

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 Servicers, 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 Services 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.

Eligibility

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.

Restrictions on Use of Materials

The contents of this Site are protected by national and international copyright and trademark laws, and are the property of Elavon and any other owners. Unless we say otherwise, you may access the materials located within the Site only for your lawful, personal and non-commercial use. You may not change or delete any trademark, legend or copyright notice. You may not modify, copy, publish, display, transmit, adapt or in any way exploit the content of the Site. You must follow and observe all additional copyright notices or other restrictions contained in any parts of the Site. Any unauthorized use by you of the contents of this Site may subject you to civil and criminal penalties.

Linking to the Site

You may link only to the homepage of the Site. Links to other pages of the Site may only be established after obtaining our written permission.

We grant you a limited, non-exclusive, non-transferable, revocable, royalty-free license to use our service mark and Internet icon(s) (consisting of the Elavon logo, picture, link or similar mark or depiction), if available, for the sole purpose of serving as a link from your web site to the Site. You may not use our trademarks or service marks for any other purpose.

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.

Cookies

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.

Disclaimers

THE SERVICES AND MATERIALS ON THIS SITE ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

NEITHER ELAVON NOR ANY OF ITS RESPECTIVE LICENSORS, AFFILIATES, OR SUPPLIERS WARRANTS THAT ANY FUNCTIONS CONTAINED IN THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT ELAVON OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

NEITHER ELAVON NOR ANY OF ITS RESPECTIVE LICENSORS OR SUPPLIERS WARRANTS OR MAKES ANY REPRESENTATIONS REGARDING THE CONTENT OF THE SITE IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, AVAILABILITY OR OTHERWISE.

APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

Limitation of Liability

UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, WILL ELAVON OR ANY OF ITS RESPECTIVE LICENSORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE SITE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT SHALL THE TOTAL LIABILITY TO YOU BY ELAVON OR ANY OF ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SUPPLIERS FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED \$100.00.

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

elavon.com, elavon.com/acquiring, our logos, and product and service names are registered trademarks or service marks ("Site Marks"). You agree not to display or use in any manner the Site Marks without our prior written permission.

Privacy Policy

We are committed to protecting your privacy and security and have explained in detail the steps we take to do so. Please read our Privacy Policy available at <https://www.merchantconnect.com/CWRWeb/privacy.do>. The Privacy Policy governs the use of personally identifiable information provided by you on or through the Site. By submitting any personally identifiable information (relating to yourself or others) to the Site, you represent and warrant that (i) you have the necessary approvals and permissions to provide such personally identifiable information, and (ii) collection, use and disclosure of the personally identifiable information in accordance with the Privacy Policy does not violate any laws or any third party rights.

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.

SCHEDULE R TO PAYMENT DEVICE PROCESSING AGREEMENT
CONVERGE SERVICES

CONVERGE SERVICES. Merchant elects and agrees to accept the Converge Services (the "Converge Services"), and, if selected on the EVTA-2 Work Order form, the Converge Tokenization Services, as part of the Payment Device Processing Services. The Converge Services and the Converge Tokenization Services are subject to the terms and conditions of the applicable provisions of the Payment Device Processing Agreement (the "Agreement"), including, but not limited to, the Merchant Operating Guide (the "MOG"). Except as expressly set forth in this Schedule R, all terms and conditions of the Agreement, including all other Schedules to the Agreement, remain in full force and effect and shall govern the relationship among the parties to this Schedule R. Capitalized terms used and not otherwise defined in this Schedule R shall have the meanings ascribed to them in the Agreement or in the MOG, which are incorporated herein by this reference.

SERVICES ELECTED BY MERCHANT. Merchant elects the following Processing Services as further described in this Schedule R and the Agreement:

- Attachment A to Schedule R, Converge Services
- Attachment B to Schedule R, Converge Tokenization Services

If Merchant will receive professional services pursuant to this Schedule R, a separate Professional Services Addendum and Statement of Work will be required. Professional services are out of scope of the Contract, and agencies desiring to obtain such services must contract with Elavon directly.

ATTACHMENT A TO SCHEDULE R
CONVERGE SERVICES

1) LICENSE.

- a) **License Grant.** Subject to the terms and conditions of this Schedule R and the Agreement, including without limitation, the Converge Terms of Use (as defined in the MOG), Elavon hereby grants to Merchant, and Merchant hereby accepts from Elavon, a nonexclusive, nontransferable license (without a right of sublicense) to access and use, as applicable, the Converge Payment System, including the Converge Application (as each such term is defined in the MOG) and documentation, exclusively for Merchant's internal business use to receive the Converge Services.
- b) **Restrictions.** Merchant shall not, and will ensure that its employees, agents, contractors, and vendors do not: (i) copy (other than maintaining one backup or archival copy for Merchant's internal business use only), re-sell, republish, download, frame or transmit in any form or by any means the Converge Payment System, or any part thereof; (ii) rent, lease, subcontract, operate or otherwise grant access to, or use for the benefit of any third party, the Converge Payment System; (iii) decompile, disassemble, reverse engineer or translate the Converge Payment System; (iv) change, modify, alter or make derivative works of the Converge Payment System; (v) without Elavon's prior written consent, grant any third party access to the computers, hardware, system or equipment on which the Converge Payment System or the Converge Services are accessible; (vi) attempt to interfere with or disrupt the Converge Payment System or attempt to gain access to any other services, hardware or networks owned, maintained or operated by Elavon or its suppliers; (vii) disclose any passwords or other security or authentication device with respect to the Converge Payment System to any person other than the person to whom it was issued; (viii) remove, conceal or alter any identification, copyright or other proprietary rights notices or labels on the Converge Payment System; (ix) directly or indirectly, ship, export or re-export the Converge Payment System; (x) directly or indirectly resell or re-offer the Converge Services; or (xi) act as a gateway through which a third party may gain direct or indirect access to the Converge Payment System or the Converge Services.
- c) **Implementation.** Merchant shall, at its own expense, pay for any preparation of its facilities necessary for it to access the Converge Payment System and use the Converge Services in connection with this Schedule R.
- d) **Ownership.** Merchant acknowledges and agrees that the Converge Payment System, Elavon's Internet websites and any related tools, content, applications and utilities (including all modifications, enhancements and customizations to and compilations and derivative works of any of the foregoing) and all patents, copyrights, trademarks, trade secrets and other intellectual property rights related to or embodied therein, whether created or developed prior to, during, or after the Term (collectively, the "Intellectual Property") shall remain the exclusive property of Elavon and/or its licensors, as applicable. Merchant acknowledges and agrees that it has no right in or license grant to any source code contained in or related to the Converge Payment System pursuant to this Schedule R. As between Elavon and Merchant, Elavon and/or its licensors, as applicable shall retain all rights, title and interest in the Converge Payment System, and the Intellectual Property not expressly granted herein. Any information obtained or works created in violation of this Schedule R shall be both the Intellectual Property and the Confidential Information of Elavon and/or its licensors, as applicable, and shall automatically and irrevocably be deemed to be assigned to and owned by Elavon and/or its licensors, as applicable.
- e) **Use by Third Parties.** Elavon hereby consents to Merchant allowing one or more third parties to access the Converge Payment System and use the Converge Services but only for Merchant's benefit and in connection with Merchant's own use of the Converge Payment System and Converge Services and for Merchant's own internal business operations and activities, including access to the Converge Payment System and use of the Converge Services from backup equipment at a secure off-site backup location and/or for testing purposes, subject to the restrictions of this Schedule R and provided such third parties have agreed to be bound by the licensing terms and restrictions of this Schedule R.
- f) **Upgrades.** During the term of this Schedule R, Elavon shall make available to Merchant any updates, upgrades or modifications to the Converge Payment System that Elavon generally makes available to its other customers, and each such update, upgrade and modification and all parts thereof shall be deemed to be part of the Converge Services and shall be governed by the terms of this Schedule R.
- 2) **FEES.** Merchant shall pay the fees for Converge Services set forth in Amended Appendix D.

**ATTACHMENT B TO SCHEDULE R
CONVERGE TOKENIZATION SERVICES**

- 1) **CONVERGE TOKENIZATION SERVICES**, which shall consist of a tokenization feature pursuant to which Elavon will provide Merchant with randomized numerical tokens (each, a "Token") in substitution for the account numbers associated with certain types of cards and other payment devices as further specified in the Converge Developers Guide, as the same may be updated by Elavon from time to time (each such number, a "Card Account Number"; such services, the "Converge Tokenization Services"). More specifically, when a Card Account Number associated with a Transaction is transmitted from Merchant to Elavon through the Converge Services, Elavon will:
- (i) generate a Converge Token;
 - (ii) associate the Converge Token with the Card Account Number; and
 - (iii) send the Converge Token, instead of the Card Account Number, back to Merchant in the Transaction authorization response message.
- For so long as this Schedule R remains in effect, the Converge Token, rather than the associated Card Account Number, may be submitted by Merchant to Elavon through the Converge Services to process additional Transactions to the Credit Card or Signature Debit Card associated with such Converge Token across all Merchant locations. The Card Account Number associated with each Converge Token generated by Elavon can be retrieved by Elavon, on Merchant's written request, until the date that is three (3) years after the expiration or termination of this Schedule R (the "Converge Token Validity Period"), provided that the retrieval of Card Account Numbers after the expiration or termination of this Schedule R will be subject to additional terms and conditions and at an additional cost to Merchant. Merchant acknowledges that the Converge Tokens will be formatted in Elavon's reasonable discretion and may not be compatible with other Merchant systems, equipment, communications devices, databases and/or services.
- 2) **MERCHANT RESPONSIBILITIES**.
- (a) Merchant shall cause the appropriate hardware, including POS Devices, to be readily available for use at all Merchant locations that are the recipients or users of the Converge Tokenization Services (the "Hardware").
 - (b) Merchant acknowledges that Elavon does not store Credit Card or Debit Card expiration dates. In order to use a Converge Token to process a Transaction through the Converge Services, Merchant must provide the Converge Token (in lieu of a Card Account Number) together with the expiration date for the original Credit Card or Debit Card.
- 3) **FEES**. Merchant shall pay the Converge Tokenization Services Fees and all other fees set forth in Amended Appendix D.
- 4) **DE-TOKENIZATION**. Merchant may request a reversal of the Converge Tokenization process as follows:
- (a) To reverse the Converge Tokenization process on an individual Converge Token basis, Merchant may access an Elavon web portal and, with appropriate authentication credentials, retrieve the Card Account Number associated with any Converge Token.
 - (b) To reverse the Converge Tokenization process on a bulk basis (i.e., in excess of 100 Converge Tokens at a time), an officer of Merchant must make a request in writing to Elavon and provide Elavon with the Converge Tokens for which Merchant wishes to reverse the Converge Tokenization process. Elavon will provide Merchant's requesting officer with an encrypted file containing the Card Account Numbers associated with such Converge Tokens within thirty (30) days of receiving the request. Merchant acknowledges and agrees that additional terms and conditions may apply to reversal of Converge Tokenization on a bulk basis.
- 5) **LIABILITY; DISCLAIMER OF WARRANTIES**.
- (a) MERCHANT EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE LIMITATION OF LIABILITY CONTAINED IN APPENDIX B §76 OF THE CONTRACT SHALL APPLY WITH RESPECT TO THE CONVERGE TOKENIZATION SERVICES, THE HARDWARE AND ANY LICENSED PRODUCTS, INCLUDING ANY SOFTWARE, PROVIDED UNDER THIS SCHEDULE R AND THAT THE CONVERGE TOKENIZATION SERVICES, HARDWARE AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, PROVIDED UNDER THIS SCHEDULE R ARE PROVIDED "AS IS".
- 6) **RELATIONSHIP TO OTHER SCHEDULES**. Notwithstanding anything herein, therein or elsewhere in the Agreement to the contrary, the terms of Schedule L (SAFE-T Services) to the Agreement (if such Schedule L has been executed by Merchant, and OGS has not executed such Schedule L) shall be inapplicable to the Converge Services and the Converge Tokenization Services and the terms of this Schedule R shall be inapplicable to the SAFE-T Services.

