

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development AF

BOARD AGENDA # *D-2

Urgent

Routine

AGENDA DATE January 14, 2014

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a Contract Agreement with Elavon for the Implementation of the Accela Citizen Access Online Permitting Software System for the Planning and Community Development Department, Building Permits Division

STAFF RECOMMENDATIONS:

Authorize the Director of Planning and Community Development to execute a contract agreement with Elavon for use in the e-payment process for Accela Citizen Access Online Permitting Software System.

FISCAL IMPACT:

Costs associated with implementing an e-payment solution will be absorbed within departmental existing budgeted appropriations and are estimated to range from \$0.63 for a debit card transaction to \$3.71 for a credit card transaction, based on the type of payment method. While the department anticipates that the added costs will be off-set by the time savings for staff in the processing of customer on-line permit requests, versus traditional in-person permit requests, the Department will closely monitor all costs.

BOARD ACTION AS FOLLOWS:

No. 2014-23

On motion of Supervisor Withrow, Seconded by Supervisor Monteith,
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

One of the goals of the Board's priority of Efficient Delivery of Public Services is to increase e-government (electronic) services and transactions. As part of this goal, on November 21, 2006, the Board of Supervisors approved a Customer E-Payment Policy.

On September 23, 2008, the Board of Supervisors approved an E-Payment Master Agreement with Link-2-Gov, which is now FIS (hereafter referred to as FIS) for each department that wishes to explore the possibility of deploying electronic payments in the future. Although FIS was chosen, not all software programs may be compatible and should it be determined that there is a gap in the ability of the vendor to meet a department's specific electronic payment needs, the department shall work with General Services Agency-Purchasing to determine the best way to move forward.

On September 13, 2011, the Board of Supervisors approved the purchase of the Accela Software for the One-Stop Permitting program in the Planning and Community Development Department, Building Permits Division. The installation of the permitting software is complete with the exception of the online permitting portion, Citizen Access. Although Stanislaus County has a Master Agreement with FIS as the merchant for E-Payment process, the Accela Software Program is not compatible with FIS. After consulting with Accela, it is found that to use FIS, Accela would need to build an adapter at an estimated cost of \$30,000. Due to this cost, the Building Permits Division decided to seek Requests for Proposal's from the three "out of the box" merchant account providers that Accela software is compatible with, PayPal Payflow, Official Payments STP and Virtual Merchant.

Upon the completion of the RFP process, the Building Permits Division had received only one proposal in which Virtual Merchant was selected and hereafter referred to as Elavon. The Building Permits Division is seeking the Board's approval and authorization to proceed forward to contract with Elavon as the e-payment provider for the One-Stop online permitting needs. Elavon has been teamed with the county's bank, Bank of the West, since 1993 as its exclusive provider to meet its client's payment processing needs. Elavon currently provides credit card processing services for many of the largest counties, cities, special districts, universities and other government agencies in the country with substantial transaction volume.

The Accela Citizen Access is the public facing web portal, which will substantially reduce the need for visits for simple over the counter permits and provide 24 hour online and telephone access to Building Permit operations. Citizen Access will allow for on-line building permit issuance and inspection requests. Citizens will be able to access services and carry out entire processes online from looking up information, to applying and paying for permits, to printing off completed paperwork. The County Interactive Voice Response (IVR) systems will be integrated into the Citizen Access module to allow for automated telephone based inspection scheduling as well. Refer to the business case for more detail (Attachment 2).

Approval of a Contract Agreement with Elavon for the Implementation of the Accela Citizen Access Online Permitting Software System for the Planning and Community Development Department, Building Permits Division
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The Citizen Access module and the IVR systems are in the final stages of preparation for implementation and are estimated to go live in March 2014. Attached is a copy of the proposal from Elavon and proposed contract agreement (Attachment 2). In accordance with County E-Payment Solution policy, the Elavon proposal and contract agreement have been reviewed by County Counsel and signed by the Treasurer/Tax Collector.

POLICY ISSUES:

Approval of this agenda item will support the Board's priority of Efficient Delivery of Public Services and is consistent with the Customer E-Payment Policy.

STAFFING IMPACTS:

The implementation of e-payment will reduce staff costs by reducing the time spent processing traditional in-person permit requests.

CONTACT PERSONS:

Angela Freitas, Planning and Community Development Director, (209) 525-6330
Steve Treat, Chief Building Official, (209) 525-6557

ATTACHMENTS:

1. Elavon Contract Agreement
2. Building Permit's Division E-Payment Business Case



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," Elavon, Inc. ("Elavon") and Member, as designated on the Merchant Application, and includes the following Terms of Service (the "TOS") and all Schedules and other attachments to the Agreement, and all Schedules and other attachments to the Agreement as may be added from time to time, 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
- Schedule B, Affiliated Entities
- Schedule C, Merchant Application (Large Relationship)
- Substitute Form W-9 (required for U.S. entities)
- Substitute Form W-8BEN (required for non-U.S. entities)

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
- Multi-Currency Pricing Services
- Wireless Services
- Contactless Services
- Schedule D, Electronic Gift Card Services
- Schedule E, Electronic Check Services
- Schedule J, Processing Services for Convenience Fees
- Schedule K, Biller Direct Services
- Schedule L, Safe-T Suite Services
- Schedule N, Internet PIN-Based, Debit Card Services
- Schedule O, Global eCommerce Gateway Services
- Schedule P, Payment Service Provider Processing Services

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

- EBT Services
- Hospitality Services
- No Signature Required Program Services
- Schedule F, Petroleum Services
- Schedule I, Processing Services for Government Entities and Institutions

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

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

APPROVED AS TO CONTENT:

By:
Ford Gordon B. Ford
Treasurer/Tax Collector

IN WITNESS WHEREOF, the parties hereto have executed the Agreement.

Stanislaus County, California _____,
on behalf of itself and each of the affiliated entities
identified on Schedule B (the "MERCHANT"):

By:

Name: Angela Freitas

Title: Director
Planning and Community Development

APPROVED AS TO FORM:

John P. Doering
County Counsel

By:
Thomas E. Boze
Deputy County Counsel

ELAVON, INC.

By:

Name: Patrick Volpe, VP

Title: _____

Date: 1-7-14
("Effective Date")

MEMBER

By:

Name: Patrick Volpe, VP

Title: _____



TERMS OF SERVICE

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.

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/pdf/MOG_Eng.pdf. 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 (less recoupment of any Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement) may be available as soon as the next banking day after the banking day on which Elavon and Member process the Transactions. Regardless of

where Merchant maintains its DDA, Merchant acknowledges and agrees that Elavon and Member may use either "direct" (ACH debit authority pursuant to which Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement are debited from the DDA) or "net" (pursuant to which Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement are netted from Transaction proceeds) methods to recover any amounts owed by Merchant to Elavon or Member under the Agreement. 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 Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. 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 or to debit the DDA 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 Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement. Merchant irrevocably authorizes Elavon, Member, and their respective authorized vendors and agents who provide services under the Agreement at Merchant's request, to initiate ACH debit and credit entries to the DDA or the Reserve Account for any products or services requested by Merchant in order to make payments to or collect payments from Merchant due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Merchant's obligations to Elavon and Member have been paid in full. 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 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 debit or credit the DDA and to otherwise exercise their rights under the Agreement with respect to the DDA.
- e) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. Merchant must promptly examine all statements relating to the DDA and promptly notify Elavon and Member in writing of any errors in the statement Merchant received from Elavon. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Elavon within forty-five (45) days of the date of the Elavon statement containing the asserted error. If Merchant fails to provide such notice to Elavon within said forty-five (45) days, Elavon and Member shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against Elavon or Member for any loss or expense relating to any asserted error for forty-five (45) days immediately following Elavon's receipt of Merchant's written notice. During that forty-five (45) day period, Elavon (i) will be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying Elavon, and (ii) notify Merchant of its proposed resolution of the asserted error.
- 4) **SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.**
- a) **Security Interests.**
- i) **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. Merchant grants to Elavon and Member a security interest in and lien upon: (a) all funds at any time in the Reserve Account, regardless of the source of such funds, and (b) all funds underlying present and future Transaction Receipts in process by Member or Elavon (collectively, the "Secured Assets"). These security interests and liens will secure all of Merchant's obligations under the Agreement. Elavon and Member may execute this security interest, without notice or demand of any kind, by making an immediate withdrawal or by restricting Merchant's access to the Secured Assets.



