

ELAVON MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is between Elavon, Inc. ("Elavon") and the entity identified as Company in the signature block below ("Company"). The Agreement will be effective on the date in Elavon's signature block (the "Effective Date"). The Agreement consists of:

- This signature page, the General Terms and Conditions, and Appendix 1 – Definitions;
 - Schedule A – Fees;
 - Schedule B – Company Application
 - Schedule C – Affiliated Entities
 - Schedule D – Processing Services Terms;
 - Schedule E – SAFE-T Terms;
 - Schedule F – Services in Canada;
 - Schedule G – Services in Puerto Rico;
 - Schedule H – Government Terms;
 - Schedule I – Electronic Check Services Terms; and
- Any other schedules and any applicable Statements of Work entered into under the Agreement.

Agreed and accepted

County of San Mateo Treasurer
on behalf of itself and each Affiliated Entity ("Company"):

By: *[Signature]*
Name: *Jamie Bennett*
Title: *Assessor-Tax Collector*
Date: *10/31/17*

ELAVON
By: *[Signature]*
Name: Timothy I. Miller
Title: Senior Vice President
Global Credit and Risk
Effective Date: *10/30/17*

If Company is receiving Processing Services under Schedule D to the Agreement, the Member, as designated on the Company Application (attached as Schedule B), agrees to and accepts the Agreement solely as to the terms in Schedule D, Section 1.7.

MEMBER
By: *[Signature]*
Name: Timothy I. Miller
Title: Senior Vice President
Global Credit and Risk
Date: *10/30/17*

GENERAL TERMS AND CONDITIONS

1. **Defined Terms.** Capitalized terms used in the Agreement will have the meanings stated in Appendix 1.
2. **Scope of Agreement.** The Agreement governs Company's receipt and use of the Services selected by Company in the Company Application. In addition to the terms of the Agreement, Company will comply with the general terms of the Operating Guide, any terms of the Operating Guide applicable to each selected Service, and any Documentation Elavon provides to Company in writing from time to time that is applicable to the Services.
3. **Affiliated Entities.** Company's Affiliated Entities may use the Services so long as they comply with all restrictions, obligations, and requirements imposed on Company. Company will remain fully responsible for any use of the Services by any Affiliated Entities, will cause its Affiliated Entities to comply with the terms and conditions of the Agreement, and will be liable for the acts and omissions of each Affiliated Entity, in each case as though each Affiliated Entity were Company. Affiliated Entities may not enforce the terms of the Agreement against Elavon. The parties may add Affiliated Entities to Schedule C after the Effective Date by substituting a new Schedule C that is in writing and signed by Company and Elavon. Company will promptly notify Elavon in writing if any entity on Schedule C no longer qualifies as an Affiliated Entity that Company allows to use the Services. For any acts or omissions of an Affiliated Entity giving rise to a termination right by Elavon under Section 4.2, Elavon may terminate the Agreement with respect to (i) only such breaching Affiliated Entity, or (ii) Company and all Affiliated Entities. If Elavon terminates the Agreement under Section 4.2 as to Company, the Agreement will terminate with respect to Company and all Affiliated Entities.
4. **Term and Termination**
 - 4.1. **Term.** Unless terminated as provided below, the Agreement will remain in effect for the Initial Term stated in Schedule A. Thereafter, the Agreement will automatically renew for successive Renewal Terms as stated in Schedule A unless terminated as provided below.
 - 4.2. **Termination.**
 - (a) **Non-Renewal.** Either party may terminate the Agreement effective at the end of the Initial Term or any Renewal Term by providing written notice of non-renewal to the other party at least 90 days prior to the expiration of the then current term.
 - (b) **By Either Party for Cause.** Either party may terminate the Agreement if any of the following conditions remain uncured 30 days after the terminating party notifies the other party in writing of the existence of the condition:
 - (i) The other party has failed to pay the party an undisputed amount owed to the party under the Agreement; or
 - (ii) The other party has failed to perform a material obligation under the Agreement.
 - (c) **By Elavon for Cause.** Elavon may terminate the Agreement immediately in writing if any of the following occur:
 - (i) A material adverse change in Company's financial condition;
 - (ii) The commencement of a Bankruptcy Proceeding by or against Company;
 - (iii) Any representation by Company 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;
 - (iv) Any Payment Network or application of Payment Network Regulations requires Elavon to terminate the Agreement or cease processing Transactions for Company; or
 - (v) Assignment of the Agreement or a Change of Control of Company without Elavon's written consent.
 - (d) **Force Majeure.** Company will have the termination right stated in Section 18.14 if a Force Majeure occurs.