APPENDIX P TO CONTRACT (SCHEDULE E to PAYMENT DEVICE PROCESSING AGREEMENT)
ECS SERVICES

This Schedule E supplements, is made a part of and is subject to the terms and conditions of the Agreement.

ELECTRONIC CHECK SERVICES ELECTED BY MERCHANT. If selected by Merchant on the EVTA-2 Work Order form, Merchant elects and agrees to the following Electronic Check Services as part of the Payment Device Processing Services, as such Electronic Check Services are described in this Schedule E and in the Electronic Check Services Merchant Operating Guide (the "ECS MOG"):

Electronic Check Services General Requirements and the ECS MOG

Check Conversion – Service Levels (check desired options):

- Conversion with Guarantee (check all that apply):
 POP¹ BOC² ARC³
- Conversion with Verification (check all that apply):
 POP¹ BOC² ARC³
- Conversion with Verification and Collections* (check all that apply):
 POP¹ BOC² ARC³
- Conversion Only (check all that apply):
 POP¹ BOC² ARC³
- Conversion Only with Collections* (check all that apply):
 POP¹ BOC² ARC³

¹ Point of Purchase entries

² Back Office Conversion entries

³ Account Receivable Conversion entries

*Collections services not available under this Schedule.

ACH-Echeck* – Service Levels (check desired options)**:**

- ACH-Echeck with Verification:
 - Concurrent Enrollment (includes WEB, TEL, PPD and CCD)**
 - Individual Enrollment (check all that apply):
 - WEB Internet-Initiated Entries
 - TEL/IVR Telephone-Initiated Entries
 - PPD Prearranged Payment Entries
 - CCD Corporate to Corporate Entries
- ACH-Echeck Conversion Only:
 - Concurrent Enrollment (includes WEB, TEL, PPD and CCD)**
 - Individual Enrollment (check all that apply):
 - WEB Internet-Initiated Entries
 - TEL/IVR Telephone-Initiated Entries
 - PPD Prearranged Payment Entries
 - CCD Corporate to Corporate Entries

*Entries drawn on business accounts must be classified as CCD (Corporate Credit or Debit) regardless of initiation channel.

**Converge customers will be concurrently enrolled in all product types.

Note: At this time only ACH debit entries may be initiated.

Delivery Method:

- Online Delivery (check one):
 - Converge (Schedule R required)
 - Direct Connect/Certified to Elavon's technical specifications
- Batch Delivery
- Biller Direct Services (Schedule K required)

Capitalized terms used and not otherwise defined in this Schedule shall have the meanings ascribed to them in the Agreement or the ECS Rules (including in the ECS MOG and the ECS Primer). Except as the context requires otherwise herein, the terms "ECS" and "Electronic Check Services" include both electronic check conversion and Automated Clearing House (ACH) Transaction processing.

Section A - Electronic Check Services General Requirements

Merchant acknowledges and agrees that its acceptance and use of ECS shall be subject to the following terms and conditions, in addition to those terms and conditions set forth elsewhere in the Agreement:

- 1) Merchant shall comply with and be bound by (a) the ECS Rules, including the ACH Rules, the ECS MOG and the ECS Primer, and (b) Laws, including, but not limited to, the Check Clearing for the 21st Century Act and Regulation CC, Article 3 and Article 4 of the Uniform Commercial Code as in effect in the applicable state(s), the Electronic Fund Transfer Act and Regulation E, and the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act. The current version of the ECS MOG is located at our website <https://www.merchantconnect.com/CWRWeb/ElectronicCheckService.do>, and attached hereto as Appendix Q to the Contract.
- 2) Merchant shall pay the fees for ECS as set forth in the amended Appendix D to the Contract.
- 3) In the event Merchant accepts for ECS any payment that is ineligible for ECS as specified in the ECS MOG for any reason, such Transaction is subject to Chargeback. Merchant may be liable for the amount of the Transaction and any actual damages related to or arising out of processing a Transaction that has been charged back.
- 4) Merchant shall cause a Check Reader/Imager to be readily available for use at all Merchant locations at which Merchant accepts Paper Checks for ECS processing.

- 5) Merchant must use commercially reasonable procedures to verify the identity of each Customer that presents a Paper Check or Customer ABA Routing Number and account information for ECS processing.
- 6) Merchant shall be solely responsible for providing Customers with notifications and disclosures in connection with ECS, including, but not limited to, posting all point of sale signage and distributing all Customer takeaways and all notices and disclosures required to be provided under the ECS Rules and Laws.
- 7) Merchant may use the ECS only in connection with the presentation and acceptance of a Paper Check or Customer ABA Routing Number and account information for ECS processing in payment for goods or services sold by Merchant, or in payment for an obligation owed to Merchant, and only in compliance with the ECS Rules. Merchant shall be the sole user of the ECS, and Merchant may not resell or otherwise transfer any portion of ECS (or any associated information) in whole or in part to any other Person.
- 8) Merchant represents and warrants, with respect to all ECS Transactions submitted for processing by Elavon, that (i) the Customer has duly authorized the debiting or crediting of the Customer's account for the amount of the ECS Transaction in accordance with Laws, (ii) the Transaction represents an obligation or right of the Person who is tendering the Paper Check or submitting the Customer ABA Routing Number and account information for ECS processing, and (iii) the ECS Transaction is for merchandise actually sold or rented, for services actually rendered, or for the actual amount due and owing from the Customer to Merchant or from the Merchant to the Customer, in each case for the actual price of such merchandise or services (including tax) or for the actual amount due and owing to Merchant or the Customer, as applicable. Merchant represents and warrants that no portion of any ECS Transaction involves any element of Merchant's extension of credit.
- 9) Merchant is responsible to Elavon for any Transaction charged back by Elavon or its agent in accordance with the Agreement, including the ECS MOG, and for any fines, penalties and assessments of the Payment Networks incurred as a result of Merchant's non-compliance with Laws or the ECS Rules. Merchant agrees to immediately pay to Elavon or its agent (by means of debit or set-off initiated by Elavon or its agent, submission of payment by Merchant, or otherwise) an amount equal to the amount of any ECS Transaction that is stopped, not settled, or charged back, as well as any related fees and charges.
- 10) Merchant must fully cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representations, and errors in accordance with the ECS Rules and Laws.
- 11) All of the representations and warranties an Originating Depository Financial Institution or a Third Party Sender is deemed to make on behalf of an Originator pursuant to the ACH Rules shall be deemed representations and warranties Merchant makes to Elavon and Member upon Merchant's submission of an Item or Transaction for ECS processing. Merchant is responsible for satisfying all of the Originator standards and obligations set forth in the ACH Rules as of the Effective Date of this Schedule and shall continue to satisfy such standards and obligations during the Initial Term and any Renewal Term, as applicable.
- 12) Merchant is responsible for and will ensure that all information, including MICR data and payment amounts, are accurately captured from a Paper Check in accordance with the applicable ECS Rules, and that all such information and Customer ABA Routing Number and account information for ECS processing are accurately reflected in the related Item Merchant sends to Elavon for processing through ECS. Merchant will not submit for clearing or settlement any physical Paper Check unless and until Elavon and Member have processed and settled a Chargeback to Merchant with respect to any Items created from such Paper Check.
- 13) Merchant will not disclose to third parties any information related to ECS Transactions including, but not limited to, Customer ABA Routing Number and account information, driver's license number, telephone number, or social security number except as specified in the Agreement, including the ECS MOG. Merchant shall keep all such information confidential and secure, in accordance with the Agreement and Laws.
- 14) Merchant does not have the right to use ECS data for any purpose other than to support the ECS itself.
- 15) Merchant must treat all ECS documents, including, but not limited to the ECS Rules, the ECS MOG and ECS collateral material or related guides, as confidential and proprietary information and must protect it with the same degree of care as Merchant would protect its own confidential and proprietary information and as further specified in the Agreement.
- 16) The ECS Services provided under this Schedule will not be available beyond August 2, 2019 unless authorized in writing by Elavon.
- 17) Merchant assumes full responsibility for any losses suffered by Elavon as a result of Elavon complying with Merchant's directions in submitting or resubmitting any Item for processing. Further, Merchant assumes full responsibility for the alteration of any Item made at Merchant's direction prior to resubmission by Elavon of the Item for processing. Merchant will not request or direct Elavon to modify or alter any Item, or to submit or resubmit any Item for processing, where Merchant knows or should know that such modification, alteration, submission, or resubmission is not permitted by Law.

Section B – Glossary

- 18) **ABA Routing Number:** The ABA number that uniquely identifies the bank that holds the Customer account to be debited or credited through ECS.
- 19) **Authorization:** A process where a Drawee Bank, processor, or Authorizing Agent approves a Transaction.
- 20) **Authorizing Agent:** A third party designated by Elavon to provide approvals and declines for Transactions.
- 21) **Batch:** The total of the Transactions processed since a Merchant's last settlement.
- 22) **Chargeback:** For purposes of this Schedule, "Chargeback" means (i) a sales Transaction disputed by a Customer or an Item not in compliance with Conversion with Guarantee warranty provisions or ECS Rules; (ii) for all Service Levels other than Conversion with Guarantee, the face amount of any Item that is returned by the Drawee Bank or an ECS Association to Elavon

unpaid and that is ineligible for resubmission to the Drawee Bank or the ECS Association, including any Item returned for non-sufficient or uncollected funds after the third presentment; and (iii) for all Service Levels, an Item that is not in compliance with Merchant's obligations, representations and warranties under the Agreement or this Schedule.

- 23) **Check Reader/Imager:** A device certified by Elavon that electronically captures the MICR line and/or an image of the Paper Check.
- 24) **Check Replacement Document:** A Demand Draft, Photo-In-Lieu, or Substitute Check.
- 25) **Demand Draft:** A negotiable instrument drawn on the Customer's checking account that is created from transaction data included in an Item and that does not bear the Customer's signature but that is authorized by the Customer and is able to be processed via standard check processing methods.
- 26) **Drawee Bank:** The financial institution where a Customer maintains a checking or other deposit account (i) on which a Paper Check that serves as the source document for an Item is drawn, or (ii) as to which a Customer provides the ABA Routing Number and account information for use in generating an Item.
- 27) **ECS Primer:** The detailed information relating to ECS processes and implementation provided by Elavon to Merchant, which must be used by Merchant in conjunction with the technical specifications and certification requirements provided by Elavon to promote integrated point of sale system connectivity and integration between Merchant and Elavon.
- 28) **ECS Rules:** Means (a) all applicable rules and operating regulations of or applicable to the ECS Associations, (b) the ECS MOG, and (c) the ECS Primer, in each case including without limitation, all amendments, changes, and revisions made thereto from time to time.
- 29) **Item:** An electronic file or entry representing a Transaction that is created from (i) the information captured by Merchant from a Paper Check using a Check Reader/Imager, or (ii) Customer inputs of ABA Routing Number and account information, that is forwarded by Merchant to Elavon or Member in accordance with the Agreement.
- 30) **MICR:** The magnetic ink character read line encoded on a Paper Check that contains information about the Customer's checking account, including the ABA Routing Number and checking account number.
- 31) **Paper Check:** A Customer's paper check presented to Merchant for payment to the Merchant, which check will serve as the source document for Items.
- 32) **Photo-In-Lieu:** A photocopy of a Paper Check, other than a Substitute Check.
- 33) **Substitute Check:** A draft that includes images of the front and back of the original Paper Check and that may meet the requirements for a "Substitute Check" under the Check Clearing for the 21st Century Act and related regulations.