- ii) **Perfection.** Upon request of Elavon or Member, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. Merchant represents and warrants that no other Person has a security interest in the Secured Assets. With respect to such security interests and liens, Elavon and Member will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Elavon and Member written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Elavon and Member are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Elavon or Member. If Merchant fails to execute control agreements or other documents to evidence or perfect the security interest or lien within ten (10) days of Elavon's or Member's request, Merchant authorizes and appoints Elavon as Merchant's attorney in fact to sign Merchant's name to any control agreement or other documents used for the perfection of any security interest or lien granted hereunder.
- 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.** The following will constitute Reserve Events: (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 Merchant in violation of Section 15(e), 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; 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) **Recoupment and Set-off.** Elavon and Member have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them hereunder from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe Merchant under the Agreement. 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 Agreement. Merchant will compensate Elavon and Member for Processing Services as indicated on Schedule A, Schedule of Fees, and in any other Schedules executed by Elavon, Member and Merchant.
- a) **Fees.** Merchant will pay Elavon and Member fees in the ordinary course of business for all Processing Services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) (including enrollment forms) or schedules provided by Elavon and Member in writing to Merchant. 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.
 - b) **Research.** In addition, Merchant will pay Elavon at its standard rates for research as set forth on Schedule A including, but not limited to, research required to respond to any third party or government subpoena, levy, garnishment or required reporting on Merchant’s account.
 - c) **Change of Fees.** The fees set forth in the Agreement and any additional application or setup form(s) (including enrollment forms) will not be amended by Elavon for the Initial Term of the Agreement except (i) as provided in Schedule A or (ii) to pass through to Merchant increases in interchange, assessments, or increased or new fees imposed by a third party.
 - d) **Other Amounts Owed.** Merchant will promptly pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties, assessments (including all fines, penalties, or assessments by the Payment Networks as a result of Merchant’s Transaction processing), and any other payments due under the Agreement. Elavon or Member may offset these amounts from funds otherwise owed by Elavon or Member to Merchant or may debit these amounts from Merchant’s DDA or Reserve Account by ACH. In the event such offset or ACH debit does not fully reimburse Elavon or Member for the amount owed, Merchant will promptly pay Elavon or Member such amount upon demand. Elavon will charge interest on all uncollected amounts owed to

Elavon or Member that are more than thirty (30) days past due at a rate equal to the lesser of (i) the product of the uncollected amounts and the then-current Federal Funds Rate plus 10% (calculated and computed on the basis of a 365-day year), or (ii) the maximum daily rate of interest permitted under applicable law.

- 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; INDEMNIFICATION; LIMITATION OF LIABILITY.

- a) **Accuracy of Information.** Merchant must promptly notify Elavon in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, 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 (e.g., partnership, corporation, etc.), 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. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to Merchant's business information. Merchant may request written confirmation of Elavon's consent to the changes to the Merchant's business information.

b) **Indemnification.**

- i) **By Merchant.** Merchant will be liable for and indemnify, defend, and hold harmless Elavon, Member and their respective employees, officers, directors, and agents against all claims by third parties for losses, damages, liabilities or expenses, including all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or Elavon, any Transaction processed under the Agreement, any breach by Merchant of the Agreement, Merchant's negligence, gross negligence or willful misconduct, any action taken by Elavon or Member with respect to the DDA or Reserve Account in accordance with the Agreement, or any Merchant Bankruptcy Proceeding, but excluding claims to the extent attributable to

Elavon's or Member's negligence, willful misconduct, or breach of the Agreement.

- ii) **By Elavon.** Elavon will be liable for and indemnify, defend, and hold harmless Merchant and its employees, officers, directors, and agents against all claims made by third parties for losses, damages, liabilities or expenses arising out of Elavon's breach of the Agreement, negligence, gross negligence, or willful misconduct, but excluding claims to the extent attributable to Merchant's negligence, gross negligence, willful misconduct, or breach of the Agreement.

- c) **Limitation of Liability.** Merchant acknowledges that fees for the Processing Services provided to Merchant by Elavon and Member are very small in relation to the funds advanced to Merchant for Transactions and consequently Elavon's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the lesser of (a) the fees paid by Merchant to Elavon and Member during the last three (3) months, exclusive of fees and variable costs incurred by Elavon and Member to process Transactions, such as Interchange costs, assessments, and fees imposed by a third party or, (b) fifty thousand dollars (\$50,000). In no event will the parties, or their agents, officers, directors, or employees be liable to any other party to the Agreement for indirect, exemplary, punitive, special, or consequential damages.

- d) **Performance; Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ELAVON AND MEMBER MAKE NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROCESSING SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. ELAVON AND MEMBER DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No party hereto shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of such party and without the fault or negligence of such party.

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 Merchant Application, in the bid process if applicable, the assumptions in Schedule A 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.
 - 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 Schedule B 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 (i) placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), (ii) named to the Consortium Merchant Negative File maintained by Discover, or (iii) placed on or named to any other negative or terminated merchant file of any other Payment Network 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 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 Merchant Application 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 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. Merchant has all power and authority to provide all Customer information, Cardholder Data and Transaction information that Merchant provides to Elavon and Member. 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.** Merchant is responsible for any violations of this Agreement that result from the actions of or failure to act by Merchant's officers, directors, employees, agents, Value Added Servicers, business invitees, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to information related to Transactions from Merchant or access to systems under Merchant's control, but excluding all actions or failures to act to the extent attributable to Elavon's or Member's breach of the Agreement, negligence or willful misconduct.
- 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, 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 the Merchant Application and from time to time, any business credit or other inquiries they consider reasonably necessary to review the Merchant Application or continue to provide Processing Services under the Agreement. Merchant also authorizes 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. Within one hundred twenty (120) days after the end of each fiscal year, 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. Notwithstanding the foregoing, Merchant shall not be obligated to provide financial statements or similar information other than those included in Merchant's filings with the Securities and Exchange Commission so long as Merchant remains registered and obligated to file financial statements (including annual reports on Form 10-K and quarterly reports on Form 10-Q) pursuant to the Securities Exchange Act of 1934, as amended.

iii) **Merchant Information.** Merchant agrees that any Merchant financial information, Transaction Data, and other information regarding Merchant, its principles, affiliates, or agents that Merchant or Merchant principal provides to Elavon or Member on the Merchant Application or otherwise obtained by Elavon or Member in connection with the Agreement may be: (i) used by Elavon, Member, and their respective service providers, affiliates, agents,



and referral partners, (a) in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services, or (b) for administrative purposes and to maintain Merchant's account pursuant to this Agreement; (ii) disclosed and shared for reporting purposes to credit rating agencies, under the the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (iii) utilized to enhance or improve Elavon's products or services, generally, (iv) used or disclosed in the course of any actual or potential sale, reorganization or other change to Elavon's or Member's business; (v) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (vi) retained for such periods of time as required by Elavon and Member to perform their obligations and exercise their rights under the Agreement. Elavon may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Elavon's customers or specific segments of Elavon's customers.

c) **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. Accordingly, Merchant must provide certain information and identifying documents to allow Elavon and Member to identify Merchant.

9) **FRAUD MONITORING.** Merchant is solely responsible for monitoring its Transactions. Elavon and Member are under no duty to monitor Merchant's Transactions for fraudulent or other suspicious activity.

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 such third parties unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all 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 the Agreement, Merchant will be bound by the acts and omissions of any Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will indemnify and hold harmless Elavon and Member from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including Value Added Servicers. Neither Elavon nor Member is responsible for any 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 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.** Unless terminated as set forth below, the Agreement, including all Schedules hereto executed as of or following the Effective Date, will remain in effect for the Initial Term, as defined on Schedule A, Schedule of Fees, following the Effective Date set out on page 1 of the Agreement. Thereafter, the Agreement, including all Schedules thereto, will automatically renew for successive Renewal Terms, as defined on Schedule A, Schedule of Fees, unless terminated as set forth below. 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.**
 - (A) The Agreement may be terminated by Merchant effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Elavon at least ninety (90) days prior to the expiration of the then current term.
 - (B) The Agreement may be terminated by Merchant if any of the following conditions remain uncured thirty (30) days after Merchant provides Elavon and Member written notice of the existence of the condition:
 - (1) Elavon has failed to pay Merchant an undisputed amount owed to Merchant under the Agreement; or
 - (2) Elavon or Member has failed to perform a material obligation under the Agreement.
 - ii) **By Elavon or Member.**
 - (A) The Agreement may be terminated by Elavon or Member effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Merchant at least ninety (90) days prior to the expiration of the then current term.
 - (B) The Agreement may be terminated by Elavon or Member if, after providing thirty (30) days written notice, any of the following conditions remain:
 - (1) The occurrence of Excessive Activity.
 - (2) The acceptance of Card Not Present or Convenience Fee Transactions without proper disclosure to Elavon and Member in the Agreement or an amendment to the Agreement.
 - (3) The failure to pay Elavon or Member any amount Merchant owes Elavon or Member.
 - (4) The failure by Merchant to perform a material obligation of the Agreement.
 - (C) 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 Merchant's financial condition.
 - (2) The garnishment or attachment of Merchant's deposit accounts with Member, Alternate Security, 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 Merchant 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 Merchant sells or in the methods by which Merchant sells them, or any change that results in Merchant's violation of Elavon's or Member's underwriting policy.
 - (7) Assignment of the Agreement or a change in control of Merchant 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. 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 Term 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. 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 of termination.
- iii) **Early Termination Fee.** If Merchant terminates the Agreement before the end of the Initial Term, except for termination pursuant to Section (A)(12)(b)(i)(B), Merchant will immediately pay Elavon and Member, as liquidated damages, an early termination fee as specified on Schedule A, Schedule of Fees. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. In addition to the foregoing, if Merchant terminates the Agreement during the Initial Term, other than a termination under Section (A)(12)(b)(i)(B), any incentives, discounts or credits granted by Elavon to Merchant, as reflected on Schedule A, Schedule of Fees, will be immediately due and payable to Elavon in accordance with Schedule A.