- (e) **Additional Termination Rights.** If Company is receiving Processing Services, Elavon also will have the termination rights set out in Section 1.6 of Schedule D.

4.3. **Account Closing.**

- (a) Company acknowledges that closing Company's account with Elavon may take up to 30 days following Elavon's receipt of written notice of termination.
- (b) All obligations of a party regarding Transactions serviced prior to termination will survive termination. Company will maintain enough funds in the DDA following termination to cover all Chargebacks and returns (if Company is receiving Processing Services), adjustments, fees, fines, penalties, assessments and charges from the Payment Networks and other amounts due under the Agreement for at least 180 days after termination.

- 4.4. **Early Termination Fee.** If Company terminates the Agreement before the end of the Initial Term (except for termination for Elavon's uncured default as stated in Section 4.2(b), termination pursuant to Section 4.2(d), or for discontinuance of the Services as stated in Section 7), Company will immediately pay Elavon an Early Termination Fee. Company acknowledges that the Early Termination Fee is not a penalty, but rather a reasonable estimate of the damages Elavon sustained because of Company's termination of the Agreement before the end of the Initial Term.

4.5. **Transition Assistance.**

- (a) Subject to Section 4.5(b) and at Company's request, Elavon will provide Company with up to 90 days of Elavon's standard assistance in transitioning Services provided under the Agreement to Company or a provider designated by Company, which transition assistance will begin on the termination date of the Services (or such earlier date following notice of termination as may be requested by Company) (the "**Transition Period**") and will be at no additional cost to Company. Elavon will continue to perform, and Company will continue to pay Elavon, in accordance with the Agreement during any such Transition Period. Company will pay Elavon, at Elavon's then-standard rates, for any services in addition to Elavon's standard transition assistance. Each party will fully comply with all provisions of the Agreement during any Transition Period.
- (b) Elavon will not be obligated to provide transition assistance to Company under Section 4.5(a) if (i) Elavon terminates the Agreement for cause under Sections 4.2(b), (c), or (e), or (ii) Company chooses not to renew the Agreement in accordance with Section 4.2(a).

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

- 5.1. Company will be responsible for the distribution of all passwords and user IDs issued to any Authorized User and for maintaining the confidentiality and security of Authorized User's passwords and user IDs. Company will ensure that the access granted to each Authorized User to the Services is limited to only the access and information necessary for the Authorized User to perform his or her job functions on behalf of Company. Company will ensure that all Authorized Users will be trained and qualified to access and use the Services in accordance with the terms of the Agreement, the Operating Guide and any Documentation. Company is responsible for its Authorized Users' compliance with the terms of the Agreement, the Operating Guide, and the Documentation, for all acts or omissions of the Authorized Users, and for all use of any user ID and password other than by Elavon or Elavon's third-party contractors or use by third-parties of user IDs and passwords obtained by such third parties from Elavon or Elavon's third-party contractors.

- 5.2. Company will not, and will ensure that its Authorized Users do not:

- (a) access or use the Services for any purposes other than for its own internal business purposes (except as authorized by Elavon) as disclosed to Elavon in writing;
- (b) modify, reverse engineer, disassemble or decompile any part of the Services or Elavon Materials;
- (c) knowingly transmit any data that contains software viruses, time bombs, worms, Trojan horses, spyware, disabling devices, malicious code, or other harmful or deleterious computer code, files or programs to or through the Services; provided, that Company will use commercially reasonable measures (at least industry standard) to screen for the foregoing.