**Electronic Check
Service (ECS)
Merchant Operating
Guide**

November 2014

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Preface

As part of your Agreement with Elavon, Inc. (hereinafter referred to as "Elavon," "us," "our," or "we"), this *Electronic Check Service (ECS) Merchant Operating Guide (MOG)* is intended to be a concise, easy-to-understand instruction guide for processing ECS and Automated Clearing House (ACH) Transactions. You can also refer to it for assistance with returns, Chargebacks, and reports. If you have any questions concerning these services or the content of the ECS MOG, please contact us. The meanings of capitalized terms used in this ECS MOG are defined in the attached Glossary or have meanings ascribed to them in the Agreement.

FEATURES AND BENEFITS

The Elavon Electronic Check Service provides many benefits to your business as well as to your Customers, including:

- **Faster access to funds:** Qualifying Paper Checks and/or Paper Check information is automatically converted to electronic payments and electronic payments are processed quickly and easily by Elavon. Funds related to items are settled with the same speed and ease as credit card deposits, typically within 24 to 48 hours.
- **Reduced costs:** ECS eliminates the time, labor, and paperwork associated with handling other forms of payment, including Paper Checks.
- **Minimized risk:** Verification and Guarantee Services (where available) reduce the risk of returned Items. Electronic payments that result in non-sufficient or uncollected funds will be automatically resubmitted, as applicable and as permitted under Laws.
- **Improved reporting:** All electronic payment activity you process is consolidated on reports and statements.
- **Single depository bank relationship:** All funds related to Items are deposited into a specified deposit account, eliminating the need for multiple banking relationships.

TECHNICAL SUPPORT

If questions arise or you have difficulty with any aspect of ECS, please contact customer support. When contacting customer support, please provide your Merchant Identification Number (MID) and as much information as possible. Contact information is as follows:

Elavon
7300 Chapman Highway
Knoxville, TN 37920
Tele: (800) 725.1243
Fax: (865) 577.0661
Email : ecs@elavon.com

INTERNET

For your convenience, you can also access our online, interactive customer support and reporting system at www.MerchantConnect.com. It is available 24x7.

Chapter

1

The ECS Process

ECS is the service offered by Elavon whereby Paper Checks and ACH debits are processed electronically. Except as otherwise provided herein, the terms "ECS" and "Electronic Check Services" include both electronic check conversion and ACH-Echeck Transaction processing.

PROCESSING OPTIONS

ECS supports several Paper Check Conversion and ACH Transaction processing options. Specific ACH Rules apply depending on which Channel (POP, BOC, ARC, WEB, TEL, PPD, or CCD) is used to process the Transaction. Paper Checks ineligible for ACH processing are subject to alternative processing as Check Replacement Documents.

- "POP" refers to the ECS processing option for a Paper Check present/Customer present environment, and includes a "point-of-purchase entry" under the ACH Rules. In a POP Transaction, a Paper Check is passed through the POS Device for Conversion, and data is captured from the Paper Check to create an electronic payment Item. The Paper Check is marked void or "franked" and then handed back to the Customer. The Customer must sign a Transaction Receipt that authorizes the POP Transaction.
- "BOC" refers to the ECS processing option for a Paper Check present/Customer present environment where Merchants can accept Paper Checks at the POS or at a manned bill payment location, and includes a "back office conversion entry" under the ACH Rules. Those Paper Checks are then converted to electronic payment Items during back office processing on check reading equipment. Customer authorization for BOC entries is obtained through notice provided by the Merchant at the point of purchase and the Customer's proceeding with the Transaction.
- "ARC" refers to the ECS processing option for an "accounts receivable conversion entry" under the ACH Rules. In an ARC Transaction, a Paper Check is passed through the POS Device for Conversion, and data is captured from the Paper Check to create an electronic payment Item. Typical ARC Transactions also include account payments, mail and courier-order receivables, Paper Checks delivered to a drop box, and Paper Checks tendered in person for the payment of a bill at a manned location. Customer authorization for ARC entries is obtained through notice provided to the Customer in a billing statement, written agreement or invoice and the Customer's proceeding to deliver a Paper Check to the Merchant.
- "WEB" refers to the ACH-Echeck processing option for an internet- initiated entry (either recurring or single) processed based on a Customer's input of account information at a payment application website. Customer authorization is obtained via the internet.
- "TEL" refers to the ACH-Echeck processing option in which an electronic payment Item (either recurring or single) is created based on a Customer's oral authorization captured via the telephone. In addition, a TEL Transaction cannot be processed when there is no existing relationship between the Merchant and the Customer, and the Merchant initiated the telephone call.
- "PPD" refers to the ACH-Echeck processing option for a "prearranged payment and deposit" entry (either recurring or single) to a Customer's account pursuant to a written authorization that is obtained from the Customer. At this time, only ACH debit entries are supported.

- "CCD" refers to the ACH-Echeck processing option for a "corporate credit or debit" entry initiated by an organization to effect a transfer of funds to or from the account of that organization or another organization. At this time, only ACH debit entries are supported.

DATA DELIVERY AND ROUTING

ONLINE DELIVERY

ECS Transactions are typically processed online, meaning that the Item created from Paper Checks or Customer information inputs is processed through Elavon's network for real-time validation and Authorization. For the ECS Conversion with Guarantee Service Level and for the ECS Conversion with Verification Service Level, Paper Checks must be converted into Items and must be submitted for real-time validation and Authorization.

BATCH DELIVERY

Batch delivery is available for Merchants that have selected the Conversion Only Service Level. Businesses that choose Batch delivery typically manage and handle real-time Transaction approval internally, or choose to forego validation based on the risk level associated with the Transactions. Transactions given approval through Merchant's authorization processes are accumulated and later submitted to Elavon via a Batch delivery file.

INFORMATION ROUTING

For POP and BOC, Paper Checks may be Authorized by our Authorizing Agent and be processed via ACH or processed as Check Replacement Documents routed through traditional Paper Check settlement systems.

For ARC, TEL, PPD, and CCD, Items may be Authorized by our Authorizing Agent and processed via ACH to be posted electronically to the Customer's account. Items may occasionally be routed through one of our other service providers or processed as a Check Replacement Document.

NOTES

Chapter

2

Check Conversion (POP, BOC, and ARC)

This chapter provides an overview of the general policies and procedures that each Merchant should follow when utilizing ECS for POP, BOC, and ARC Transactions. It is important to develop consistent policies and procedures throughout your business to ensure compliance with all applicable regulations and Laws. Before you begin accepting Paper Checks for ECS, you and your employees should become familiar with the information in this chapter.

A. GENERAL POLICIES AND PROCEDURES

1. PAPER CHECKS ELIGIBLE FOR ECS

- a. The following types of Paper Checks are eligible for ECS using any approved Check Reader/Imager:
 - Consumer checks;
 - Business checks;
 - Corporate checks; and
 - Convenience checks.
- b. The following additional Paper Checks are eligible for ECS only by using a Dual-Sided Check Reader/Imager solution (availability depends on Merchant's POS platform capabilities). These Paper Checks are ECS eligible, but if Merchant elects the ECS Conversion with Guarantee Service Level, these Paper Checks are not eligible for the Guarantee:
 - Cashier's checks;
 - Federal Reserve checks;
 - Government checks, including checks drawn on a state or local government;
 - Money orders¹;
 - Payroll checks;
 - Third-party checks;

¹ The image must contain all of the appropriate data elements from the front and back of the money order for processing.

- Traveler's checks;
- U.S. Treasury checks; and
- Federal Home Loan Bank checks.

It is Merchant's responsibility to determine the types of Paper Checks that can be submitted for ECS processing based on the type of Check Reader/Imager solution used and Merchant's POS platform capabilities.

2. PAPER CHECKS NOT ELIGIBLE FOR ECS

The following types of Paper Checks are not eligible for ECS:

- Checks payable in a form other than U.S. currency;
- Gift certificates;
- Checks having invalid or fraudulent ABA Routing Numbers;
- Checks without a preprinted check serial number;
- Checks that have been previously negotiated;
- Checks previously marked void or "franked" in connection with another ECS Transaction;
- Checks not encoded in magnetic ink;
- Demand drafts and third-party drafts that do not contain the Customer's signature;
- Checks drawn on an investment company as defined in the Investment Company Act of 1940; and
- Any Paper Check that does not receive an Approval response.

Note: An ineligible Paper Check that is nevertheless processed through ECS may be subject to Chargeback.

3. BEST PRACTICES

For POP, BOC, and ARC Transactions, ECS includes the Conversion of eligible Paper Checks into electronic payments. For Merchants, this means that Paper Checks can be settled as simply as card Transactions.

In processing POP, BOC, and ARC Transactions, each Merchant should:

- Notify the Customer of your return check/EFT policy and any applicable service fees;
- Ensure POS Devices and Check Reader/Imagers are in good working order;
- Develop procedures to identify and handle Paper Checks that are ineligible for ECS, as well as Paper Checks which have failed all attempts at processing and resubmission;
- Review merchandise return policies and processes, and make sure you have a method to handle returns directly with your Customers, as ECS does not support returns;
- For POP and BOC, provide ECS check acceptance at all POS locations where Paper Checks are accepted;
- For POP Transactions, ensure that the Paper Check date and the processing date are the same;
- If you have selected Conversion with Guarantee as your Service Level option, follow procedures to avoid processing Disqualified Checks. In addition, call customer service if a Customer attempts to make restitution to you directly instead of to the Guarantor;
- Cooperate with your Customers to avoid stop payments or Customer disputes;
- Establish procedures for the reconciliation of ECS Transactions (versus Paper Checks);
- Ensure that the Paper Check is made out to the correct business name, specifically, Merchant's "doing business as" name as it appears on your Agreement;
- Develop confidentiality and security procedures for the storage and destruction of Paper Checks and Paper Check images (if applicable);
- Treat all Paper Checks equally regardless of the Receiving Bank involved in the Transaction; and
- Consult with an attorney regarding your rights and responsibilities.

In processing POP, BOC, and ARC Transactions, no Merchant should:

- Process Paper Checks that have been previously used to create Items for electronic payment;
- Process Paper Checks that have been previously marked void or "franked" in connection with another ECS Transaction;
- Deposit Paper Checks using the traditional Paper Check process method once an Item has been created from the Paper Check;
- Use fraudulent means to approve a Paper Check, or support illegal activity to process a Transaction; or
- Send the Customer to checkout lanes other than those where Paper Checks are normally processed.

Credit of funds for Items submitted for processing may be delayed if such Items or the underlying Transactions are believed to be the result of fraud, are for illegal purposes, do not contain sufficient information to allow the resulting Items to be processed by or through an ECS Association, or do not comply with the ECS Rules.

4. POINT-OF-PURCHASE CONVERSION (POP)

When a Customer chooses to pay for goods or services by Paper Check, it is suggested that the Merchant briefly explain the ECS process. Customers should be made aware that:

- Paper Checks will automatically be converted into Items for electronic payment.
- The Transaction Receipt, when signed by the Customer, will authorize an EFT. The Customer will be provided a copy of the Transaction Receipt as a takeaway notice.
- Paper Checks are immediately marked void or "franked" and returned to the Customer.

Notice

In order to accept Paper Checks in a POP environment, Merchant must post the notice sign provided by us, unless we have approved a custom notice sign. Merchants must post this notice sign in a prominent and conspicuous location at the point of purchase and must provide the Customer with a takeaway copy of such notice at the time of each Transaction. We recommend that Merchant incorporate the takeaway copy of the notice on the Transaction Receipt. Additionally, the notice sign must not be obscured by other information or other signs that may be located at the point of purchase.

MICR Capture

During the initial processing of Paper Checks for creation of an Item, Merchant must use a Check Reader/Imager to capture the full MICR line, including the full ABA Routing Number, full account number, and full check serial number from the Paper Check. Manual key entry is not permitted during initial processing but is permitted for the subsequent correction of errors.

Merchant Telephone Number

We will provide a sign to Merchant that includes a working telephone number for Customer questions or inquires regarding Items processed via ECS. Merchant must post the sign provided by us, unless we have approved a custom sign.