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, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to Elavon's and Member's fulfillment of the obligations related to the listing of Merchant in such databases, and Merchant waives all claims and liabilities Merchant may have as a result of such reporting.
- 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 regarding 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. Merchant will not disclose Cardholder or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as otherwise required or permitted by Laws and the Payment Network Regulations. Merchant must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent unauthorized access to or disclosure of such information. All Value Added Servicers must comply with the requirements of those Security Programs. Merchant is responsible

for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents"). Merchant shall indemnify and hold Elavon and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by any of Merchant's Agents.

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, 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.

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

14) **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.**

a) **Use of Trademarks.** Merchant shall use and display the Payment Networks' marks as may be required or requested by the Payment Networks, 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. 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 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/CID data after authorization for any purpose, including record keeping or additional authorization processing. After authorization, Merchant may only retain the Customer account number, name, and Card expiration date if Merchant has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement.

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 and 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 acknowledges that during the Initial Term and any Renewal Term of this Agreement, a party may disclose certain Confidential Information to the other party. Each party agrees to protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate the other party's Confidential Information, except in connection with the performance of its obligations under this Agreement. 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. The obligations of non-disclosure provided hereunder shall continue during the term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.

c) **Passwords.** If 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 or any of its agent's databases or services; (iii) be liable 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 indemnify, defend, and hold Elavon and Member harmless from 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, 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.** The Agreement (including all Schedules, attachments, exhibits, addenda and other documents incorporated by reference into the Agreement or any of its Schedules, attachments, exhibits or addenda) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and

superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any amendment or Schedule to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Operating Guide; and (v) any other guides or manuals provided to Merchant from time to time.

b) **Jurisdiction and Venue; Governing Law.** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the Laws of the State of Georgia. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Georgia and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Georgia. Jurisdiction and venue for any claim or cause of action arising under the Agreement (other than collection actions by Elavon or Member relating to amounts owed by Merchant under the Agreement) shall be exclusively in the United States District Court for the Northern District of Georgia, and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, that court. If subject matter jurisdiction does not exist in the United States District Court for the Northern District of Georgia, then the exclusive forum and venue for any such action shall be the courts of the State of Georgia located in Fulton County and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, such court. Merchant, Elavon and Member hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant, Elavon and Member each represents to the other that this waiver is knowingly, willingly and voluntarily given.

c) **Exclusivity.** During the Initial Term and any Renewal Term of the Agreement, Merchant will not enter into an agreement with any other entity that provides processing services similar to those provided by Elavon and Member as contemplated by the Agreement without Elavon and Member's written consent.

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 or by

- change in control of Merchant, without the prior written consent of Elavon. 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, provided that such consent shall not be required for (i) the assignment or delegation to an affiliate of Elavon, or (ii) the assignment or delegation to any Person into or with which Elavon shall merge or consolidate, or who may acquire substantially all of Elavon's stock or assets.
- f) **Notices.** Any written notice to the other party under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or (iii) one (1) business day after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to the Merchant's last address shown on the records of Elavon, or to Elavon at 7300 Chapman Highway, Knoxville, TN 37920.
- 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. Merchant acknowledges that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy.
- 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 facsimile, telephone, mobile 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. Notwithstanding the foregoing, 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. 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 invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby if the essential terms and conditions of the Agreement for each party remain valid, legal and enforceable. 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; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.
- p) **Force Majeure.** Elavon and Member shall not be considered in default in performance of their obligations to the extent such performance is delayed by force majeure affecting their ability to so perform. Force majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion or riots, strike, lockout, epidemic, accident, fire, flood, earthquake, windstorm, explosion, lack of or failure of telecommunication facilities, regulation or

ordinance, demand or requirement of any government or governmental agency, or any court, tribunal or arbitrator(s), having or claiming to have jurisdiction over the subject matter of the Agreement or over the parties hereto, or any act of God or any act of government or any cause whether of the same or different nature existing now or in the future which is beyond the reasonable control of Elavon and Member.

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 Merchant Application, 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) **Cardholder Data:** One or more of the following data elements pertaining to a Cardholder's account: card number, Cardholder name (if applicable), card account activity, Cardholder account balance, and/or such other data applicable to the Merchant's card program.
- 27) **Chargeback:** A Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- 28) **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. For the avoidance of doubt, as between Merchant, on the one hand, and Elavon and Member, on the other hand, Cardholder and Transaction information shall constitute Elavon and Member Confidential Information and shall not constitute Merchant Confidential Information.
- 29) **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.
- 30) **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.
 - 31) **Credit Card Associations:** (i) Visa.; (ii) MasterCard; (iii) American Express; (iv) Discover Network; (v) Diners; (vi) JCB; (vii) UnionPay; and (viii) 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.
 - 32) **Customer:** A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder).
 - 33) **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.
 - 34) **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.
 - 35) **Diners:** Diners Club International Ltd.
 - 36) **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).
 - 37) **Discover:** DFS Services LLC.
 - 38) **Discover Network:** The payment network operated and maintained by Discover.
 - 39) **EBT Card:** A card utilized for electronic benefits transfers.
 - 40) **ECS Association:** NACHA and any regional ACH association or network, the Federal Reserve (in its processing of ACH entries or Demand Drafts or other legal replacements or substitutes for a Paper Check, including under the Check Clearing for the 21st Century Act or under applicable provisions of the Uniform Commercial Code), and any other organization or association 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.
 - 41) **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.
 - 42) **Effective Date:** The date set forth in the signature block of Elavon on page 1 of the Agreement.
 - 43) **Elavon:** As applicable, 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.
 - 44) **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.
 - 45) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant.
 - 46) **Electronic Gift Card (EGC):** A special stored value card provided by Merchant that is redeemable for merchandise, services or other Transactions.
 - 47) **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.
 - 48) **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.
 - 49) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
 - 50) **JCB:** JCB International Co., Ltd.

- 51) **Laws:** All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.
- 52) **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.
- 53) **MasterCard:** MasterCard International Incorporated.
- 54) **Member:** The sponsoring Member designated on the Merchant Application 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.
- 55) **Merchant:** The entity set out in the first page of the Agreement and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B.
- 56) **Merchant Application:** The Merchant Application attached hereto as Schedule C 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.
- 57) **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.
- 58) **NACHA—The Electronic Payments Association:** The national association that establishes standards, rules, and procedures governing the ACH Network, including the ACH Rules.
- 59) **OFAC:** The United States Department of the Treasury's Office of Foreign Assets Control.
- 60) **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.
- 61) **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.
- 62) **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.
- 63) **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.
- 64) **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.
- 65) **Processing Services:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- 66) **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).
- 67) **Reserve Account:** The account established pursuant to Section (A)(4).
- 68) **Reserve Amount:** The amount established pursuant to the calculation set forth in Section (A)(4).
- 69) **Reserve Event:** The events designated in Section (A)(4).
- 70) **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.
- 71) **Servicer:** See "Elavon."
- 72) **TOS:** These Terms of Service and all additions, amendments, modifications and replacements to the TOS, as applicable.
- 73) **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).
- 74) **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.
- 75) **UnionPay:** China UnionPay Co., Ltd.
- 76) **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.
- 77) **Visa:** Visa U.S.A., Inc.

SCHEDULE A - SCHEDULE OF FEES

If this schedule is inclusive of exception pricing on any fees or service, written approval of final pricing included herein must be attached for legal review. Primary documentation should be a P&L model including the final pricing, reviewed and signed by the Pricing and Profitability team. If Safe-T Suite pricing is included, see Section VII, C., a signed Schedule L must be included. If Professional Services pricing is included, a separate Statement of Work and Professional Services Agreement must be included. Various forms of written approval will be accepted, but must be approved by appropriate parties within the applicable professional services groups as outlined in the pricing guidelines for these products.

I. ASSUMPTIONS / Merchant PROFILE

Legal Entity Name: Stanislaus County
 Business Segment: Services Government
 Category Description:
 MCC: #N/A
 Multiple MCCs?: Yes
 Locations: 1+

	Annual Volume	Avg. Ticket	Annual Transactions
VISA	\$ 1,000,000	\$ 100.00	10,000
MasterCard	\$ 500,000	\$ 100.00	5,000
Discover			0
UnionPay			0
American Express			0
JCB & Diners			0
PIN-Debit			0
Checks			0
EBT			0
Total	\$ 1,500,000	\$ 200.00	7,500

II. TERM

Initial Term of: Year(s) with: Year(s) Renewal Term

Early Termination Fee Options (Choose One):

Fixed Flat Fee:

OR

Percentage of Settlement: The early termination fee is equal to the sum of (i) the rolling twelve month volume multiplied by the settlement fee percentage; and (ii) sum of the monetary authorization and settlement per item fees multiplied by the rolling twelve month transaction count. This figure is then multiplied by the number of years in the Initial Term, multiplied by a factor of one hundredth (0.01), and then multiplied by the number of months remaining in the Initial Term, based on the month of termination notification.