- (d) interfere with or disrupt the servers or networks connected to or providing the Services;
- (e) remove, change or obliterate the copyright, trademark or other proprietary protection legends or notices that appear in connection with access to and use of the Services or any Elavon Materials; or
- (f) copy, re-sell, republish, download, frame or transmit the Services or Elavon Materials, including in order to act as a consultant for any third party or, unless otherwise permitted under the Agreement, as a service bureau, outsourcing or application service provider for any third parties, or otherwise allow any third party to use or access the Services.

5.3. Company is responsible for changing the user IDs and passwords of its Authorized Users if it believes that any of those user IDs or passwords have been stolen or might otherwise be misused and for disabling any Authorized User's IDs and passwords promptly upon the termination of employment of such Authorized User or the cessation of such Authorized User's need to access the Services. Company will promptly notify Elavon if Company believes the Services or Elavon's databases have been compromised by use of a user ID or password associated with the Services.

6. Fees and Taxes.

6.1. **Compensation.** Company will compensate Elavon for all fees and other amounts due for the Services and Equipment in accordance with Schedule A, any Statement of Work, and any additional application or setup forms (including enrollment forms), addenda or schedules mutually agreed upon in writing by Elavon and Company. Such amounts will be calculated and debited from the DDA (or, if applicable and Company is receiving Processing Services, the Reserve Account), once each day or month for the previous day's or month's activity, as applicable, or (if Company is receiving Processing Services) will be deducted from the funds due Company under the Agreement.

6.2. **Research.** Company will pay Elavon at its standard rates for each research item as stated in Schedule A, including research required to respond to any third party or government subpoena, summons, levy, garnishment or required reporting on Company's account.

6.3. **Change of Fees.** Elavon will not amend the fees for the Services for the Initial Term except (i) as stated in Schedule A or (ii) to pass through to Company increases in interchange, assessments or charges, or increased or new fees imposed by a third party (including a Payment Network).

6.4. Other Amounts Owed.

(a) In addition to the amounts described in Sections 6.1 and 6.2 above, Company will promptly pay Elavon for:

(i) Any fines, penalties, assessments, or charges (including all fines, penalties, assessments, or charges by the Payment Networks as a result of Company's violation of Payment Network Regulations, whether or not such amount is assessed directly against Company), attributable to the Agreement (other than those directly attributable to Elavon's acts or omissions); and

(ii) if Company is receiving Processing Services, any Chargebacks, returns, adjustments and associated fees.

Elavon may debit these amounts from Company's DDA (or, if applicable and Company is receiving Processing Services, the Reserve Account) by ACH, or, if Company is receiving Processing Services, offset these amounts from funds Elavon otherwise owes to Company. If such offset or ACH debit does not fully reimburse Elavon for the amount owed, Company will promptly pay Elavon such amount upon demand.

(b) Elavon will charge interest on all uncollected amounts owed to Elavon that are more than 30 days past due at a rate no greater than the maximum rate of interest permitted under Laws.

6.5. **Taxes.** Company will pay all taxes and other charges imposed by any governmental authority on the Services and Equipment provided under the Agreement, excluding any taxes based on Elavon's property or net income. If Company is a tax-exempt entity, Company will provide Elavon with an appropriate certificate of tax exemption.