Merchants should follow these steps when processing POP Transactions:

1. Ensure the Paper Check is eligible for ECS.
2. Ensure the Paper Check is properly filled out.
3. Ensure that the Item submission date and Paper Check date are the same.
4. Process the Paper Check through your POS Device to create an Item.
5. Obtain Customer information and enter it when prompted by the POS Device, or write this information on the Paper Check prior to imaging (required for Conversion with Guarantee Service Level only).
6. Obtain the Customer's signature on the Transaction Receipt.

7. Compare the signed Transaction Receipt to the Customer identification to ensure they match.
8. Ensure all Paper Checks are either marked void or "franked."
9. Return the marked void or "franked" Paper Check to the Customer, along with the Customer copy of the Transaction Receipt and a takeaway copy of the notice required above.

After the Transaction has been completed, Merchant should:

- Keep a copy of the signed Transaction Receipt for two (2) years; and
- Upon request, provide a copy of the Transaction Receipt to us within ten (10) business days.

5. BACK OFFICE CONVERSION (BOC)

When a Customer chooses to pay for goods or services by Paper Check, it is suggested that the Merchant briefly explain the ECS process. Customers should be made aware that:

- Paper Checks may be converted into Items for electronic payment;
- The posted notice sign and the Paper Check, when completely filled out and given to Merchant by the Customer, will authorize an EFT; and
- Paper Checks will be marked void or "franked" and destroyed by Merchant.

Notice

In order to accept Paper Checks in a BOC environment, Merchant must post the notice sign provided by us, unless we have approved a custom notice sign. Merchants must post this notice sign in a prominent and conspicuous location at the point of purchase and must provide the Customer with a takeaway copy of such notice at the time of each Transaction. We recommend that Merchant incorporate the takeaway copy of the notice on the Transaction Receipt. Additionally, the notice sign must not be obscured by other information or other signs that may be located at the point of purchase.

Opt Out Requirement

Merchants may allow Customers the opportunity to opt out of electronic check Conversion. If a Customer opts out of electronic check Conversion, the Merchant is not obligated to accept the Paper Check as payment and we recommend that Merchant request an alternative form of payment.

MICR Capture

During the initial processing of Paper Checks for creation of an Item, Merchant must use a Check Reader/Imager to capture the full MICR line, including the full ABA Routing Number, full account number, and full check serial number from the Paper Check. Manual key entry is not permitted during initial processing but is permitted for the subsequent correction of errors.

Merchant Telephone Number

We will provide a sign to Merchant that includes a working telephone number for Customer questions or inquires regarding Items processed via ECS. Merchant must post the sign provided by us, unless we have approved a custom sign.

Merchant should follow these steps when processing BOC Transactions:

1. Ensure the Paper Check is eligible for ECS.
2. Ensure that the Paper Check is completely filled out and signed by the Customer.
3. Verify the Customer's identity.
4. Process the Paper Check through the POS Device.
5. Obtain Customer information and enter it when prompted by the POS Device, or write this information on the Paper Check prior to imaging (required for Conversion with Guarantee Service Level only).
6. Ensure all Paper Checks are either marked void or "franked."

7. Return a takeaway copy of the notice required above to the Customer.
8. Ensure that the Item submission date and Paper Check date are the same when accepting Paper Checks at the Point of Sale.
9. Ensure that the Item submission date is no more than one (1) business day later than the Paper Check date when accepting Paper Checks at locations other than the Point of Sale (e.g., via a manned bill payment location).

We encourage Merchant to establish policies and procedures to destroy Paper Checks as soon as is reasonable after submission of Paper Check images to us in accordance with this ECS MOG to protect against the risk of fraud or erroneous entry of the Paper Check into the traditional Paper Check processing system.

6. ACCOUNTS RECEIVABLE CONVERSION (ARC)

In order to accept Paper Checks in an ARC environment, the Merchant must first provide Customers with notice that their Paper Check(s) will be converted into electronic payments. Notice is required prior to the receipt of each Paper Check that is converted. Notification can be made in any of the following ways:

- Include disclosure in a monthly statement or invoice;
- Obtain signed authorization, either on a document (such as a lease agreement) or on a separate form specifically for that purpose; or
- Post a conspicuous sign near a physical drop box or manned bill payment location.

Notice

The recommended notification language is as follows:

"Each remittance of payment by check is considered authorization to convert that particular check into an electronic fund transfer. If your check is unable to be converted, it may be processed as a Check Replacement Document drawn against your account."

These notices must be clear and readily understandable. Notices in small print and buried in the middle of unrelated information are not sufficient. Notices must not be otherwise obscured by other information or other signs that may be located at a drop box or manned bill payment location.

For Paper Checks accepted at in-person environments for the payment of a bill, Merchants must provide a copy of the authorization notice to the Customer at the time of the Transaction.

Opt Out Requirement

Merchants may allow Customers to opt out of electronic check conversion. Merchants must honor any such opt-out requests for all Paper Checks subsequently drawn from the same account, and must remain in effect until the Customer notifies the Merchant otherwise. It is suggested that Merchants establish procedures for handling Paper Checks that are not to be converted or request an alternative form of payment.

MICR Capture

During the initial processing of Paper Checks for creation of an Item, Merchant must use a Check Reader/Imager to capture the full MICR line, including the full ABA Routing Number, full account number, and full check serial number from the Paper Check. Manual key entry is not permitted during initial processing but is permitted for the subsequent correction of errors.

Merchants should follow these steps when processing ARC Transactions:

1. Ensure the Paper Check is eligible for ECS.
2. Ensure the Paper Check is completely filled out and signed by the Customer.
3. Obtain Customer information and enter it when prompted by the POS Device, or write this information on the Paper Check prior to imaging (required for Conversion with Guarantee Service Level only).
4. Ensure that the Item submission date is no more than one (1) calendar day later than the date Merchant

collects Paper Checks accepted by mail, courier, at a drop box location, or at a manned bill payment location.

5. Process the Paper Check through your Check Reader/Imager. We encourage Merchant to establish policies and procedures to destroy Paper Checks as soon as is reasonable to protect against the risk of fraud or erroneous entry of the Paper Check into the traditional Paper Check processing system.

B. DECLINE PROCESS FOR ECS TRANSACTIONS

It is suggested that you establish procedures for those instances in which a Paper Check receives a Decline response for an ECS Transaction. In the event of a Decline response, notify the Customer of the Decline, and refer the Customer to the notice and contact information located on the Transaction Receipt. This notice contains information about the Customer's legal rights. You should consult with an attorney regarding your legal responsibilities in connection with Decline responses. As a Merchant, you can ask for another form of payment or process the Paper Check in its paper form after an ECS Decline, but such Paper Check may not be processed under ECS. We recommend that Merchant not accept any Paper Check that receives a Decline response.

C. VOIDS/REVERSALS

ECS Transactions may be voided electronically in certain circumstances. Voids can occur for several reasons, including:

- Dollar amount was incorrectly entered; or
- Customer changed mind about the purchase.

To initiate a Void, you must:

- Use the same POS Device through which the original Transaction was processed; and
- Execute the Void/Reversal within thirty (30) minutes of receiving a successful response from the original Transaction request. (Note: For legacy/non-chip and pin enabled terminal applications, a Void/Reversal must be executed within ten (10) minutes of receiving a successful response from the original Transaction request.)

If either of these conditions is not met, you cannot execute a Void/Reversal of the Transaction. Instead, you must follow your return process for cash or Paper Check Transactions.

D. CONFIDENTIALITY AND SECURITY OF CUSTOMER INFORMATION

Merchants must honor the confidentiality of Customer information. No information obtained from either a Customer or us as a result of processing ECS Transactions may be disclosed to any third party. The following limited exceptions may apply:

- Information that is requested by an agent of Elavon or a third party authorized by Merchant for the purpose of assisting a Merchant in completing an ECS Transaction;
- To comply with ECS error resolution procedures;
- As needed to pursue collection activities; or
- As specified by privacy Laws.

E. SERVICE LEVEL OPTIONS

To fit your specific needs, the following general Service Level options are available:

- (1) Conversion with Guarantee

(2) Conversion with Verification

(3) Conversion Only

In addition, Conversion with Verification and Conversion Only each are offered with collection service options, as described in the chapter titled "Additional Services."

1. ECS CONVERSION WITH GUARANTEE

In the Conversion with Guarantee Service Level, Paper Checks are converted into electronic payments and then guaranteed by a Guarantor. During processing, an *Approval* or *Decline* decision is issued based on the Customer's account status or Authorizing Agent's risk management databases. The Guarantor retains the collection risk for all eligible, qualified Paper Checks that are processed following Merchant's receipt of an Approval decision. Merchant should pursue all Guarantee claims directly against the Guarantor as neither Elavon nor Member is responsible for any amounts owed to Merchant by a Customer or the Guarantor. Only consumer, business, corporate, and convenience Paper Checks are eligible for Guarantee. Additional ECS-eligible Paper Checks (as listed in chapter 2.A.1.b) are not eligible for Guarantee, but may still be processed under this Service Level. In addition, in order to qualify for the Guarantee, the consumer, business, corporate, or convenience Paper Check must include the following information:

- The Customer's name, machine-printed on the Paper Check;
- A street address or a complete mailing address (P.O. boxes are not acceptable);
- The Customer's preprinted or handwritten ten-digit telephone number; and
- Applicable to consumer checks only:
 - A driver's license number (must be entered when prompted by the POS Device, or must be hand-printed on the face of the Paper Check prior to scanning it through the POS Device); and
 - Two-letter postal abbreviation or numeric check code of the state where the driver's license was issued (see Appendix B for a list of state codes).

If any of the following occurs, the Paper Check will be a "Disqualified Check" and the Transaction will be ineligible for the Guarantee:

- The Paper Check is not a consumer, business, corporate, or convenience Paper Check;
- The convenience check was accepted on or after its expiration date;
- The Paper Check is a third party check;
- The goods and/or services for which the Paper Check or Item was issued (i) were returned to Merchant, were not accepted by the Customer or the acceptance thereof was rescinded by the Customer; (ii) were not delivered by Merchant; or (iii) were initially delivered by Merchant on credit, bailment, loan or under a lease;
- The Merchant received full payment, partial payment, security, or collateral in any form, from the Customer or a source other than the Customer or attempted to collect on a Paper Check or Item submitted for Guarantee payment;
- The ECS Transaction for which the Paper Check or Item was tendered is illegal, void or invalid, disputed by the Customer, the result of fraud perpetrated by Merchant or its employee, presumptive fraud exists or a court of competent jurisdiction has ruled that the Paper Check or Item is in whole or part not due and payable by the Customer;
- The ECS Transaction was inappropriately or erroneously processed, or the Item transmitted to the Guarantor through the POS Device was inaccurate, incomplete, or erroneous;
- The Paper Check was previously negotiated or is not eligible for ECS, as provided herein or in the ECS Primer;
- The Paper Check was written or the Item was created by an employee of Merchant, Merchant had