Annual Volume: \$ 1,500,000
 Settle Fee %:
 Settle Fee \$:
 Annual Transactions: 7,500
 Auth Fee \$:
 Initial Term: 3
 Factor: 0.01
 Estimated Early Term Fee: \$0 x number of months remaining in Initial Term

III. ACCOUNT IMPLEMENTATION & MAINTENANCE FEES

IV. CARD PROCESSING FEES

Billing Method:

#N/A

Service may adjust Merchant's pricing if (i) Merchant's annualized Visa/MasterCard/Discover/UnionPay average ticket or volume varies from projections by more than twenty percent (20%), or (ii) Merchant's Visa/MasterCard/Discover/UnionPay average ticket or volume for any month falls below fifty percent (50%) of such Visa/MasterCard/Discover/UnionPay average ticket or volume during the same month of the previous calendar year.

Choose One Card Processing Pricing Program Below

- OR Tiered Rate
- OR Differential Rate
- OR Transaction Count Tiered Rate
- OR Pass-Through

All Visa, MasterCard, Discover, UnionPay, and debit network authorization and Interchange fees, assessments, dues and other fees and charges are passed to Merchant at cost. Service Transaction processing fees include:

	%	Per Item (\$)
Visa	0.1500%	
MasterCard	0.1500%	
Discover	0.1500%	
UnionPay	0.1500%	
PIN-Debit		

OR Enhanced Pass-Through

V. AUTHORIZATION FEES - Servicer

Telecom Method	IP/DIAL
Additional Fee for Telecom	
	Per Authorization Fee
Visa	\$ 0.1000
MasterCard	\$ 0.1000
Discover	\$ 0.1000
UnionPay	\$ 0.1000
PIN Debit	\$ 0.2500
American Express	\$ 0.1000
Diners	
JCB	

EBT
 Other Card Type
 Frame Relay
 Dial Back-Up for Frame Relay
 Voice (VRU) Authorization
 Voice Authorization with Address Verification
 Operator-Assist Authorization
 Bank Referral Authorization

\$	0.7500
\$	0.7500
\$	0.7500

VI. OTHER TRANSACTION FEES

VII. SERVICES

A. Reporting

Merchant Connect Basic		
Setup Fee		\$0
Monthly Fee		\$0
Merchant Connect Premium		
Setup Fee		\$ 75.00
Monthly Fee	1 User	\$ 15.00
	2-5 Users	\$ 15.00
	6-10 Users	\$ 15.00
	11+ Users	\$ 15.00
OCM Setup Fee		
Monthly Maintenance Fee	1-5 Users	
	6-10 Users	
	11+ Users	
ACS Reporting		
Setup Fee (per MID)		
Monthly Fee		
Customized Reporting		
Setup Fee		
Monthly Fee		
PIN-Debit BIN Reporting		
Setup Fee (per MID)		
Monthly Fee		

B. Foreign Networks & Gateways

C. Security

D. Professional Services

E. Equipment/Software

Purchase			
Equipment Type	Price/Unit	Monthly Fee	Application
Virtual Merchant	\$295	\$14.95	
vx520	\$650		
Vx510	\$399		
Wireless Terminals	\$850	\$20	
Mini Wedge - Virtual Merch	\$90		
Printers (optional)	\$275		

Notes: 1) Shipping and handling fees are included in the equipment price. 2) All newly purchased equipment from Servicer is warranted for one year from date of purchase. Servicer will replace defective equipment. Merchant will pay a \$35/unit swap fee for the shipping and handling of the replacement equipment. After the first year, Merchant will be quoted a new equipment cost based on market pricing. 3) Merchant owned equipment is not warranted by Servicer, but Merchant may purchase new equipment at market pricing from Servicer. 4) See additional pricing sheet as needed.

Lease				
Equipment Type	Lease/Month	Lease Term (months)	Monthly Fee	Quantity

Supplier Name: Fill In Address: Fill In Telephone: Fill In

Notes: 1) Other fees or charges may be applied by Servicer as set forth in the lease agreement. 2) Each location will require a separate lease contract. 3) Servicer will replace defective equipment during the term of the lease. Merchant will pay a \$35/unit swap fee for the shipping and handling of the replacement equipment. 4) All previously leased equipment is not warranted by Servicer. 5) See additional pricing sheet as needed.

Rent				
Equipment Type	Rental Fee/Month/Unit	Rental Terms (months)	Monthly Fee	Quantity

Notes: 1) Shipping and handling fees are billed separately. 2) All rented equipment is warranted for the term of the rental. Servicer will replace defective equipment. 3) See additional pricing sheet as needed.

VIII. VALUE ADDED PRODUCTS

IX. PCI

Channel:

Direct		
Start Date:	3/1/2014	
MID Type:	Single-MID	
MIDS:	1	
Billing Type:	Monthly	
	IP	
	NON-IP	
Monthly Fee:	\$ 7.00	\$ 7.00
Annual Fee:	N/A	N/A

All Merchants must comply with the requirements of the Payment Card Industry Data Security Standards ("PCI DSS"). Elavon requires Level 4 Merchants (determined based on transaction volume) to validate PCI DSS compliance on an annual basis, with initial validation to occur no later than ninety (90) days after account approval. An annual PCI Fee will be charged to Merchants with access to the services of the qualified third party assessor with whom Elavon has a preferred provider relationship. Any Merchant that has not validated PCI DSS compliance within ninety (90) days of account approval, or in subsequent years on or before the anniversary date of account approval, will be charged an additional monthly non-compliance fee of \$34.95 until Elavon is provided with validation of compliance. Merchant may be eligible for Data Breach Coverage following account approval and PCI DSS compliance validation. See the PCI Compliance Program Overview for coverage details and conditions. Unless stated otherwise in the Agreement, these rates are subject to change with a thirty (30) day notification.

Merchant ACKNOWLEDGEMENT

Signature: _____

Printed Name: _____

Title: _____

Date: _____



**SCHEDULE B
AFFILIATED ENTITIES**

Check one:

Merchant named on page 1 only, and all locations will operate under Tax ID Number _____.

Merchant named on page 1, with Tax ID Number _____ and the following affiliate(s) (a separate Form W-9 or Form W-8BEN, as applicable, must be submitted for each entity identified below):

Name	Tax ID Number
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

MERCHANT, on behalf of itself and each of the affiliated entities identified above:

By: [Signature]
Name: Angela Freitas
Title: Director
Planning and Community Development

ELAVON, INC.

By: [Signature]
Name: Patrick Volpe, VP
Title: _____
Date: 1.7.14
(Schedule B "Effective Date")

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: [Signature]
Thomas E. Boze
Deputy County Counsel

MEMBER

By: [Signature]
Name: Patrick Volpe, VP
Title: _____

APPROVED AS TO CONTENT:

By: [Signature]
for Gordon B. Ford
Treasurer/Tax Collector

NEW MERCHANT APPLICATION - GOVERNMENT / INSTITUTIONAL

1 MERCHANT INFORMATION			
LEGAL/CORPORATE NAME: Stanislaus County			
DBA NAME (IF DIFFERENT THAN ABOVE): Planning and Development		DBA PHONE #:	
CONTACT NAME: Steve Treat		DBA FAX #:	
DBA ADDRESS 1 (NO PO BOX): 1010 Tenth St.		CUSTOMER SERVICE PHONE #:	
DBA ADDRESS 2:		PREVIOUS PROCESSOR: UNKNOWN	
CITY: Modesto	STATE: CA	ZIP CODE: 95354	YEAR ESTABLISHED:
EMAIL ADDRESS:			
2 MAILING ADDRESS (IF DIFFERENT THAN ABOVE)			
MAILING NAME:		MAILING PHONE #:	
MAILING CONTACT:		MAILING FAX #:	
MAILING ADDRESS:	CITY:	STATE:	ZIP CODE:
3 CONTACT INFORMATION (AUTHORIZED REP)			
<input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> MANAGER <input type="checkbox"/> AUTHORIZED REPRESENTATIVE <input checked="" type="checkbox"/> OTHER TITLE _____			
FIRST NAME:	MI:	LAST NAME:	
CONTACT ADDRESS:		CONTACT PHONE #:	
CITY: Modesto	STATE: CA	ZIP CODE: 95354	
OTHER MERCHANT INFORMATION			
AVERAGE SALE AMOUNT: \$ 50		DESCRIPTION OF PRODUCT OR SERVICES OFFERED: County Government	
TOTAL MONTHLY VISA/MC/DISC/UNIONPAY SALES: \$ 25,000		MCC: 9399	
CARD PRESENT (SWIPED) 100 %	WHEN DOES THE CUSTOMER RECEIVE THE PRODUCT OR SERVICE?		
CARD PRESENT (NOT SWIPED) _____ %	<input checked="" type="checkbox"/> SAME DAY <input type="checkbox"/> IF NOT SAME DAY, _____ # OF DAYS (INCLUDE SHIPPING TIME FRAME)		
MAIL ORDER _____ %	IS ANY PRODUCT DELIVERY OVER 1 YEAR? <input type="checkbox"/> YES <input type="checkbox"/> NO		
TELEPHONE ORDER _____ %	FOR INTERNET TRANSACTIONS:		
INTERNET _____ %	LIST THE PRODUCT WEB SITE: _____		
TOTAL = 100%	"CONTACT US" EMAIL ADDRESS: _____		
DO YOU OPERATE SEASONALLY: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, PLEASE CHECK MONTHS CLOSED:			
<input type="checkbox"/> JANUARY	<input type="checkbox"/> FEBRUARY	<input type="checkbox"/> MARCH	<input type="checkbox"/> APRIL
<input type="checkbox"/> MAY	<input type="checkbox"/> JUNE	<input type="checkbox"/> JULY	<input type="checkbox"/> AUGUST
<input type="checkbox"/> SEPTEMBER	<input type="checkbox"/> OCTOBER	<input type="checkbox"/> NOVEMBER	<input type="checkbox"/> DECEMBER