6.6. **Demand Deposit Account.** Company will establish and maintain one or more DDAs to facilitate payment of fees to Elavon. Company irrevocably authorizes Elavon and its Affiliates that provide Services under the Agreement to

initiate ACH credit and debit entries to the DDA in order to pay the fees and any other amounts that may be due by Company to Elavon under the Agreement, and Company authorizes its depository institution to grant Elavon access to any information or records regarding the DDA reasonably requested by Elavon to debit or credit the DDA and to otherwise exercise Elavon's rights under the Agreement with respect to the DDA. The foregoing authorizations will remain in effect after termination of the Agreement until all of Company's payment obligations to Elavon have been paid in full. Elavon has the right to rely on written instructions submitted by Company requesting changes to the DDA. If Company changes the DDA, the ACH authorizations established under this Agreement will apply to the new account, and Company will provide Elavon such information regarding the new DDA as Elavon deems necessary to effect debits from or credits to the DDA as provided under the Agreement. It may take Elavon up to 10 business days after Elavon's receipt of a written notice from Company to reflect in Elavon's system any change to Company's DDA.

7. **Modifications and Discontinuance of Services.** Elavon may modify the Services or particular components of the Services from time to time and will use commercially reasonable efforts to notify Company of any material modifications. If Elavon ceases to make a Service selected by Company generally available to its merchant customers (a "**Discontinued Service**"), Elavon may cease providing such Discontinued Service to Company upon 180 days' advance written notice. If discontinuing the Discontinued Service has a material impact on Company, Company may terminate the Agreement without any obligation to pay the Early Termination Fee by notifying Elavon in writing within 60 days of Company's receipt of Elavon's notice of the Discontinued Service. If Company does not terminate the Agreement within such 60-day period, the Agreement will continue in full force and effect without the Discontinued Service. Elavon will not be liable to Company or to any third party for any modification or discontinuance of the Services as described in this Section 7. Company may request transition assistance from Elavon under Section 4.5 for any Discontinued Service.
8. **Compliance with Laws and Payment Network Regulations.**
 - 8.1. **General.** Elavon and Company will comply with all Laws and Payment Network Regulations applicable to the selected Services.
 - 8.2. **Office of Foreign Assets Control Compliance.** Company acknowledges that Elavon is an entity governed by the Laws of the United States of America and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including the Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto.
 - 8.3. **Export Laws Compliance.** Company will comply with all United States export Laws governing the export and re-export of hardware, software or technology applicable to the Services and Equipment, including United States Department of State International Traffic In Arms Regulations (ITAR), United States Foreign Corrupt Practices Act, United States Commerce Department's Export Administration Regulations, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto. Company will not, and will not request Elavon to, export, directly or indirectly, any technical data pursuant to the Agreement or any product using any such data to any country for which the United States Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
 - 8.4. **Customer Identification.** To help the United States Government fight the funding of terrorism and money laundering activities, federal law requires financial institutions and their affiliates to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Company will provide certain information and identifying documents requested by Elavon to allow Elavon to identify Company.
9. **Confidentiality; Data Security and Use.**
 - 9.1. **Confidentiality.**
 - (a) **Confidential Information Generally.** Each party will protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and will not use, reproduce, distribute, disclose, or otherwise disseminate the other party's Confidential Information except in connection with the performance of its obligations or rights under the Agreement. The Receiving Party acknowledges that any breach of this Section 9.1 by the Receiving Party may result in irreparable harm to the Disclosing Party for which

monetary damages may not provide a sufficient remedy. Therefore, the Disclosing Party may seek both monetary damages and equitable relief with respect to any such breach without any obligation to post bond.