- knowledge of a circumstance that would prevent the Paper Check or Item from clearing or the Customer did not authorize the Transaction;
- The Customer stopped the electronic payment or the stop payment form was not received or was incomplete;
 - For POP Transactions, a legible Transaction Receipt signed by the Customer is not received by the Guarantor within ten (10) days of a written request by the Guarantor or Elavon to Merchant;
 - The Guarantor did not receive an image of the Paper Check;
 - The Paper Check or Item was returned as "Refer to Maker," unless, in connection with such Paper Check or Item, the Guarantor receives a written statement of unauthorized debit submitted by the Customer and a copy of the signed Transaction Receipt;
 - The original Paper Check, as reviewed by the Guarantor in electronic format, reveals that the Paper Check or Item: (i) was not drawn on a U.S. financial institution; (ii) does not include the Customer's machine printed name and machine printed check serial number; (iii) does not include a street address or a complete mailing address (P.O. boxes are not acceptable); (iv) does not include the Customer's preprinted or handwritten ten-digit telephone number; (v) applicable to consumer checks only, does not have a valid driver's license number (which must be entered when prompted by the POS Device or must be handwritten on the face of the Paper Check prior to scanning it through the POS Device); (vi) applicable to consumer checks only, does not include the two-letter postal abbreviation or numeric check code of the state where the driver's license was issued; (vii) was not made payable to the order of Merchant; (viii) was not processed for authorization; (ix) date is different than the authorization date; (x) was declined on the request for authorization; (xi) was previously declined using a different identification number; (xii) was written for an amount different than the request for authorization amount or the invoice amount; (xiii) Customer identification is different than the Customer identification on the request for authorization; (xiv) amount and written form of the amount of the Paper Check or Item do not match; (xv) does not include a date or includes an incomplete or improper date; (xvi) makes reference to the maker; (xvii) date has been post-dated; (xviii) exceeds the Guarantee limit per Customer; (xix) information is not legible; or (xx) was altered by the Merchant after receipt from the Customer;
 - Where the Paper Check or Item is submitted in connection with the Hold Check service, the Paper Check or Item: (i) with respect to a Hold Check authorization request, was not deposited within the proper timeframe set forth in the Hold Check agreement and within thirty (30) days from the date of the Paper Check; (ii) with respect to a Hold Check authorization request, was not processed under the Merchant's Hold Check location; (iii) with respect to a Hold Check authorization request, was not processed for each individual Hold Check and approved for each individual Hold Check Transaction; or (iv) was the subject of a Return not received by the Guarantor within twenty-five (25) days from the date of deposit; or
 - Where the Paper Check is not electronically converted and is processed through traditional paper banking methods, the Paper Check: (i) is the subject of a bank debit notice that was not received by the Guarantor; (ii) Return was not received by the Guarantor within ten (10) days of the bank debit notice date; (iii) was not deposited within the seventy-two (72) hour timeframe from the date of the Paper Check; (iv) Return is evidenced by a copy only without the original Paper Check or bank generated image of the original Paper Check; (v) was the subject of a Return not received by the Guarantor within twenty-five (25) days from the date of the Paper Check; (vi) check serial number does not match the Paper Check serial number authorized; or (vii) has not been deposited.

2. ECS CONVERSION WITH VERIFICATION

For the Conversion with Verification Service Level, Paper Checks are converted into electronic payments and an Authorization message is routed to an Authorizing Agent for verification that the Transaction is likely to be paid. The probability of payment is based on specific account information at the time of the request and/or third party risk management database(s). During processing, an *Approval* or *Decline* decision is issued based on verification of funds in the Customer's account or third party risk management database(s). *Merchant retains the risk for all Transactions processed, including those that are returned notwithstanding Merchant's receipt of an Approval decision.* The Conversion with Verification Service Level is only available if Transactions are processed online.

To verify a Transaction, an Authorizing Agent uses third party risk management database(s) concerning the account and the Customer.

3. ECS CONVERSION ONLY

In the Conversion Only Service Level, Paper Checks are converted into electronic payments, then an Authorization message is routed to an Authorizing Agent to authenticate that the Paper Check contains a valid ABA Routing Number and account number and is eligible for ECS. During processing, an *Approval* or *Decline* decision is issued based on these criteria. *The Merchant retains the risk for all Transactions processed, including those that are returned notwithstanding Merchant's receipt of an Approval decision.* The Conversion Only Service Level is available with both online and Batch processing.

F. TRANSACTION TYPES

PURCHASE PAYMENTS

A purchase payment occurs when a Merchant accepts payment by a Paper Check issued for the purchase of goods or services. Each purchase payment is subject to Approval as an ECS Transaction, regardless of Service Level selected by Merchant.

Approval Responses

Approved purchase payment Transaction Receipts may vary in appearance; however, each such Transaction Receipt must contain the information required in the ECS Primer.

Where a fee for insufficient or uncollected funds may be debited, the specific fee amount must be disclosed on the Transaction Receipt.

Decline Responses

Transactions that do not receive Approval can result in either a short Decline receipt or a long Decline receipt. For additional information regarding how Approval and Decline decisions are made, refer to specific Service Level descriptions. The following is a general description of Decline responses. Please refer to the ECS Primer for more details (if applicable).

Short Decline Receipt

If a Transaction is Declined due to a system error or an error in MICR data capture, a short Decline receipt will print. In this case, a short Decline receipt is printed with an error response. Errors can be caused by errors in data capture, due to faulty Merchant equipment and for a variety of other reasons. Merchant may resubmit to us for processing an Item that received a Decline response due to an error. Merchant may not resubmit an Item that has otherwise received a Decline response. If the POS Device displays any message other than *Decline* and a short Decline receipt prints, please attempt to reprocess the Paper Check.

Long Decline Receipt

If an Authorizing Agent Declines a Transaction, a long Decline receipt will print and will include the Authorizing Agent's contact information to allow the Customer to inquire as to why the Transaction received a Decline response. Unlike short Decline receipts, long Decline receipts contain a Decline Code as well as the third-party Authorizing Agent's contact information.

G. RETURNED ITEMS

1. RETURNED ECS TRANSACTIONS

The Conversion of a Paper Check into an Item does not guarantee payment, even if the Transaction receives an Approval response. Transactions can still be returned for various reasons. The most common returns are due to:

- **Non-sufficient funds (NSF):** The Customer's account lacks available funds at the time the Transaction

is posted;

- **Closed account:** No funds are available, as the Customer's account no longer exists;
- **Invalid account:** Account is stolen, forged, or otherwise invalid;
- **Fatal return:** There is an inability to correctly identify and format the MICR information or to process an ineligible Item; and
- **Customer dispute:** Customer has initiated a dispute after receiving an initial statement concerning Customer's account.
- **Image quality:** Occasionally, an Item will be returned to Merchant due to poor image quality. Elavon will make every attempt (through image quality monitoring processes) to prevent such returns, however, Elavon shall not be responsible for such returns. If image quality issues arise which impact Merchant funding, Elavon will work with such Merchant to identify the cause of the poor image quality to resolve such issues. Merchant is fully responsible for ensuring that its Check Reader/Imager is in proper working order and for the quality of its images.

The following paragraphs describe how returns are processed under the various Service Level options:

Conversion with Guarantee

Unless an ECS Transaction involved a Disqualified Check, a Merchant is protected against returns for insufficient or uncollected funds, closed accounts, or invalid accounts. The Guarantor bears the risk of these returned Transactions. However, Items resulting from a Disqualified Check are not covered under Conversion with Guarantee and may be returned to the Merchant.

Conversion Only or Conversion with Verification

A Merchant is responsible for all ECS Transactions that are returned unpaid or are otherwise charged back to Elavon. The Merchant is notified of a return via a mailed notification. The mailed notification provides an image of the Paper Check, which includes the Customer's contact information to assist the Merchant in the collection efforts. As an additional service, the notification will allow the Merchant to forward this return or subsequent returns to collection by simply following the procedures on the notification.

Conversion Only with Collections or Conversion with Verification and Collections

If the Merchant subscribes to collections, we automatically submit Transactions returned for insufficient or uncollected funds to a third-party collection agency. Merchant must enter into a separate contract with the collection agency designated to perform this service in order to collect the amount(s) owed to Merchant in connection with a returned ECS Transaction. A mailed notification informs the Merchant that the return Transaction has been placed in collections. Each month the Merchant receives an acknowledgement report to show the status of Paper Checks received and a statement, sent directly to the Merchant, along with the dollars collected during the prior month.

Reinitiation of POP, BOC, and ARC Entries

The ACH Rules restrict the number of times that any entry returned for insufficient or uncollected funds may be reinitiated to no more than two times following the return of the original entry. Returned POP, BOC and ARC Transactions are automatically resubmitted up to the maximum number of times allowed by law and the ACH Rules in an attempt to clear funds. Paper Checks processed as Check Replacement Documents that are returned for insufficient or uncollected funds may be re-submitted up to one (1) time.

Note: An Item created from an ineligible Paper Check and submitted for ECS is subject to a Void/Reversal or Chargeback.

2. PROCESSING CHARGEBACKS AND RETURNS

Returns of Transactions originally processed via ACH may be returned for a variety of reasons,

including administrative errors in the original entry, insufficient or uncollected funds, and Customer disputes. Administrative and financial returns of Transactions originated from a Receiving Bank may be processed electronically via ACH. In these cases, the Merchant is notified of returned Transactions via U.S. mail.

Check Replacement Documents

Returned Check Replacement Documents are processed through the traditional Paper Check processing system. Merchant is notified of returned Transactions via U.S. mail.

3. TIPS FOR AVOIDING CHARGEBACKS AND RETURNS

Review the following list to help eliminate returns and Chargebacks:

- Do not process Paper Checks that have been previously used for payment;
- Do not process Paper Checks previously voided or "franked" in connection with another ECS Transaction;
- For POP Transactions, obtain the Customer's signature on the Transaction Receipt and keep a copy of the signed Transaction Receipt for two (2) years;
- For ARC and BOC Transactions, retain a copy of the Paper Check image for two (2) years;
- Provide all documentation (including a copy of the Transaction Receipt) within ten (10) business days from the request;
- For Conversion with Guarantee, enter the required Customer's information or hand-write the information on the Paper Check prior to scanning the Paper Check through the Check Reader/ Imager;
- Process the original Transaction only one time through the POS Device;
- Do not deposit a Paper Check in the traditional Paper Check processing method once you have processed it electronically;
- Do not use fraudulent means to approve a Paper Check or support illegal activity to process an illegal Transaction;
- Cooperate with your Customers to avoid stop payments or Customer disputes; and
- Visibly post EFT Policy and Return Check Service Fee Notice.

NOTES

Chapter

3

ECS Image Solutions

For qualifying Merchants, we offer the following solutions to capture and transmit the images of Paper Checks to us:

A. POS WITH IMAGE

If Merchant elects to receive POS with Image services, Merchant shall scan the Paper Check at the POS to initiate an image transfer to us. Merchant must utilize a certified Check Reader/Imager device. Merchants accepting Paper Checks for POP and ARC Transactions must use the POS with Image service.

B. CASH OFFICE IMAGE (COI)

If Merchant elects to receive COI services, Merchant shall retain all Paper Checks that received an Approval response and, at the end of the day, at the end of a shift, or within one (1) calendar day from the approved Transaction date, Merchant shall scan the Paper Checks to initiate an image transfer to us. Merchant must utilize a Check Reader/Imager with stacking capabilities interfaced to Image Software or Third Party Image Software, and an integrated POS which is certified by us or our agent to be compliant with ECS specifications. Merchant must comply with any COI related guides separately provided to Merchant, which are made a part of this ECS MOG.

C. CENTRALIZED/ENTERPRISE IMAGE (CI)

If Merchant elects to receive CI services, Merchant shall retain and consolidate at a Merchant centralized location all Paper Checks that received an Approval response and, at the end of the day, at the end of a shift, or within one (1) calendar day from the approved Transaction date, Merchant shall scan the Paper Checks at the centralized location to initiate an image transfer to us. Merchant must utilize a high speed imager interfaced to Image Software or Third Party Image Software, and an integrated POS which is certified by us or our agent to be compliant with ECS specifications.

D. OUTSOURCED IMAGE (OI)

If Merchant elects to receive OI services, Merchant and Elavon will arrange for delivery of physical Paper Checks from Merchant locations to third party image capture locations designated by us. We or our agent will scan the Paper Checks and send the images to the ECS image archival host, which will manage the image data for the primary purposes of returns management and exception out-clearing. Checks are securely stored and destroyed on behalf of Merchant.

NOTES

Chapter

4**ACH-Echeck (WEB, TEL, PPD,
and CCD)**

This chapter provides an overview of the general policies and procedures that each Merchant should follow when utilizing ECS for ACH debit Transactions using the WEB, TEL, PPD, and CCD standard entry class codes. At this time, only debit entries are supported. It is important to develop consistent policies and procedures throughout your business to ensure compliance with all applicable regulations and Laws. Before you begin using ECS for ACH debit Transactions using the WEB, TEL, PPD, and CCD standard entry class codes, you and your employees should become familiar with the information in this chapter.