FOR INTERNAL USE ONLY			
<input checked="" type="checkbox"/> NEW LOCATION	<input type="checkbox"/> ADDITIONAL LOCATION	EXISTING MID:	CHAIN #:
PORTFOLIO CODE:	FI:	AGENT:	BANK:
CLIENT GROUP #:	ENTITY:	REP #:	AWB:
STATEMENTS <input type="checkbox"/> DBA OR <input checked="" type="checkbox"/> MAILING OR <input type="checkbox"/> W-9	SHIPPING <input type="checkbox"/> DBA OR <input checked="" type="checkbox"/> MAILING OR <input type="checkbox"/> W-9 OR <input type="checkbox"/> SEE SPECIAL INSTRUCTIONS	RETRIEVALS <input checked="" type="checkbox"/> MAIL TO: <input type="checkbox"/> DBA <input checked="" type="checkbox"/> MAILING OR <input type="checkbox"/> FAX TO: <input type="checkbox"/> DBA <input type="checkbox"/> MAILING OR <input type="checkbox"/> ONLINE CASE MANAGEMENT (OCM)	CHARGEBACKS <input checked="" type="checkbox"/> MAIL TO: <input type="checkbox"/> DBA <input checked="" type="checkbox"/> MAILING OR <input type="checkbox"/> FAX TO: <input type="checkbox"/> DBA <input type="checkbox"/> MAILING OR <input type="checkbox"/> ONLINE CASE MANAGEMENT (OCM)
AUTO SEND: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (CHAIN MERCHANTS ONLY - MUST INCLUDE CHAIN SET UP FORM)			

CARD ACCEPTANCE (PLEASE CHECK EACH CARD YOU WISH TO ACCEPT.)						PRICING CATEGORY																																																			
<input checked="" type="checkbox"/> ALL VISA/MASTERCARD/UNIONPAY/DISCOVER CARDS (JCB, DI)						<input checked="" type="checkbox"/> RETAIL <input type="checkbox"/> LODGING <input type="checkbox"/> MO/TO / INTERNET																																																			
<input type="checkbox"/> VISA CREDIT <input type="checkbox"/> VISA DEBIT <input type="checkbox"/> MASTERCARD CREDIT <input type="checkbox"/> MASTERCARD DEBIT <input type="checkbox"/> DISCOVER (JCB, DI) <input type="checkbox"/> UNIONPAY						<input type="checkbox"/> RESTAURANT <input type="checkbox"/> SUPERMARKET <input type="checkbox"/> ARU																																																			
PRICING INFORMATION						FEES																																																			
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<input checked="" type="checkbox"/> IC PLUS* .15 % \$ _____			* RATES ARE FOR ALL CARD ACCEPTANCE TYPES SELECTED. ALL CARD BRAND ASSESSMENTS WILL BE PASSED THROUGH AT COST.																																																						
BANK ACCOUNT (CHECKING ACCOUNTS ONLY)																																																									
DEPOSIT BANK NAME:			ABA/ROUTING #:			DDA ACCOUNT #:																																																			
BILLING BANK NAME (IF DIFFERENT):			ABA/ROUTING #:			DDA ACCOUNT #:																																																			
CHARGEBACK BANK NAME (IF DIFFERENT):			ABA/ROUTING #:			DDA ACCOUNT #:																																																			
POINT OF SALE (EQUIPMENT OR SOFTWARE)																																																									
NETWORK: <input checked="" type="checkbox"/> ELAVON <input type="checkbox"/> OTHER						# OF TIDS (VAR):																																																			
VAR SERVICE PROVIDER (HOSTED):			VAR VENDOR (DISTRIBUTED):			GATEWAY (OPTIONAL):																																																			
			VAR PRODUCT:			AGGREGATOR:																																																			
PURCHASE OR LEASE			PURCHASE		LEASE**		SOFTWARE/WIRELESS																																																		
QTY	POS DESCRIPTION	ITEM CODE	PRICE PER UNIT	TERM MONTHLY	MONTHLY RATE PER UNIT	WIRELESS SETUP PER UNIT	MONTHLY FEE PER UNIT	PER AUTH FEE																																																	
1	Virtual Merchant		\$295		\$	\$	\$14.95	\$																																																	
			\$		\$	\$	\$	\$																																																	
			\$		\$	\$	\$	\$																																																	
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MERCHANT OWNS						SOFTWARE/WIRELESS																																																			
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			\$	<input type="checkbox"/>		\$	\$	\$																																																	
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EXCHANGE/SPECIAL PROGRAMS																																																									
QTY	POS DESCRIPTION	ITEM CODE	PRICE PER UNIT			EQUIPMENT BACK FROM MERCHANT																																																			
		I	\$	USED																																																					
**PLEASE NOTE THAT ALL LEASES MUST COMPLETE THE LADCO LEASE AGREEMENT.						ALL APPLICABLE STATE AND LOCAL TAXES WILL BE APPLIED. <input checked="" type="checkbox"/> SALES TAX EXEMPT																																																			

OTHER CARD TYPES EXISTING			
	SE # _____	AUTH FEE _____	SE # _____
AMEX	(10 DIGITS)	\$ _____	OTHER: _____ \$ _____
EBT	(7 DIGITS)	\$ _____	OTHER: _____ \$ _____
REPORT TOOLS			
<input type="checkbox"/> MCP ONLY <u>OR</u> <input type="checkbox"/> MCP WITH OCM MONTHLY FEE \$ _____ SET UP FEE \$ _____ # USERS _____ SET UP TYPE (CHECK ONE) <input type="checkbox"/> MID <input type="checkbox"/> CHN <input type="checkbox"/> ENT <input type="checkbox"/> ACS MONTHLY FEE \$ _____ SET UP FEE \$ _____ REMOTE ID _____			
ECS PRODUCT SELECTION AND PRICING			
PROCESSING OPTIONS: <input type="checkbox"/> POP (POS IMAGE) <input type="checkbox"/> ARC (POS IMAGE) <input type="checkbox"/> BOC (<input type="checkbox"/> POS IMAGE OR <input type="checkbox"/> CASH OFFICE IMAGE)			
1. ANNUAL CHECK VOLUME: \$ _____		2. AVERAGE CHECK AMOUNT: \$ _____	
3. MAXIMUM CHECK AMOUNT: \$ _____		ECS MONTHLY MINIMUM: \$ _____	
<input type="checkbox"/> CONVERSION WITH GUARANTEE GUARANTEE RATE: _____ % PER TRANSACTION: \$ _____ <input type="checkbox"/> CONVERSION WITH VERIFICATION <input type="checkbox"/> COLLECTIONS PER TRANSACTION: \$ _____ PER RETURN TRANSACTION: \$ _____ <input type="checkbox"/> CONVERSION ONLY <input type="checkbox"/> COLLECTIONS PER TRANSACTION: \$ _____ PER RETURN TRANSACTION: \$ _____		PLEASE CHECK BOX FOR EACH ADDITIONAL SERVICE OPTION <input type="checkbox"/> NSF SERVICE FEE PROCESSING @ \$2.00 PER NSF ITEM. NOT APPLICABLE FOR POP GUARANTEE AND ALL ARC PRODUCTS <input type="checkbox"/> ENQUIRE REPORTING ACCESS: # USERS: _____ @ _____ EACH PER MONTH <input type="checkbox"/> TURN OFF RETURN MEMO ADVICES	
EGC CARDS		EGC PRICING	
CARD STYLE CARD QUANTITY PRICE <input type="checkbox"/> BASIC _____ \$ _____ <input type="checkbox"/> STANDARD _____ \$ _____ <input type="checkbox"/> CUSTOM _____ \$ _____ <input type="checkbox"/> SHARING CARDS EXISTING MID: _____ MAX CARD VALUE \$ _____ (DEFAULT \$500)	<input type="checkbox"/> TRANSACTION PRICING: \$ _____ PER TRANSACTION AND \$ _____ PER MONTH. OR <input type="checkbox"/> MONTHLY PRICING: \$ _____ PER MONTH (INCLUDES _____ TRANSACTIONS PER LOCATION ANNUALLY. ADDITIONAL TRANSACTION BILLED \$0.29 PER TRANSACTION)		
EGC CARRIERS		EGC SERVICE FEES	
<input type="checkbox"/> CARD CARRIERS (ENTER TOTAL CARDS) # _____ OF STYLE _____ \$ _____ X _____ # _____ OF STYLE _____ \$ _____ X _____ # _____ OF STYLE _____ (MULTIPLES OF 100 ONLY)		<input type="checkbox"/> SERVICE FEES (CARDHOLDER CHARGED ON UNUSED BALANCES) - CUSTOM CARDS ARE REQUIRED - FEE MERCHANT CHARGED PER TRANSACTION \$ _____ - APPLY SAME TO ALL STATES? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N (IF NO, COMPLETE FOR EACH STATE) FEE AMOUNT: \$ _____ APPLIED: <input type="checkbox"/> MONTHLY <input type="checkbox"/> QUARTERLY <input type="checkbox"/> ANNUALLY BEGINNING: _____ MONTHS AFTER LAST TRANSACTION DATE (CANNOT BE LESS THAN 12 MOS) LOCK BALANCES AFTER: _____ MONTHS OF NON-USE (DEFAULT 72 MONTHS, CANNOT BE LESS THAN 60 MONTHS)	
EGC OPTIONS		EGC NETWORK	
<input type="checkbox"/> MONTHLY ONLINE ADMIN - # _____ USERS \$ _____ <input type="checkbox"/> GRAPHIC DESIGN SERVICE \$ _____ <input type="checkbox"/> CUSTOM CARD UPGRADE \$ _____		<input type="checkbox"/> MISC FEE - _____ \$ _____ <input type="checkbox"/> MISC FEE - _____ \$ _____ <input type="checkbox"/> ELAVON <input type="checkbox"/> GIVEX	
EGC STANDARD CARD ORDER DETAILS			
CARD STYLE: _____		TEXT COLOR: _____	
JUSTIFICATION: <input type="checkbox"/> LEFT <input type="checkbox"/> CENTER <input type="checkbox"/> RIGHT <input type="checkbox"/> AS SUBMITTED			
IMPRINT: <input type="checkbox"/> LOGO (TO AVOID DELAY, PLEASE SUBMIT ARTWORK TO: EGCARTWORK@ELAVON.COM) OR <input type="checkbox"/> TEXT (IMPRINTING DETAILS MUST BE ENTERED BELOW) ♦ FONT (SELECT ONE): <input type="checkbox"/> Arial <input type="checkbox"/> Book Script <input type="checkbox"/> Times New Roman ♦ Text Case (select ONE): <input type="checkbox"/> Title Case <input type="checkbox"/> UPPER CASE <input type="checkbox"/> lower case <input type="checkbox"/> As submitted			
EGC NOTES			
BILLER DIRECT SERVICES			
<input type="checkbox"/> BILL PAYMENT PORTAL <input type="checkbox"/> ENTERPRISE BILLING SOLUTION			
CHECK SERVICE COMPANY			
NAME: _____		SERVICE #: _____	
PRIMARY PHONE #: _____		SECONDARY PHONE #: _____	
CURRENCY EXCHANGE		MONEY MANAGER	
<input type="checkbox"/> DYNAMIC CURRENCY CONVERSION (DCC) - REBATE: 0.75% DCC ANNUAL REGISTRATION FEE: \$25.00		<input type="checkbox"/> MONEY MANAGER VENDOR: _____	
<input type="checkbox"/> MULTI-CURRENCY		<input type="checkbox"/> WORKING CAPITAL VENDOR: _____	
PINLESS DEBIT			
<input type="checkbox"/> PINLESS DEBIT			