- (b) **Disclosure of Confidential Information.** If the Receiving Party or its agents become legally required or compelled (by any publicly filed and noticed deposition, interrogatory, request for documents, civil subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party if permitted will provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. If the Disclosing Party does not obtain a protective order or other remedy, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party is legally required to disclose and to use reasonable efforts to obtain assurances that confidential treatment will be accorded such Confidential Information. Neither party will be obligated to notify the other of the receipt of any non-public or confidential investigative demand, summons, or grand jury subpoena or other similar process that requires confidentiality on the part of the applicable party.
- (c) **Duration of Obligations.** The non-disclosure obligations in this Section 9.1 will continue (i) with respect to Confidential Information that does not constitute a trade secret, for three years following termination, and (ii) with respect to Confidential Information that is a trade secret under Laws, for the longer of three years after termination and such period as the information retains its status as a trade secret under Laws.
- (d) **Obligations on Termination.** At the request of the Disclosing Party upon the termination of the Agreement, the Receiving Party will promptly delete or return to the Disclosing Party all originals and copies containing or reflecting any Confidential Information of the Disclosing Party (other than those required to be retained by Law, or that would be unreasonably burdensome to destroy, such as archived computer records). If a dispute arises between the parties in relation to the Confidential Information or the Agreement, the Receiving Party may retain a copy of such Confidential Information as the Receiving Party reasonably determines is necessary for its defense of the dispute. In all cases, any retained Confidential Information will continue to be subject to the terms of the Agreement.

9.2. Data Security and Use.

- (a) **Security Programs Compliance.** Elavon and Company will each comply with the applicable requirements of the Security Programs.
- (b) **PCI-DSS Attestation.** Company may review Elavon's current PCI-DSS compliance status on the Payment Network websites as available. Elavon will undergo an annual assessment of its compliance with the Security Programs and, if applicable to the Services provided under the Agreement, the Payment Application Data Security Standards. At Company's written request, Elavon will provide to Company a written attestation of Elavon's compliance with the security requirements related to Cardholder Data promulgated by the Payment Card Industry Security Standards Council.
- (c) **Elavon Data Breach.** If Elavon suffers an Elavon Data Breach, then it will follow all Laws and Payment Network Regulations with respect to such Elavon Data Breach including providing the required reporting and forensic audits to the Payment Networks. Elavon will not pass-through or require Company to be liable to Elavon for any fees, fines, penalties, assessments, or charges levied against Elavon by the Payment Networks in connection with an Elavon Data Breach. Unless otherwise required or directed under Law, the Payment Network Regulations, or a Payment Network, Elavon will not (i) contact or inform any Customer of whose data may have been the subject of an Elavon Data Breach of the occurrence of the Elavon Data Breach, or (ii) publicly disclose that information provided by Company to Elavon was the subject in any part of an Elavon Data Breach. If Elavon is legally obligated or the Payment Network Regulations or Payment Networks require Elavon to contact Customers as part of an Elavon Data Breach, Elavon will limit the notices to such Customers to those required by the legal obligation, the Payment Network Regulations, or the Payment Networks, or as approved by Company.
- (d) **Cardholder Data and Transaction Information.**
 - (i) Elavon and Company will ensure the security of Cardholder Data and Transaction Information in accordance with all Laws and Payment Network Regulations. Elavon and Company will retain

Cardholder Data and Transaction Information for the duration required by Laws and the Payment Network Regulations and thereafter will destroy, in a manner that will render the information unreadable, all such information that is no longer necessary or appropriate to maintain for ordinary business purposes.

- (ii) Company will not disclose Cardholder Data or Transaction Information to any third party, except to a Service Provider, or as otherwise required by Laws and the Payment Network Regulations. Company will not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose. After authorization, Company will retain only the Customer account number, name, and card expiration date if Company has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement. If there is a failure or other suspension of Company's business operations, including any Bankruptcy Proceeding, Company will not sell, transfer, or disclose Cardholder Data or Transaction Information to third parties, and Company will (a) return this information to Elavon, or (b) provide acceptable proof of destruction of this information to Elavon.
- (iii) Elavon acknowledges that Company may collect information about Company's Customers as part of a Company sales transaction (e.g., price paid, time, store identifier, SKU information) regardless of the Customer's payment type and not in connection with the Services, and that the Agreement does not restrict Company's retention, use or disclosure of such information even though some of that information may overlap with elements of Transaction Information.
- (iv) Notwithstanding anything in Section 9.1, any Cardholder Data, Transaction Information, and information regarding Company, its principals, Affiliates, or agents included on the Company Application or that Elavon otherwise obtains in connection with the Agreement may be:
 - (1) Used by Elavon and its Affiliates, third-party contractors, agents, and referral partners (a) to provide the Services and related functions to Company and to respond to any further application for Services, (b) for administrative purposes and to maintain Company's account pursuant to the Agreement, and (c) for Elavon's internal fraud and compliance monitoring;
 - (2) Disclosed and shared by Elavon for reporting purposes to credit rating agencies and to the financial institution where the DDA is maintained;
 - (3) Used to enhance or improve Elavon's products or services generally;
 - (4) Used or disclosed by Elavon in the course of any actual or potential sale, reorganization or other change to Elavon's business;
 - (5) Collected, used and disclosed by Elavon as required by Laws (e.g., for tax reporting or in response to a subpoena); and
 - (6) Retained for such periods of time as Elavon requires to perform its obligations and exercise its rights under the Agreement.