Elavon offers both Batch processing and online processing of ACH Transactions. Batch processing may be familiar to Merchants who have typically sent ACH files to a financial institution for processing on a daily basis. Online processing offers additional benefits such as the Conversion with Verification Service Level and full alignment with credit card settlement and funding timelines.

Note: ACH-Echeck is limited to Transactions where there is a preexisting relationship between the parties, such as bill payment, and is not available for retail purchases of goods or services or e-commerce. Typical uses of ACH-Echeck include government, education, utilities, telecommunications, healthcare, insurance, and property management payments, professional/general billed services and charitable donations.

A. GENERAL POLICIES AND PROCEDURES**1. INTERNET-INITIATED ENTRIES (WEB)**

Internet-Initiated Entries ("WEB") are used for the origination of consumer debit entries to a Customer's account pursuant to an authorization that is obtained from the Customer via the internet. We support a number of services that process WEB Transactions. Depending on Merchant's service, we may interface directly with the Customer in connection with the Transaction or Merchant may interface with the Customer. In services where we interface directly with the Customer, we will obtain and retain WEB authorizations and process resulting Transactions in accordance with the ACH Rules.

In services where Merchant interfaces directly with the Customer, Merchant must obtain and retain WEB authorizations and process resulting Transactions in accordance with Elavon Specifications and the ACH Rules, including, but not limited to the following:

- Merchant must obtain the Customer's authorization prior to submitting a resulting Item to us for processing. The authorization must:
 - Be in writing and signed or similarly authenticated by the Customer (which means the written authorization language must be displayed on the computer screen or other visual display in a manner that the Customer can easily read, and the Customer's "signature" may be provided



- and captured electronically in a manner that satisfies the Electronic Signatures in Global and National Commerce (E-SIGN) Act);
- Be readily identifiable as an ACH debit authorization;
 - Clearly and readily understandably state its terms; and
 - Provide the Customer with a method to revoke their authorization by notifying Merchant (for recurring payments only).
- Merchant must provide a hard copy of the Customer's authorization to the Customer upon request. We recommend that Merchant prompt the Customer to print the authorization from the Merchant's website and retain a copy.
 - Merchant must include the name of the Customer with each WEB entry or the Item will be rejected and returned unpaid.
 - Merchant must use commercially reasonable means to verify the ABA Routing Number of the financial institution at which the Customer's account to be debited is held (e.g., by using a database directory of financial institution ABA Routing Numbers).
 - Merchant must employ a commercially reasonable fraudulent transaction detection system to verify the identity of the Customer. Robust authentication controls and methods should be used by Merchant to prevent fraudulent transactions. The authentication method Merchant uses must evidence both the Customer's identity and the Customer's manifestation of assent to the authorization allowing Merchant to debit the Customer's account.
 - Merchant must employ a commercially reasonable security technology that provides a level of security that, at a minimum, is equivalent to 128 bit RC4 encryption technology that begins at the first point of key entry of Customer financial information through the transmission of data to the Merchant.
 - Merchant must conduct an audit at least once a year to ensure that the Customer's financial information is protected by security practices and procedures that include adequate levels of:
 - Physical security to protect against theft, tampering, or damage;
 - Personnel and access controls to protect against unauthorized access and use; and
 - Network security to ensure capture, storage, and distribution of financial information.
 - Merchant must retain a record of each Customer's authorization for at least two years after termination or revocation of the authorization. Merchant must provide a copy of a Customer's authorization upon Elavon's request. In order to satisfy this requirement, Merchant may provide Elavon with a computer screen shot of the authorization language presented to the Customer, the date and timestamp of the Customer's login and express agreement to the authorization language reflected in the screen shot, and evidence that Merchant verified the Customer's identity and recorded the Customer's assent to the authorization language reflected in the screen shot.

Authentication of a Customer's identity and evidence of a Customer's assent to a debit authorization is strongest when the authorization occurs simultaneously or nearly simultaneously with the identity authentication. Merchant bears the burden of demonstrating that authentication of the Customer was sufficiently linked to the Customer's authorization.

2. TELEPHONE-INITIATED ENTRIES (TEL)

Telephone-Initiated Entries ("TEL") are used for the origination of debit entries to a Customer's account pursuant to an oral authorization that is obtained from the Customer via the telephone or by an automated voice response system, orally spoken. A TEL entry may be initiated only where there is an existing relationship between Merchant and the Customer or, if there is not an existing relationship, where the Customer initiated the telephone call to Merchant. Merchant must obtain and retain TEL authorizations and process resulting Transactions in accordance with Elavon's specifications and the ACH Rules, including, but not limited to:

- Merchant must obtain the Customer's authorization prior to submitting a resulting Item to us for processing. In connection with obtaining the Customer's authorization, Merchant must verify the Customer's identity in accordance with the following requirements:
 - Merchant must use commercially reasonable procedures to verify the identity of the Customer (e.g., obtain the Customer's name, address and telephone number and use a directory database to verify the accuracy of the information provided by the Customer);
 - Merchant is advised to further verify the Customer's identity by verifying pertinent information with the Customer (e.g., past buying history, mother's maiden name, using caller ID, verifying shared secret information, obtaining account passwords, presenting challenge questions using non-public information, etc.);
- Merchant must include the name of the Customer with each TEL entry or the Item will be rejected and returned unpaid.
- Merchant must use commercially reasonable means to verify the ABA Routing Number of the financial institution at which the Customer's account to be debited is held (e.g., by using a database directory of financial institution ABA Routing Numbers).
- In authorizing a TEL Transaction, the Customer must orally acknowledge and confirm the following terms of the Transaction. Additionally, Merchant must include the following terms on the Transaction Receipt:
 - The date on or after which the Customer's account will be debited;
 - The amount of the debit entry to the Customer's account;
 - The Customer's name;
 - A telephone number that is available to the Customer and answered during normal business hours for Customer inquiries;
 - The date of the Customer's oral authorization; and
 - A statement by the Merchant that the authorization obtained from the Customer will be used to originate an ACH debit entry to the Customer's account.
- Merchant must either tape record the Customer's oral authorization or send, in advance of the settlement date of the entry, a Transaction Receipt to the Customer that confirms the oral authorization.
 - If a Merchant provides a Transaction Receipt to the Customer confirming the Customer's oral authorization, Merchant must, during the telephone call, disclose the method by which such Transaction Receipt will be provided. Merchants may mail, fax, or email (if allowed by state law) a copy of the Transaction Receipt to the Customer.
- Merchant must record and retain either (i) the oral authorization or (ii) a copy of the Transaction Receipt confirming the Customer's authorization for 2 years.
- For recurring TEL Entries, Merchant must record the Customer's oral authorization and provide a written copy of the Transaction Receipt confirming the Customer's authorization, which Transaction Receipt must include the Transaction Receipt information specified above. In addition, Merchant must:
 - Notify the Customer of the method by which the written copy of the Transaction Receipt will be provided;
 - Must notify the Customer of the date on or after which the Customer's account will be debited;
 - Must notify the Customer of the account that will be debited; and
 - Must notify the Customer of the method by which the Customer can revoke the authorization.

3. PREARRANGED PAYMENT AND DEPOSIT ENTRIES (PPD)

Prearranged Payment and Deposit Entries ("PPD") are used for the origination of ACH debit entries to a Customer's account pursuant to a standing (recurring) or single entry written authorization that is signed or similarly authenticated (in a manner that complies with the E-SIGN Act) by the Customer. The signed or similarly authenticated authorization by the Customer must:

- Be in writing and be readily identifiable as an authorization to initiate recurring ACH debit entries to the Customer's account;
- Clearly and readily understandably state its terms, including providing the Customer with a method to revoke authorization by notifying Merchant; and
- Evidence both the Customer's identity and the Customer's assent to Merchant's initiation of debits based on the authorization. Merchant must provide a copy of the Customer's authorization to the Customer upon request; and

Merchant must provide a copy of the authorization to the Customer for all PPD Entries. Merchant must retain a record of each Customer's authorization for at least two years after termination or revocation of the authorization. Merchant must provide a copy of a Customer's authorization upon Elavon's request. Merchant must include the name of the Customer with each PPD entry or the item will be rejected and returned unpaid.

4. Corporate Credit or Debit Entries (CCD)

Corporate Credit or Debit Entries ("CCD") are used for the origination of ACH debit entries by an organization to effect a transfer of funds to or from the account of that organization or another organization. This application can serve as a stand-alone funds transfer, or it can support a limited amount of payment related data with the funds transfer. As with consumer entries, an organization (the Customer) must authorize all ACH debits to its account. Merchant must include the name of the receiving organization with each CCD entry or the Item will be rejected and returned unpaid. The organization that authorizes the initiation of CCD entries must also enter into an agreement with Merchant under which the organization has agreed to be bound to the ACH Rules.

At this time, Elavon supports a Merchant-initiated payment: debit model. The Merchant initiates a CCD debit to the Customer's account. Merchant will debit the Customer's account for the amount of the payment due by the Customer to the Merchant on an agreed upon date, financial terms and number of entries. This method may be used as a stand-alone payment instruction for a transfer of funds, with no remittance detail included in the entry. In the CCD debit model, the Merchant "pulls" funds from the Customer's account.

5. Recurring WEB, TEL, PPD and CCD Entries

WEB, TEL, PPD and CCD Transaction authorizations may be for one-time (single) funds transfers from the Customer's account, in which case a separate authorization is required for each transfer, or may be for recurring funds transfers from the Customer's account, in which case a single authorization permits Merchant to debit the Customer's account at regular intervals without additional intervention or input from the Customer. For recurring WEB, TEL, PPD and CCD entries, Merchant's authorization from Customer, in addition to complying with the applicable requirements above, must comply with all of the following:

- The authorization must specify the amount of each recurring Transactions, or reference the method of determining the amount of each recurring Transaction;
- Where the amount of each recurring Transaction may vary, the authorization must allow the Customer to specify a minimum and maximum Transaction amount to be charged, unless the Customer will be notified of the amount and date of each charge, as specified in the remainder of this section;
- Where the amount of each recurring Transaction may vary, Merchant must inform the Customer of the right to receive, at least ten (10) calendar days prior to each scheduled Transaction date, written notification of the amount and date of the next charge;

- Where the amount of each recurring Transaction may vary, the Customer must be provided the option to choose to receive the notification in any of the following ways:
 - For every charge;
 - When the Transaction amount does not fall within a pre-approved range of amounts specified in the authorization; or
 - When the Transaction amount will differ from the most recent prior charge by more than an agreed upon amount;
- The authorization must include the timing (including the start date), number, and/or frequency of the recurring Transactions; and
- The authorization must provide the Customer with a method to revoke the recurring Transaction authorization.

B. SERVICE LEVEL OPTIONS

WEB, TEL, PPD, and CCD Transactions are eligible for Conversion with Verification and for Conversion Only (processing only) Service Levels.

1. ECS CONVERSION WITH VERIFICATION

For the Conversion with Verification Service Level, an Authorization message is routed to an Authorizing Agent for verification that the Transaction is likely to be paid. The probability of payment is based on specific account information at the time of the request. During processing, an *Approval* or *Decline* decision is issued based on third party risk management database(s). *Merchant retains the risk for all Transactions processed, including those that are returned notwithstanding receipt of an Approval decision.* The Conversion with Verification Service Level is only available if Transactions are processed online.

To verify a Transaction, an Authorizing Agent uses third party risk management database(s) concerning the account and the Customer.

2. ECS CONVERSION ONLY

In the Conversion Only Service Level, an Authorization message is routed to the Authorizing Agent to validate that the ABA Routing Number and account number provided by the Customer are eligible for ECS. During processing, an *Approval* or *Decline* decision is issued based on these criteria. *The Merchant retains the risk for all Transactions processed, including those that are returned notwithstanding receipt of an Approval decision.* The Conversion Only Service Level is available with both online and Batch processing.