SUBSTITUTE FORM W-9

GOVERNMENT
 NON-PROFIT CHARITABLE OR SOCIAL (INCLUDE DOCUMENTS THAT SUPPORT TAX EXEMPT STATUS)
 OTHER

NAME* : **Stanislaus County**

*NAME (OF BUSINESS) AS SHOWN ON YOUR BUSINESS INCOME TAX RETURNS. FOR SOLE PROPRIETORS, THIS SHOULD ALWAYS BE THE OWNER'S NAME.

ADDRESS: **1010 Tenth Street** TIN (EMPLOYER ID #):
 CITY: **Modesto** STATE: **CA** ZIP CODE: **95354** OR TIN (SOCIAL SECURITY #):

4 MERCHANT REPRESENTATIONS AND CERTIFICATIONS

Merchant Representations and Certifications. By signing below, the applicant merchant ("Merchant") and its representative(s) represent and warrant to Elavon, Inc. ("Elavon" or "member" as applicable), with offices at 7300 Chapman Highway, Knoxville, TN 37920 (collectively, "we" or "us") that (i) all information provided in this merchant application ("Merchant Application") is true and complete and properly reflects the business and financial condition of Merchant; and (ii) the persons signing this Merchant Application are duly authorized to bind Merchant to all provisions of this Merchant Application and the Agreement. The signature by an authorized representative of Merchant on the Merchant Application, or the transmission of a Transaction Receipt or other evidence of a Transaction to us, shall be the Merchant's acceptance of and agreement to the terms and conditions contained in the Agreement including, without limitation, this Merchant Application, the Terms of Service ("TOS") and the Merchant Operating Guide ("MOG") incorporated herein by this reference and located at our website at https://www.merchantconnect.com/CWRWeb/pdf/TOS_ENG.pdf and https://www.merchantconnect.com/CWRWeb/pdf/MOG_Eng.pdf, respectively. If Merchant does not have access to view the TOS or MOG at our website please contact our customer service center. Notwithstanding any such non-receipt of the TOS or MOG, Merchant agrees to comply with the Agreement, and all applicable laws, rules, and regulations including the rules and regulations of the Payment Networks, and understands that failure to comply will result in termination of processing services. Capitalized terms shall, unless otherwise defined in this Merchant Application, have the same meaning ascribed to them in the TOS and MOG.

Merchant must obtain an Authorization Code via electronic terminal or similar device before completing any transaction. Merchant understands that an AUTHORIZATION CODE IS NOT A GUARANTEE OF ACCEPTANCE OR PAYMENT OF A TRANSACTION. RECEIPT OF AN AUTHORIZATION CODE DOES NOT MEAN THAT MERCHANT WILL NOT RECEIVE A CHARGEBACK FOR THAT TRANSACTION.

Merchant and its representative(s) authorize us prior to our acceptance of this Merchant Application and from time to time thereafter, to investigate the business history and background of Merchant and to obtain credit reports or other background investigation reports on Merchant that we consider necessary to review the acceptance and continuation of this Merchant Application. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to us.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. 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. This means we will ask for certain information and identifying documents to allow us to identify you.

This Merchant Application 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 Merchant Application. Delivery of executed counterparts of this Merchant Application may be accomplished by a facsimile transmission, and a signed facsimile or copy of this Merchant Application shall constitute a signed original.

All merchants must comply with the requirements of the Payment Card Industry Data Security Standards ("PCI DSS"). Elavon requires Level 4 merchants (determined based on transaction volume) to validate PCI DSS compliance on an annual basis, with initial validation to occur no later than ninety (90) days after account approval. Any merchant that has not validated PCI DSS compliance within ninety (90) days of account approval, or in subsequent years on or before the anniversary date of account approval, will be charged a monthly non-compliance fee of \$34.95 until Elavon is provided with validation of compliance. Merchant may be eligible for Data Breach Coverage following account approval and PCI DSS compliance validation. See the PCI Compliance Program Overview for coverage details and conditions.

SIGNATURE: X	PRINTED NAME:	TITLE:	DATE:
SIGNATURE: X	PRINTED NAME:	TITLE:	DATE:

SUBMITTED BY (INTERNAL USE ONLY)

To the best of my knowledge, I certify that the information provided in this Merchant Application was provided by the Merchant and is true, complete and accurate. I further certify that the signatures were provided by the Merchant's authorized representative.

SALES REP SIGNATURE: X	PRINTED NAME: myron bouchakian	REP ID #: 24166	DATE:
REP PHONE #: (360)894-3090	REP EMAIL: myron.bouchakian@elavon.com		

FOR INTERNAL USE ONLY

ACCEPTED BY ELAVON, INC.:	DATE:	v.USA-GOV-ELV-0413
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WHAT HAPPENS NEXT?

Thank you for choosing us as your payment processor. We look forward to providing you with the best customer service in the industry. Below are the steps that will be taken to get you up and running quickly.

1. APPLICATION AND CREDIT UNDERWRITING

Your application will be sent to our Operations center for processing. It will be checked for completeness and accuracy. Our credit underwriting specialists will review the information provided, perform the necessary analysis, and approve or decline the application. We will contact you within 24-72 hours if we need you to provide additional information.

2. DEPLOYMENT

Once your application is approved and entered into our systems, our deployment team will prepare any equipment or software for shipment. You should receive your package within two-five days, depending on the method of shipping selected. Look inside the box for your Getting Started Kit — it contains a packing list, your Merchant Identification Number (MID), support materials, and information about training and service.

3. TRAINING

Once you receive your package, please call the training at 866-451-4007 to speak with one of our representatives. If we don't hear from you, we will contact you to schedule a session. The session will cover information about credit card processing, how to set up and use your processing terminal or software solution, and where to find helpful information.

4. PCI COMPLIANCE VALIDATION PROCESS


These days it's more important than ever for you to ensure that cardholder data is protected in an effort to prevent a data breach that could result in significant fines and legal costs. One of the best defenses in preventing a breach is to annually validate compliance with the Payment Card Industry Data Security Standards (PCI-DSS), a set of security guidelines that businesses are required to follow in order to assure that they protect payment card data within their environment. You can find more information at <http://pci.elavon.com>.

A certificate of compliance showing your business meets the PCI DSS standards must be submitted to Elavon within ninety days (90) days of account approval to avoid non-compliance fees. Simply follow the steps below to complete your compliance and receive a Certificate of Compliance.

Step 1. Access the Elavon PCI website at <http://pci.elavon.com>

Step 2. Click "Verify Compliance" along the top of the page

Step 3. Click 

Step 4. Click  in the upper right corner of the page.