Elavon may prepare, use, and share with third parties, aggregated, non-personally identifiable information derived from Transaction Information of all of Elavon's customers or specific segments of Elavon's customers.

10. Assessment and Audit

- 10.1. **Elavon Reports on Internal Controls.** Elavon will engage independent, qualified, external auditors (the "**Elavon Auditors**") to assess the internal controls and information security measures in place related to the Services ("**Internal Controls Assessment**"). The Internal Controls Assessment will conform with Laws, applicable Payment Network Regulations and industry standards, including generally accepted auditing standards such as the Statement on Standards for Attestation Engagements Number 16 "Reporting on Controls at a Service Organization" issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (the "**SSAE 16**"). The frequency of the Internal Controls Assessment will be consistent with industry standards. Upon Company's written

request, but not more frequently than once every 12 months, Elavon will provide a copy of its most recent SSAE 16 SOC 1 report, which will be deemed Elavon's Confidential Information.

- 10.2. **Company Audit.** If Elavon reasonably suspects that it is subject to a financial or reputational risk due to Company's acts or omissions, Company authorizes Elavon and its agents to perform an audit or inspection of Company's operations and records to confirm Company's compliance with the Agreement upon reasonable advance notice, during normal business hours, and at Elavon's expense (unless Elavon reasonably determines based on such audit that Company is not in compliance with the Agreement, in which case Company will bear the cost). Company will maintain complete and accurate records of its performance under the Agreement. Company will execute and deliver to Elavon all documents Elavon reasonably deems necessary to verify Company's compliance with Section 8.1.
11. **Proprietary Rights.** As between Elavon and Company, Elavon retains all right, title and interest in and to the Services, Elavon Materials, Updates, Customizations, and all Intellectual Property Rights in any of the foregoing. Company will not acquire any ownership interest or license rights (except such rights as are expressly stated in the Agreement (including the Operating Guide)) in or to the Services, Elavon Materials, Updates, Customizations, or Intellectual Property Rights in any of the foregoing. If any right, title or interest in and to any Customizations is deemed to vest in Company, Company hereby assigns and agrees to assign to Elavon all worldwide right, title, and interest in and to such Customizations, including all Intellectual Property Rights therein. All rights not otherwise stated in the Agreement are reserved to Elavon. The rights granted to Company under the Agreement are non-exclusive and nothing in the Agreement will limit the ability of Elavon to market, sell, offer for sale, license or otherwise exploit the Services, Elavon Materials, Updates, Customizations or Intellectual Property Rights in any of the foregoing to any third parties or to appoint or authorize any other person or entity to do the same.

12. Representations and Disclaimers

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

- (a) **Organization.** Elavon is a corporation validly existing and organized under the laws of the state of Georgia with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Elavon conducts business, in compliance with all Laws and Payment Network Regulations.
- (b) **Authority and Power.** Elavon has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Elavon to all provisions of the Agreement and such person is authorized to execute any document and to take any action on Elavon's behalf which may be required to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Elavon is subject.
- (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Elavon's knowledge, threatened, which if decided adversely would impair Elavon's ability to carry on its business substantially as now conducted or which would adversely affect Elavon's financial condition or operations.