C. RETURNED ITEMS

1. RETURNED ECS TRANSACTIONS

An ECS Transaction submitted for Authorization does not guarantee payment. Transactions can still be returned for various reasons. The most common returns are due to:

- **Non-sufficient funds (NSF):** The Customer's account lacks available funds at the time the Transaction is posted;
- **Closed account:** No funds are available, as the Customer's account no longer exists;
- **Invalid account:** Account is stolen, forged, or otherwise invalid;
- **Fatal return:** There is an inability to process an Item further;
- **Customer dispute:** Customer has initiated a dispute after receiving an initial statement concerning Customer's account;
- **Authorization revoked by Customer:** the authorization must provide the Customer with a method to revoke the Customer's authorization;

- **Customer advises that Transaction is not authorized:** Customer authorization is required for all WEB, TEL, PPD, and CCD Transactions;
- **Payment stopped by Customer:** Customer initiates a stop-payment order on an ECS Transaction; and
- **Customer name is missing in Transaction:** Merchant must include the name of the Customer with each entry or the Item will be rejected and returned unpaid.

Reinitiation of WEB, TEL, PPD, and CCD Entries

The ACH Rules restrict the number of times that any entry returned for insufficient or uncollected funds may be reinitiated to no more than two times following the return of the original entry. Returned WEB, TEL, PPD, and CCD Transactions are automatically resubmitted up to the maximum number of times allowed by law in an attempt to clear funds. The Merchant is notified of a return via a mailed notification.

2. TIPS FOR AVOIDING RETURNS AND CHARGEBACKS

Review the following list to help eliminate returns and Chargebacks.

- Do not use fraudulent means or support illegal activity to process an illegal Transaction;
- Cooperate with your Customers to avoid stop payments or Customer disputes;
- Ensure policies for cancelling recurring payments are clearly communicated to Customers; and
- Comply with all requirements regarding authorization and Transaction Receipts.

NOTES

Chapter

5

Additional Services

To enroll in any of the following additional services, please contact your Elavon representative. Additional approvals and/or agreements may be required for the following services:

A. COLLECTIONS

For all ECS Transaction types (excluding WEB, TEL, PPD, and CCD) and Service Levels (excluding ECS Conversion with Guarantee), Merchant can request that we automatically submit NSF Transaction returns to a third-party collection agency. Merchant must enter into a separate agreement with the collection agency designated to perform this service in order to collect the amount(s) owed to Merchant in connection with an ECS Transaction. The collections service option includes the following benefits:

- Automatic submission of returned ECS Transactions with the collections service;
- Mailed notification that indicates placement into collections;
- Monthly status statements; and
- Payment of a standard percentage of face value for a successfully collected ECS Transaction.

B. NSF SERVICE FEE

For POP, BOC, ARC, CCD, WEB, TEL and PPD Transactions, and for all Service Levels excluding ECS Conversion with Guarantee, upon the successful resubmission of a returned ECS Transaction, an NSF Transaction service fee may be collected automatically and deposited to the ECS depository account designated by Merchant. The amount of the fee will vary depending on each state's limit on the maximum amount that may be charged for acceptance of out-of-state checks or CCD, WEB, TEL and PPD Transactions.

Prior to our collecting any NSF Transaction service fee on Merchant's behalf, Merchant must, at minimum, instruct us as to the amount of the fee to be collected and provide appropriate conspicuous notices at the POS or in the other form of Customer Transaction authorization, sufficient to establish that the Customer has authorized the collection of an NSF Transaction service fee in accordance with Elavon's requirements, applicable Laws and ACH Rules. Merchant is fully responsible for ensuring that all NSF Transaction service fees and all related disclosures to and permissions obtained from Customers comply with applicable Laws and ACH Rules.

Merchants may obtain authorizations from Customers for the collection of NSF Transaction service fees. Merchant must ensure that a Customer separately authorizes the collection via ACH entry of an NSF Transaction service fee using an authorization method specified in this MOG (e.g., for POP, BOC and ARC Transactions, Merchant must obtain a signed or similarly authenticated, written authorization from the Customer to collect an NSF Transaction service fee (in accordance with the requirements for WEB, TEL and PPD Transactions)).

The ability to collect NSF Transaction service fees through ECS, and the amount of the fee, varies from state to state (*see Appendix C*). Merchant, and not Elavon, is responsible for ensuring that the amount and method of

collection any such fees complies with state laws, and Merchant should consult with an attorney regarding its rights and responsibilities before selecting the NSF Transaction service fee collections option.

C. HOLD CHECK

Hold Check is only available for Merchants who are new car dealers in the automobile industry and who subscribe to the ECS Conversion with Guarantee Service Level. Under Hold Check, Paper Checks are presented for payment in accordance with banking procedures applicable to processing Paper Checks; the Paper Checks are not processed electronically. Under Hold Check, the Guarantor bears the risk of loss if a Paper Check is returned to Merchant unpaid provided the following criteria are met with respect to each Hold Check:

- The Hold Check service may be used only in connection with Merchant's sale of new automobiles;
- Merchant must be a subscriber to the ECS Conversion with Guarantee Service Level;
- Merchant and Customer must complete a Hold Check Agreement, attached to your Agreement;
- The total amount of the deposit may not exceed twenty percent (20%) of the total purchase price (including tax) of the new automobile being purchased in the ECS Transaction. The Customer may write as many as four (4) Paper Checks in total for the deposit. Merchant must request approval from the Guarantor for each Paper Check regardless of the number of Paper Checks;
- Merchant must use the ATA services for Paper Check Authorization. Merchant will be prompted to provide the Hold Check MID assigned to Merchant for use with the Hold Check service and the amount of the Paper Check. When the system prompts for the amount of the Paper Check, Merchant must enter or provide the amount of the Paper Check (and repeat the ATA Authorization process for each individual Paper Check) accepted by Merchant for the deposit by Customer. Merchant must write the ATA Approval number on each Paper Check;
- Merchant shall not deposit the Paper Check(s) for processing prior to the date(s) set forth in the Hold Check Agreement. Merchant must deposit each Paper Check within thirty (30) days from the date of sale. If any Paper Check is deposited before or after the applicable date(s) in the Hold Check Agreement, or otherwise not in accordance with the terms of the Hold Check Agreement or this ECS MOG, then the Guarantor will not warrant payment of the Paper Check(s);
- Merchant must only submit those paper Hold Checks that were approved by the ATA Authorization process and subsequently returned under the Guarantee to Guarantor within thirty (30) days of the date of deposit;
- The Guarantor will not warrant payment of any Paper Check under the Hold Check Service if (a) the automobile has not left Merchant's possession or has been returned to Merchant; (ii) the sale of the automobile does not close for any reason; or (iii) Merchant has not provided the applicable Hold Check Agreement and bill of sale to the Guarantor with the returned Paper Check;
- The Guarantor's maximum liability to Merchant will not exceed the lesser of the aggregate face value of the Paper Check(s) or twenty percent (20%) of the total purchase price of the automobile; and
- The Guarantor will make payment to Merchant via a credit to Merchant's DDA on any returned Paper Check within fourteen (14) days of receipt of a returned Paper Check; provided that the ABA Routing Number, account number, Paper Check number and Paper Check amount authorized for the Transaction matches such data on the returned Paper Check.

If the above criteria are not met, Guarantor may, in its sole discretion, attempt to collect from the Customer the amount of the Paper Check(s) for a period of up to sixty (60) days. If the Guarantor is not able to collect from the Customer, the original Paper Check(s) will be returned to Merchant and Merchant's DDA will be debited the amount of the original Paper Check(s).

A copy of the bill of sale, a copy of the Hold Check Agreement, and the Paper Check(s) must accompany each returned Paper Check sent to Guarantor in connection with the Hold Check service, otherwise the Guarantor is not

obligated to warrant collection of the Paper Check(s).

D. CHECK ON DELIVERY (COD)

COD is only available for Merchants in the auto parts, lumber/building, mattress, and heating and air conditioning industries who subscribe to the ECS Conversion with Guarantee Service Level. Under COD, a Merchant may accept a mail or telephone order for products and services to be paid for by Paper Check(s). The Guarantor bears the risk of loss if a COD Paper Check is returned provided the following criteria are met with respect to each COD Paper Check:

- Merchant must be a subscriber to the ECS Conversion with Guarantee Service Level;
- Merchant must use the ATA services, as described below, for Paper Check Authorization. Merchant will be prompted to enter the COD MID assigned to Merchant for use with COD and to provide the Customer's ABA Routing Number and account number from the Paper Check;
- If the "ship to" address is different than address on the Paper Check, both addresses must appear on the Paper Check;
- Merchant must deposit each Paper Check within seventy-two (72) hours of receipt from the Customer, and no later than seven (7) days after receipt of an Approval from the Guarantor. Each Paper Check must be dated within seven (7) days of the date on which Approval was received;
- In addition to the information required on a Paper Check for the ECS Conversion with Guarantee Service Level, the Merchant must write on the Paper Check the date the Approval is given, together with the Approval number, above the Paper Check date;
- If the Paper Check is returned unpaid by the Customer's bank, Merchant must submit the returned Paper Check to the Guarantor with any and all related invoices and shipping information. Merchant must submit a returned Paper Check under the Guarantee to Guarantor within thirty (30) days of the date of deposit;
- The Guarantor reserves the right to fulfill its obligations by recovering and returning to Merchant the merchandise for which the Paper Check was written. If the above criteria are met and the Guarantor has not recovered and returned the merchandise to Merchant, the Guarantor will make payment to Merchant via a credit to Merchant's DDA on any returned Paper Check within fourteen (14) days following Guarantor's receipt of the Paper Check; provided that the ABA Routing Number, account number, Paper Check number and Paper Check amount authorized for the Transaction matches such data on the returned Paper Check.; and
- If the above criteria are not met, Guarantor may, in its sole discretion, attempt to collect from the Customer the amount of the Paper Check for a period of up to sixty (60) days. If the Guarantor is not able to collect from the Customer, the original Paper Check(s) will be returned to Merchant and Merchant's DDA will be debited the amount of the original Paper Check(s).

E. AUTOMATED TELEPHONE AUTHORIZATION (ATA)

1. ATA AS A BACK-UP TO ECS

For Merchants using an integrated Electronic Cash Register (ECR) POS solution, ATA may be used to Authorize POP and BOC Transactions when electronic online Authorization is unavailable. If Merchant receives a "Call Auth Center" response message indicating that a Paper Check cannot be processed electronically under ECS, Merchant will utilize the ATA service to enter data required for Authorization of the Transaction using the keying sequence provided by us. The ATA service will provide a 4-digit response code for each Authorization request, receiving Approval or Decline, and will track this Authorization internally. Merchant's personnel must write the Approval code on each Paper Check and complete the sale by entering the Approval code into the register. The register will respond with a "Hold Paper" response and complete the "franking" of the Paper Check. Transactions receiving a Decline must be handled by Merchant in accordance with Merchant's internal Paper Check acceptance criteria and the ECS Rules.

Merchant will comply with the Paper Check processing requirements set out in the TOS, this ECS MOG, and as set out below:

- Paper Checks must be deposited within seventy-two (72) hours of the Paper Check date;
- The Paper Check must be completely filled out and signed, including the driver's license number, state ID or military ID, state abbreviation, and Customer's telephone number with area code;
- Paper Checks must be machine "franked;"
- Returned Paper Checks must be received by Guarantor within thirty (30) days from the date of the Paper Check; and
- Paper Check ABA Routing Numbers and account numbers keyed for ATA must match the data on the physical Paper Check in order to comply with the Guarantee provisions.