Step 5. Complete your registration information and you're well on your way to becoming compliant.

Note: After registration, you will be given a choice to choose either Wizard or Expert level. Elavon strongly suggests that you choose the Wizard option. This option has been tailored to provide clarity and simplification to the certification process.

5. COMMUNICATIONS

You will receive an email from Elavon that contains helpful information about processing with us, as well as a quick link to MerchantConnect, our online support tool. You will also receive a survey that will ask you to score us on a number of factors. We value your feedback, and ask that you kindly take two minutes to rate the sales process, training process, and overall level of service. We will periodically send you information to keep you informed about things that impact your business.

6. SERVICE

Help is always just a phone call away — we operate a 24/7 call center. Call 800-725-1243 to talk with a representative. For online access to your account, go to <https://www.merchantconnect.com>. You can view your statement, display recent deposits, view chargeback and retrieval requests, access customer support, and much more.

Be sure to visit www.newmerchantassist.com for information about activating your account, as well as to find tips to help you better manage costs, protect cardholder data, and stay in compliance with changing regulatory demands. And visit www.merchantconnect.com to review statements and detailed reports about your transaction activity.

Thank you for your business. We look forward to providing you the very best in service.



SCHEDULE I
PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS

PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS. Merchant elects and agrees to accept the Payment Device Processing Services for government entities and institutions, as such services are further described in this Schedule and the Exhibits hereto, and subject to the terms and conditions of the applicable provisions of the Agreement. Except as expressly modified pursuant to this Schedule, 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 I.


Elavon Fee Collection Model (check one):

- Direct Debit
- Monthly Net Settlement
- Invoice (when available)

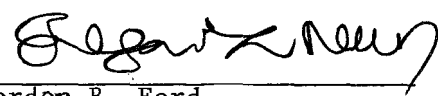
Capitalized terms used and not otherwise defined in this Schedule I shall have the meanings ascribed to them in the Agreement or in the Merchant Operating Guide (“MOG”), which is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule I to the Agreement.

Stanislaus County, California
on behalf of itself and each of the affiliated entities identified on Schedule B to the Agreement (the “MERCHANT”):

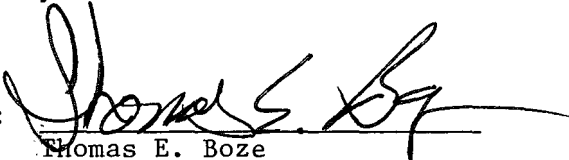
By: 
Name: Angela Freitas
Title: Director
Planning and Community Development

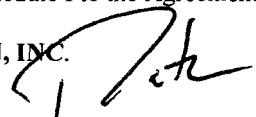
APPROVED AS TO CONTENT:

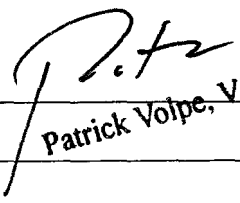
By: 
for Gordon B. Ford
Treasurer/Tax Collector

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: 
Thomas E. Boze
Deputy County Counsel

ELAVON, INC.
By: 
Name: _____
Title: Patrick Volpe, VP
Date: 1.7.14
(Schedule I “Effective Date”)

MEMBER
By: 
Name: _____
Title: _____



Section A – General Provisions Applicable to All Merchants under this Schedule

- 1) **Fees.** Elavon and Member will be compensated for the Processing Services provided under this Schedule as provided in the Agreement as such Agreement may be modified by this Schedule.
- 2) The following provisions hereby replace the like-numbered provisions of the Agreement or are hereby inserted or deleted from the Agreement, as indicated, for Merchants operating under this Schedule.
 - a) **Section (A)(4)(a)(i) Security Agreement.** is deleted.
 - b) **Section (A)(4)(a)(ii) Perfection.** is deleted.
 - c) **Section (A)(6)(a) Accuracy of Information.** is revised to read as follows:

“a) **Accuracy of Information.** Merchant must promptly notify Elavon in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services provided under this Schedule, 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. Merchant will be responsible for all losses and expenses incurred by Elavon or Member arising out of Merchant’s failure to provide proper notice or requested information for any such change, and will not make any claims against Elavon or Member for any losses sustained by Merchant as a result of such failure. Elavon may immediately terminate the Agreement upon a material change to the information in the Merchant Application if such change is not approved by Elavon. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to Merchant’s business information. Merchant may request written confirmation of Elavon’s consent to the changes to the Merchant’s business information.”
 - d) **Section (A)(6)(b)(i) Merchant Responsibilities.** is revised to read as follows:

“i) **Merchant Responsibilities.** 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 (A) any dispute with a Customer, Cardholder or any third party relating to any Transaction, (B) any action taken by Elavon or Member with respect to the DDA or Reserve Account in accordance with the Agreement, or (C) any breach by Merchant of any obligation under this Agreement. 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 any of the foregoing suits, claims, losses, demands or damages.”
 - e) **Section (A)(6)(b)(ii) Elavon Responsibilities.** is revised to read as follows:

“ii) **Elavon Responsibilities.** Elavon will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising out of (A) Elavon’s breach of the Agreement, or (B) Elavon’s negligence, gross negligence or willful misconduct.”
 - f) **Section (A)(8)(b)(ii) Financial Information.** is revised to read as follows:

“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.”
 - g) **Section (A)(11)(a) Products or Services.** is revised to read as follows:

“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 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 compliance by such Value Added Servicer with all 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.”

h) **Section (A)(12)(d)(iii) Early Termination Fee.** [DELETED]

i) **Section (A)(13)(d) Security Program Compliance.** is revised to read as follows:

“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. Merchant will not disclose Cardholder or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as otherwise required or permitted by Laws and the Payment Network Regulations. Merchant must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent unauthorized access to or disclosure of such information. 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 (collectively, “Merchant’s Agents”). Merchant shall be responsible for any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by Merchant or any of Merchant’s Agents.”

j) **Section (A)(14)(c) Passwords.** is revised to read as follows:

“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.”

k) **Section (A)(15)(b) Jurisdiction and Venue; Governing Law.** is deleted.

l) **Section (A)(15)(c) Exclusivity.** is deleted.

3) In addition to the termination rights set forth in Section (A)(12)(b)(i) of the Agreement, Merchant shall have the following termination right added to the Agreement as Section (A)(12)(b)(i)(C):

“C) The Agreement may be terminated by Merchant in the event that sufficient legislative appropriation is not available, provided that Merchant gives Elavon and Member sixty (60) days notice prior to termination.”

Section B – Elavon Fee Collection Models

4) **Direct Debit Fee Collection Model.** If Merchant elects the Direct Debit fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement remains unchanged and in full force and effect.

5) **Monthly Net Settlement Fee Collection Model.** If Merchant elects the Monthly Net Settlement fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:

a) **Section (A)(5)(a) Fees.** 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 Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. 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) on the first day of each month for the prior month’s Processing Services, and (ii) following the first day of the month for fees and other amounts owed to Elavon and Member pursuant to Schedule A that are not available or reasonably calculable as of the last day of a particular 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.

6) **Invoice Fee Collection Model.** If Merchant elects the Invoice fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:

a) **Section (A)(5)(a) Fees.** 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 Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated once each month for the previous month's activity. Elavon will send Merchant an invoice reflecting the fees due, which Merchant must pay within thirty (30) days of the invoice date. In addition to all other available remedies, Elavon and Member may offset any outstanding or uncollected amounts that are more than ninety (90) days past due from (i) any amounts they would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon or Member may owe Merchant under the Agreement.

Section C – Government/Public Institution Service Fees

7) **Government/Public Institution Service Fees.** If Merchant is both eligible to charge or to have Elavon charge Government/Public Institution Service Fees (as defined on Exhibit B hereto) and has elected on Exhibit A to manage or to have Elavon manage Government/Public Institution Service Fees, then Merchant shall comply with the Government/Public Institution Service Fee Terms and Conditions attached hereto as Exhibit B.



EXHIBIT A
GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE ENROLLMENT

ENROLLMENT FORM FOR GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE PROGRAMS

Form header with fields: Date, Pricing Quote #, New Location/Add/Update Service checkboxes, Rep Name, Rep Phone #

Merchant Information section with fields: Existing MID, Chain #, DBA Name, DBA Phone #, Contact Name, DBA Fax #, DBA Address, City, State, Zip, Contact Name (First and Last), Training Phone #, Goods or Services Sold, Federal Tax ID

Processing Options section with sub-sections: Government/Public Institution Service Fee Funding Model, Government/Public Institution Service Fee Services Programs, Government/Public Institution Service Fee Pricing, Payment/Transaction Types for GPISF Assessment, Elavon Product Supporting GPISF Assessment to be Used by Merchant

Merchant Acknowledgment section with a signature line and fields for Name & Title and Date

- 1. "Elavon-managed" means that Elavon establishes the amount of the Government/Public Institution Service Fee charged and retains the Government/Public Institution Service Fee in lieu of Merchant's obligation to pay Elavon the per transaction fees as set forth in the Agreement.
2. "Merchant-managed" means that Merchant establishes the amount of the Government/Public Institution Service Fee charged and retains the Government/Public Institution Service Fee. Merchant pays Elavon the per transaction fees as set forth in the Agreement for all such Transactions.