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

- (a) **Organization and Information.** Company is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Company conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Company Application, the bid process, and enrollment forms, as applicable, and in the assumptions in Schedule A or any other document submitted to Elavon is true and complete and properly reflects the business, financial condition and ownership of Company in all material respects.
- (b) **Authority and Power.** Company has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Company and each Affiliated Entity 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 Company that Elavon requires to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Company is subject.

(c) **No Litigation.** There is no action, suit, or proceeding pending or, to Company's knowledge, threatened, which if decided adversely would impair Company's ability to carry on its business substantially as now conducted or which would materially and adversely affect Company's financial condition or operations.

(d) **Business Use.** Company is obtaining and using the Services from Elavon to facilitate lawful business Transactions between Company and its Customers, and using the DDA only for lawful business purposes.

12.3. **Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE AGREEMENT, THE SERVICES AND ELAVON MATERIALS ARE PROVIDED "AS IS," AND ELAVON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, ELAVON MATERIALS, EQUIPMENT, SOFTWARE, DOCUMENTATION, AND COMPANY'S USE OF THIRD PARTY SERVICES, EQUIPMENT, SOFTWARE, OR DATA IN CONNECTION WITH THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, SATISFACTORY QUALITY, TITLE, SECURITY, NONINFRINGEMENT, UNINTERRUPTED OR ERROR-FREE USE, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE.

13. Indemnification

13.1. **By Elavon.** Elavon will indemnify and defend Company, its Affiliates, and their respective employees, officers, directors, and agents against losses, damages, liabilities, fines, judgements and expenses (including all reasonable attorneys' fees) (collectively, "**Losses**") in connection with claims, actions, demands or proceedings (made or threatened) brought by a third-party ("**Claims**") arising out of (a) Elavon's breach of the Agreement; (b) Elavon's or its third party contractors' gross negligence or willful misconduct; (c) Elavon's or its third party contractors' violation of Laws or Payment Network Regulations; (d) subject to Section 13.5, Elavon's alleged infringement or other violation of a United States or Canada patent, copyright or trademark of a third party by the Services (but not Equipment) in the form delivered or Company's use thereof (an "Infringement Claim"); or (e) any personal injury or real or tangible personal property damage to the extent caused by Elavon or its third party contractors.

13.2. **By Company.** Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against Losses in connection with Claims arising out of (a) any Transaction processed under the Agreement; (b) Company's breach of the Agreement; (c) all use of any user ID and password other than by Elavon or Elavon's third-party contractors; (d) Company's or its Service Providers' gross negligence or willful misconduct; (e) Company's or its Service Providers' violation of Laws or Payment Network Regulations; (f) any action taken by Elavon with respect to the DDA (and, if Company is receiving Processing Services, the Reserve Account) in accordance with the Agreement; or (g) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers.

13.3. **Exceptions.** The indemnifying party is not required to indemnify the indemnified party for Losses to the extent caused by or resulting from the negligence, gross negligence or willful misconduct of, or breach of the Agreement by, the indemnified party.

13.4. Procedure.

(a) If a Claim is subject to indemnification under the Agreement, the indemnified party will:

(i) Provide the other party prompt notice of the Claim (provided that any delay in notification will not relieve the indemnifying party of its obligations under this Section 13 except to the extent that the delay materially impairs its ability to fully defend the Claim);

(ii) Subject to Section 13.4(b), give the indemnifying party the right to exercise exclusive control over the preparation and defense of the Claim, including appeals, negotiations and any settlement or compromise thereof, provided that the indemnifying party will notify the indemnified party in writing of its election regarding the assumption of control of the preparation and defense of such Claim within 15 days following receipt of the indemnified party's written notice of such Claim, but, in any event, no later than 10 days before the date on which any written response to a complaint, summons, or other legal filing is due; and

(iii) Provide such assistance in connection with the defense and settlement of the Claim as the indemnifying party may reasonably request, at the indemnifying party's expense. The indemnifying party will not enter into any settlement that imposes any liability or obligation on the indemnified party, or contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without the indemnified party's prior written consent.