2. ATA FOR HOLD CHECK AND COD

ATA is used to authorize Paper Checks for Hold Check and COD Transactions. Merchant will utilize the ATA service to enter data required for Authorization of Paper Checks, using the keying sequence provided by us. The ATA service will provide a 4-digit response code for each Paper Check processed, indicating Approval or Decline, and will track this Authorization internally. Merchant's personnel must write the Approval code on each Paper Check.

a. For use with Hold Check:

- Customer can write up to four (4) Paper Checks at the Merchant's location for the deposit. Merchant must obtain an Approval for each of the Paper Check(s). The deposit amount can be up to 20% of the total sale price;
- Merchant will use automated voice authorization using its Hold Check specific MID;
- Merchant must write the Approval number on all Paper Checks;
- Paper Checks must be deposited within thirty (30) days from the date of sale;
- The Paper Check must be completely filled out and signed including the driver's license number, state ID or military ID, state abbreviation, and Customer's telephone number with area code; and
- Paper Check ABA Routing Number and account numbers keyed for ATA must match the data on the Paper Check in order for the Paper Checks to be eligible for the Guarantee.

b. For use with COD:

- COD Paper Checks must be authorized using the Customer's ABA Routing Number and account number. When the Paper Check number is unavailable enter 400;
- The Paper Check must be completely filled out and signed including the driver's license number, state ID or military ID, state abbreviation, and Customer's telephone number with area code; and
- The Paper Check ABA Routing Number and account numbers keyed for ATA must match the data on the Paper Check in order to comply with the Guarantee provisions.

F. STOP PAYMENT

Stop Payment is only available for Merchants who subscribe to Hold Check and to the ECS Conversion with Guarantee Service Level. The Guarantee shall apply to Paper Checks on which payment has been stopped by a Customer due to a dispute over goods or services between the Merchant and the Customer, provided the following conditions have been met and the Paper Checks meet all terms and conditions listed in the TOS and

this ECS MOG:

- The Merchant shall reasonably assist Guarantor in the collection of the Paper Checks by providing, upon request, documents such as invoices and service orders within three (3) business days of the request by Guarantor; and
- In the event that the Merchant does not assist Guarantor by providing requested documents, or if a court determines that the Customer is not liable for the payment of the Paper Check, Guarantor may re-assign the Paper Check via Chargeback to the Merchant.

NOTES

Chapter

6

Batch Settlement

The total of the Transactions processed since your last settlement is called a Batch. We will credit you for the combined net total of payment Transactions (e.g., credit, debit) in your Batch. The Batch total is posted to your DDA and disclosed on your DDA statement. Batch settlement should occur on a daily basis.

A. POS DEVICE

To settle the daily Batch, perform the following steps:

1. Total the day's Transaction Receipts;
2. Verify that the Transaction Receipts equal the POS Device totals. You can print a report from your POS Device, as applicable, to assist you in balancing. For information on how to print a report, refer to the instructions that came with your POS Device or contact customer support. If the totals do *not* balance:
 - Compare the Transaction Receipts to the individual Transactions processed;
 - Make any necessary adjustments before transmitting or closing the Batch; and
3. Close the Batch according to the instructions for the POS Device.

B. POS INTEGRATED SOLUTIONS

An integrated Electronic Cash Register (ECR) POS solution performs the reconciliation of Paper Check Transactions between the Batch and the ECR. Merchants will submit approved ECS POS transactions to Elavon daily. Merchants utilizing an integrated ECR POS solution should refer to instructions provided by the hardware/software provider for Batch transmission at the close of business for the day, which should guide you through the following general processes:

- Closing and transmitting the Transaction Batch; and
- Closing and transmitting the image Batch.

Additionally:

- Merchants must adhere to Batch transmission timeframes established during Merchant implementation; and
- Merchants must adhere to the Elavon specifications and be certified to the ECS Batch solution specifications as set forth in the ECS Primer.

NOTES

Chapter

7

ECS Reporting Tools

ECS reporting tools enable you to access your account and manage your ECS information using your web browser.

The following reporting tools are available to Merchants:

- **MerchantConnect:** A secure, web-based real-time reporting tool that allows Merchant to quickly and easily access your electronic payment activity including Batch, funding, and billing information.
- **Enquire Reporting Tool:** A secure, web-based reporting tool that provides Merchant with the status and disposition of Paper Checks electronically converted and presented for funding, as well as image information.

Note: For questions regarding online reporting or to sign up for this service, please contact your sales representative or customer support.

NOTES

Appendix

A**Glossary**

Accounts Receivable Conversion (ARC): A processing option for single-entry debits to convert a Customer's Paper Check that is received via the U.S. mail or courier, or at a drop box or manned bill payment location.

ACH: Automated Clearing House.

ACH-Echeck: The service for processing consumer and business entries via WEB, TEL, PPD, and CCD.

Agreement: The Terms of Service, including the Merchant Application, the Merchant Operating Guide (if applicable), the Electronic Check Service Merchant Operating Guide, any Merchant Agreement or Merchant Processing Agreement, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.

Approval: An affirmative response by a Receiving Bank, processor, or Authorizing Agent, permitting the Merchant to accept and process a Transaction.

Batch: The total of the Transactions processed since a Merchant's last settlement.

BOC: A processing option for ECS in which the Paper Check is present and the Customer is present at the POS.

CCD: An ACH-Echeck processing option in which a debit entry is initiated by an organization to effect a transfer of funds to or from the account of that organization or another organization.

Channel: A method of payment acceptance such as in person at the POS, over the internet, over the telephone, via a customer service representative administrative site, drop box, or any other channel for acceptance of payments supported by ECS as of the effective date of the ECS MOG or in the future.

COD: An option under the ECS Conversion with Guarantee Service Level whereby Merchant may accept a mail order or telephone order for products or services to be paid for by Paper Check(s). The Guarantor will warrant payment of the Paper Check(s) provided certain criteria are met.

Conversion: A process that captures information from a Paper Check to create an Item.

Decline: A negative response to an Authorization request by a Receiving Bank, processor, or Authorizing Agent that prohibits the Merchant from processing and accepting the Transaction.

Disqualified Check: A check which is "disqualified" from Conversion with Guarantee, as described in chapter 2(E)(1).

Dual-Sided Check Reader/Imager: A Check Reader/Imager that is capable of capturing an image of both the front and back of a Paper Check.

Enquire Reporting Tool: A web-based reporting tool that provides reporting and data retrieval including check images and returns management.

Guarantee: A process for authorizing an electronic check transaction in which the check Authorization request is routed to the Guarantor. The check Guarantor effectively buys the Item from the Merchant at a discount, with

recourse, and assumes the risk of loss in most circumstances.

Guarantor: With respect to Transactions, the third party Authorizing Agent designated by Elavon, as appropriate, that warrants the face amount of all approved checks under the "Conversion with Guarantee" Service Level provided all warranty requirements are met by Merchant.

Hold Check: An option under the ECS Conversion with Guarantee Service Level whereby Merchant may accept Paper Checks from the Customer and hold the Paper Check until a specific date(s) for deposit. The Guarantor will warrant payment of the Paper Checks provided certain criteria are met.

Image Software: The software application provided to Merchant by Elavon pursuant to a separate user license agreement.

Item: With respect to POP, BOC, and ARC Transactions, means an electronic file or entry representing a Transaction that is created from the information captured by you from a Paper Check using a Check Reader/Imager and that is forwarded by you to Elavon or Member in accordance with the Agreement for ECS, and with respect to WEB, TEL, PPD, and CCD Transactions, means the electronic payment entry created from Customer payment account information.

MID: A Merchant identification number assigned by Elavon to Merchant.

NSF Transaction: An ECS Transaction which cannot be processed because sufficient funds are not available in a checking account.

POP: A processing option for ECS for which both the Paper Check and Customer are present.

Point of Sale (POS): The physical location at a Merchant site where the Customer completes a Transaction to pay for goods, services, or cash back.

PPD: An ACH-Echeck processing option for either a recurring or single prearranged payment entry to a Customer's account pursuant to a written authorization that is obtained from the Customer.

Receiving Bank: The bank where a Customer maintains a checking account on which the Customer authorizes an EFT to pay for a purchase.

TEL: An ACH-Echeck processing option for either a recurring or single entry in which an electronic payment Item is created based on a Customer's oral authorization captured via the telephone.

Third Party Image Software: Any software provided to Merchant by a third party or developed internally by Merchant to be used with COI or CI services that has been certified by Elavon or its agent to be compliant with Elavon's specifications.

Verification: A process for authorizing an EFT in which the Authorization request message is routed to the Authorizing Agent to verify the probability that the EFT will be paid. The Authorizing Agent makes an Approval or Decline recommendation, based on access to the DDA and/or third-party risk management database(s).

Void/Reversal: A Transaction used to cancel a previous EFT within thirty (30) minutes of the original sale, or, with respect to legacy/non-chip and pin enable terminal applications, within ten (10) minutes of the original sale. Merchants must support Voids/Reversals of EFTs.

WEB: An ACH-Echeck processing option for either a recurring or single internet initiated entry processed based on a Customer's input of account information at a payment application website.

NOTES

Appendix

B**State Codes**

During some purchase transactions, you are prompted to enter the state code where the Customer's driver's license was issued. State check codes are listed in the table below.

State Code/State Name		
01 Alabama	21 Kentucky	38 North Dakota
02 Alaska	22 Louisiana	39 Ohio
04 Arizona	23 Maine	40 Oklahoma
05 Arkansas	24 Maryland	41 Oregon
06 California	25 Massachusetts	42 Pennsylvania
08 Colorado	26 Michigan	44 Rhode Island
09 Connecticut	27 Minnesota	45 South Carolina
10 Delaware	28 Mississippi	46 South Dakota
11 District of Columbia	29 Missouri	47 Tennessee
12 Florida	30 Montana	48 Texas
13 Georgia	31 Nebraska	49 Utah
15 Hawaii	32 Nevada	50 Vermont
16 Idaho	33 New Hampshire	51 Virginia
17 Illinois	34 New Jersey	53 Washington
18 Indiana	35 New Mexico	54 West Virginia
19 Iowa	36 New York	55 Wisconsin
20 Kansas	37 North Carolina	56 Wyoming

Appendix

C

Service Fees for Returned Items

REVISED April 2012

It is required that service fees be posted at the POS in all states. The following table lists the permissible service fee that can be charged in each state, as reported to Elavon by third parties believed to be reliable. The table is informational only, and Elavon is not responsible for errors or omissions in the table or for changes in the law regarding service charges and civil penalties. Merchants should check with their attorney before establishing any procedures based upon this information.

Alabama \$30	Montana \$30
Alaska \$30	Nebraska \$25
Arizona \$25	Nevada \$25
Arkansas \$30	New Hampshire \$25
California \$25	New Jersey \$25
Colorado* \$20 or 20%	New Mexico \$25
Connecticut \$20	New York \$20
Delaware \$40	North Carolina \$25
District of Columbia \$15	North Dakota \$40
Florida* up to \$40 or 5%	Ohio* \$30 or 10%
Georgia* \$30 or 5%	Oklahoma \$25
Hawaii \$30	Oregon \$35
Idaho \$20	Pennsylvania \$25
Illinois \$25	Rhode Island \$25
Indiana \$20	South Carolina \$30
Iowa \$30	South Dakota \$40
Kansas \$30	Tennessee \$30
Kentucky \$50	Texas \$30
Louisiana* \$25 or 5%	Utah \$20
Maine \$25	Vermont \$25
Maryland \$35	Virginia \$50
Massachusetts \$25	Washington \$30
Michigan \$25	West Virginia \$25
Minnesota \$30	Wisconsin \$25
Mississippi \$40	Wyoming \$30
Missouri \$25	

*Fee is dollar amount or percentage of check face value, whichever is greater.

This information is not intended as legal advice and may not be used as legal advice. Any information contained in this material is subject to change and interpretations of the statutes may vary. This information should not be used to replace the advice of your legal counsel. The above information is a summary of the applicable statutes. The statutes should be reviewed in their entirety for a complete understanding of the law regarding service fees.