the right to modify them at any time. You should check these Terms periodically for changes. By using this Site after we post any changes to these Terms, you agree to accept those changes, whether or not you have reviewed them. We will post a notice here when we make material changes to these Terms. If at any time you choose not to accept these Terms please do not use this Site.

Scope of Terms

These Terms apply to your use of this Site and the products, materials and/or services provided to you on or through the Site by Elavon, Inc. a Georgia corporation (hereafter "Elavon", "We" or "Us"). Additional or different terms of use may apply in connection with separate Elavon products, materials or services ("Other Terms"). These Other Terms are incorporated into and made a part of these Terms and Conditions by reference. In the event Other Terms conflict with these Terms, the Other Terms shall control with respect to the subject matter to which such Other Terms apply.

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The Site is provided by Elavon and available only to entities and persons over the age of legal majority who can form legally binding agreements under applicable law. If you do not qualify, you are not permitted to use the Site. Access to and use of the Site may be prohibited in certain countries. The Site is considered to be a general audience site and is not intended for use by children.

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If you link to the Site you agree not to:

- create frames around the Site or otherwise alter the visual presentation of the Site;
- imply that we are endorsing you or your products and services;
- imply an affiliation between you and us without our prior written consent;
- present false or misleading impressions about our products and services; or
- include materials that may be interpreted as distasteful or offensive.

You agree to remove any links you have to the Site upon our request.

Links on our Site

These Terms apply only to the Site, and not to the sites of any other companies or organizations, including those to which the Site may link. We are not responsible for the availability of any other site to which the Site links. We do not endorse or take responsibility for the content, advertising, products or other materials made available through any other site. Under no circumstances will we be held responsible or liable, directly or indirectly, for any loss or damage that is caused or alleged to have been caused to you in connection with your use of, or reliance on, any content, goods or services available on any other site. You should direct any concerns to those sites' administrators or webmasters.

Passwords

You are responsible for maintaining the confidentiality of your user ID and password, if any. You agree to notify us as soon as you discover any unauthorized use of your user ID or password.

Viruses

It is your responsibility to use virus-checking software on any material downloaded from the Site and to ensure the compatibility of such software with your equipment.

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You may have access to restricted or password-protected areas of the Site. If you do, we may use cookies. "Cookies" are small text files that are either used for the duration of a session ('session cookies'), or saved on a user's hard drive in order to identify that user the next time he/she logs on to a website ('persistent cookies'). We may use 'session cookies' to identify registered users logging in to the restricted areas of the Site. These cookies are deleted from the component's server soon after the session ends and are not collected or saved. We may also use 'persistent cookies' when a registered user clicks on the "save password" check box on login. Most web browsers automatically accept cookies, but you can usually change your browser to prevent that. If you disable cookies in your browser, you may not be able to access certain sections of the Site.

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Indemnity

You agree to defend, indemnify and hold harmless Elavon, its representatives, officers, directors, and employees from all liabilities, claims, costs, and expenses, including attorneys fees, that arise with your use of the Site, transmission of all communications on the Site or from your violation of applicable law.

Trademarks

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Governing Law

These Terms will be governed by and construed in accordance with the laws of the State of Georgia and the United States of America, excluding all conflict of laws rules. Except as provided in the Injunctive Relief section, you agree that any action related to or arising out of these Terms will be filed only in the courts of the state of Georgia, USA and you consent to the jurisdiction of those courts.

Injunctive Relief

In the event you breach or threaten to breach these Terms, you acknowledge and agree that Elavon may be greatly and irreparably harmed and the damage will be difficult to quantify. Therefore, we may apply to any court of competent jurisdiction accepting jurisdiction under this specific provision, which regardless of the Governing Law provision, will apply the laws of its own jurisdiction in determining whether we will be granted injunctive or other equitable relief to stop your breach or your threat of breach, without impairing, invalidating, negating or voiding our rights to relief either in law or equity.

Termination /Access Restriction

Elavon reserves the right, in its sole discretion, to terminate or refuse access to any or all of the Site and the related products, materials, and/or services at any time, without notice and for any reason.

Miscellaneous

If any provision of these Terms is held to be unenforceable, this will not affect the validity of the other provisions. These Terms constitute the complete and exclusive statement of the terms, conditions and representations of the agreement between us with respect to the Site and the information contained therein, and, except as otherwise provided herein, supersede all other agreements with respect to the subject matter hereof.

These Terms are for the benefit of Elavon, its subsidiaries, affiliates and its third party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

These Terms may be modified only by our posting of changes to these Terms or by a writing signed by both parties. Any inquiries concerning these Terms should be directed to webmaster@elavon.com.