EXHIBIT B

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

ASSESSMENT OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES. Terms and Conditions (“T&Cs”) 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 Government/Public Institution Service Fee to its Customers for Eligible Transactions, the following provisions apply to such Eligible Transactions and the related Government/Public Institution Service Fees 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. These T&Cs are intended to complement and are subject to your Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement or the MOG. In the event of a conflict between these T&Cs and other terms of the Agreement or the MOG, the terms of these T&Cs 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) at Merchants operating in certain designated merchant category codes (“MCCs”). For the avoidance of doubt, fees referred to as a “service fee” or “convenience fee” (in the context of the MCCs described herein) as used in the applicable rules of the Credit Card Associations, 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 “Government/Public Institution Service Fee.”

4) GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE SERVICES.

a) Government/Public Institution Service Fee Services.

At Merchant’s election, Merchant may choose to charge a Government/Public Institution Service Fee (a Merchant-managed Government/Public Institution Service Fee) or to have Elavon charge a Government/Public Institution Service Fee (an Elavon-managed Government/Public Institution Service Fee) 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 Government/Public Institution Service Fee, Merchant agrees that any Government/Public Institution Service Fee 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 Government/Public Institution Service Fee, Merchant agrees that Elavon may adjust the Government/Public Institution Service Fee 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 Government/Public Institution Service Fees if Merchant’s Chargeback rates materially exceed industry averages. If Merchant elects a Merchant-managed Government/Public Institution Service Fee, Merchant will receive and retain the Government/Public Institution Service Fee 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. Merchant agrees that the minimum annual Transaction fees (which includes any Elavon-retained Government/Public Institution Service Fees) paid to Elavon and Member for Transactions processed under this Schedule shall be at least equal to the “Minimum Annual Fees” amount identified on Exhibit A hereto. For any partial period of less than a full year during the term of this Schedule, the actual amount of fees paid by Merchant to Elavon for Transactions processed under this Schedule shall be annualized to determine if Merchant has satisfied this obligation. At the end of each year (the first of which shall begin on the Schedule I Effective Date and each successive year of which shall begin immediately upon the conclusion of the preceding year), Elavon may notify Merchant if the actual Transaction fees paid by Merchant in respect of this Schedule is less than the Minimum Annual Fees amount. In the event that Merchant’s actual Transaction processing fees under this Schedule for any such period are less than the Minimum Annual Fees, Merchant shall promptly pay Elavon and Member the difference.

b) Conflict of Laws. To the extent Merchant’s state or other governing body has passed legislation that requires assessment of Government/Public Institution Service Fees or other fees or charges by government agencies as a component of card acceptance, such laws will control in the event of any conflict with Payment Network Regulations. To the extent that assessment of any Government/Public Institution Service Fees or other fees or charges by government agencies as a component of card 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 GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES. This Section 5 sets forth the requirements of the Credit Card Associations applicable to Government/Public Institution Service Fees. 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 Government/Public Institution Service Fee to Transactions involving Discover Network Payment Devices on the same terms as Government/Public Institution Service Fees 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 Government/Public Institution Service Fee on certain Transactions.

i) Eligible Merchants. Merchants operating in MCC 8220 (College Tuition), 8244 (Business), 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 Government/Public Institution Service Fee 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 Government/Public Institution Service Fee on any Transaction involving payment for goods or services (including tax payments) to the Eligible Merchant (each an “Eligible Transaction”).

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 Government/Public Institution Service Fee 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 Government/Public Institution Service Fee.

3) Merchant may not also assess a separate Convenience Fee (as such term is defined in Visa’s Payment Network Regulations).

4) The Government/Public Institution Service Fee 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) Merchant must feature the opportunity to pay with Visa at least as prominently as all other payment methods.

7) 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 Government/Public Institution Service Fee.

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 Government/Public Institution Service Fees on Eligible Transactions.

i) Eligible Merchants. Merchants operating in MCCs 8211 (Elementary Schools), 8220 (Colleges/Universities), 9211 (Courts), 9222 (Fines), 9311 (Taxes) and 9399 (Miscellaneous Government Services) are eligible to charge or to have Elavon charge a Government/Public Institution Service Fee 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 Government/Public Institution Service Fee 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 for Eligible Government and Education Payments” program and/or the convenience fee program of Discover Network, in each case to the extent applicable and required.

2) The Government/Public Institution Service Fee 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 Government/Public Institution Service Fee.

3) The Government/Public Institution Service Fee must apply in the same amount regardless of the Credit Card or signature Debit Card type accepted for payment of a given Eligible Transaction within a particular payment channel.



This requirement does not apply to payments made by ACH, cash, check or PIN-based Debit Card.

4) The Government/Public Institution Service Fee 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 card 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 Government/Public Institution Service Fees. If the Government/Public Institution Service Fee 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 Government/Public Institution Service Fee is Elavon-managed, Elavon may adjust the Government/Public Institution Service Fee amount, bill the Merchant for charges in excess of the Government/Public Institution Service Fee to recover losses related to Transactions that did not qualify for optimal Interchange rates or for applicable Credit Card Associations’ reimbursement programs, including, but not limited to, losses related to Merchant’s failure to distinguish between pricing of Visa signature Debit Cards and all other card types for transactions processed within the Visa Government and Higher Education Payment Program.

ii) Approval Required to Charge or Adjust Government/Public Institution Service Fee. Merchant may not charge or adjust Government/Public Institution Service Fees unless Merchant has disclosed such fees to Elavon previously in writing and Merchant has been approved by Elavon to charge or adjust such Government/Public Institution Service Fees. If Merchant charges or adjusts a Government/Public Institution Service Fee 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 immediately terminate the Agreement 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 Government/Public Institution Service Fee, the “Merchant name” field of the Visa Transaction clearing record must include the name of the Value Added Servicer (rather than the name of Merchant).

6) ADDITIONAL PROCESSING REQUIREMENTS. If Merchant voids an underlying Eligible Transaction, the associated Government/Public Institution Service Fee must be voided as well. If Merchant processes a refund for an underlying Eligible Transaction, Merchant must disclose to Customers that Government/Public Institution Service Fees are non-refundable. Merchants that desire to charge or to have Elavon charge Government/Public Institution Service Fees will be assigned separate MIDs for use in connection with Eligible Transactions and related Government/Public Institution Service Fees. MIDs assigned for use with Eligible Transactions and/or Government/Public Institution Service Fees may not be used to process Transactions that are not Eligible Transactions.

7) PAYMENT AND TRANSACTION TYPES SUPPORTED. Government/Public Institution Service Fee 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 Credit Card Association. Government/Public Institution Service Fee capability is supported only through Elavon products specified on Exhibit A hereto. Not all payment and transaction types are supported for all products. Additionally, Merchant proprietary software, POS Devices, or Value Added Servicers may be certified to process Elavon-managed Government/Public Institution Service Fee Transactions. Closed network prepaid cards, electronic benefits transfer, and dynamic currency conversion are not supported for Government/Public Institution Service Fee processing.

Stanislaus County Planning and Community Development
Building Permits Division E-Payment Business Case

The long term goal of the Planning and Community Development Department, Building Permits Division is to provide the most cost effective, accessible, user-friendly means of paying for and obtaining a building permit.

The Accela Citizen Access web portal will substantially reduce the need for counter visits for over the counter (OTC) permits and will provide 24-hour online and telephone access to Building Permit operations. Citizen Access will allow for on-line building permit issuance and inspection requests. Citizens will be able to access services and carry out entire processes online from looking up information, to applying and paying for permits, to printing off completed paperwork. The County Interactive Voice Response (IVR) systems will be integrated into the Citizen Access module to allow for automated telephone based inspection scheduling as well.

The Citizen Access web portal will offer several types of over the counter (OTC) permits to be issued online, they are listed below:

Demolition	Electrical Service	Fireplace-Insert/Liner
Furnace Wall/Floor	Gas Service	General Inspection/Fire
Heating/Air Conditioning	Re-Roof	Sewer Line
Stucco/Siding	Water Lines	Water Heater

The Building Permits Division issued 1,234 permits over the counter in Fiscal Year 12/13 and the gross revenue generated from these permits was \$163,555, which is typical of the past 5 years. The payment method for these permits is by cash or check. Some customers use our fax in permit system in which a trust fund is set up for payment, yet the customer must still come in to our counter for the issuance of the permit.

With the implementation of the E-Payment solution, it is estimated that customers will process 25% to 40% of the OTC permits online in the first year. As the word spreads throughout the construction industry, it is expected within 2 to 3 years that 80% of these types of permits will be issued online.

Implementation of E-Payments will reduce the number of customer visits to the Building Permits Division counter proportionately with the percentages noted above. With this reduced volume of visits from roofing companies, heating and air conditioning installers, electricians and plumbers, it will provide staff more time to work on the full review projects as well as other duties. This will also have an effect on our financial accounting duties as they will not be presented with amounts of currency each day to balance. The revenue will be generated into the Accela program.

While it is hopeful that implementing E-Payments will provide a time savings to the staff, implementing E-Payments is anticipated to result in more efficient customer service for the public we serve. Customers will no longer be required to make visits to our permit counter, saving valuable time and travel costs.

The Department will absorb the cost of the E-Payments fees through the current budget appropriations.