(b) The indemnified party may join in the defense, with its own counsel, at its own expense.

13.5. Infringement Claims.

(a) Subject to Elavon's defense obligations as provided in this Section 13, indemnification for any Infringement Claim will be limited to the payment of the final award of damages assessed against Company resulting from such Infringement Claim in a final judgment by a court of competent jurisdiction, including awarded costs, or any amount in settlement or compromise authorized by Elavon in writing.

(b) If any part of the Services or the use of the Services becomes, or in Elavon's opinion is likely to become, the subject of an Infringement Claim, and as a result of such Infringement Claim Company's use of the Services may be enjoined or interfered with, then Elavon will, at its option and expense, either, and in addition to defending Company and paying the final amount of damages as provided for in this section, (i) obtain a license for Company to continue using the alleged infringing components of the Services; (ii) modify the alleged infringing components of the Services to avoid the infringement in a manner that still permits the Services to perform in all material respects in accordance with the Agreement; or (iii) replace the alleged infringing components of the Services with compatible, functionally equivalent, and non-infringing components. Elavon will use commercially reasonable efforts to accomplish the remedies identified in this section in a manner that minimizes the disruption to Company's business operations. If Elavon is not able to accomplish the above remedies within a commercially reasonable time frame and on commercially reasonable terms, Elavon may terminate the Agreement upon written notice to Company. Upon such termination, Elavon will promptly refund any fees paid for Services not performed as of the date of termination.

(c) Elavon will have no liability for any Infringement Claim to the extent caused by (i) access to or use of the Services other than as specified under the Agreement and the related Documentation, (ii) combination or use of the Services with non-Elavon products or services (whether or not provided to Company by Elavon), (iii) any hardware, devices, software, services or other resources not provided by Elavon, (iv) failure or refusal by Company to install, implement or use any Update or correction provided by Elavon, (v) modification or alteration of the Services by anyone other than Elavon without Elavon's prior written consent, or (vi) Company's goods or services.

(d) THIS SECTION 13.5 SETS FORTH THE EXCLUSIVE REMEDY OF COMPANY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO ANY INFRINGEMENT CLAIMS.

14. Limitation of Liability.

14.1. **Excluded Damages.** Except for a party's breach of its confidentiality obligations in Section 9.1 (excluding a Data Breach, which is subject to Section 14.3), neither party or its agents, officers, directors, or employees will be liable to the other party for indirect, exemplary, punitive, special, or consequential damages in connection with the Agreement under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise).

14.2. **General Limitation.** Company acknowledges that fees for the Services are very small in relation to the funds conditionally credited to Company for Transactions, and, consequently, Elavon's willingness to provide these Services is based on the liability limitations contained in the Agreement. Therefore, except for Elavon's breach of its confidentiality obligations in Section 9.1 and Elavon's indemnification obligations in Section 13 (excluding in each case a Data Breach, which is subject to Section 14.3), Elavon's aggregate liability for any Losses, regardless of the form of action, arising out of the Agreement or Elavon's performance or non-performance of Services under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise), will not exceed, in the aggregate, an amount equal to the lesser of (a) the sum of fees paid by Company to Elavon during the three months immediately preceding the event giving rise to the Losses, exclusive of fees and variable costs incurred

by Elavon to process Transactions such as interchange costs, assessments, charges, and fees imposed by a third party, and (b) the sum of fifty thousand dollars (\$50,000).

14.3. **Data Breach Limitation.** Notwithstanding the limitations set forth in Section 14.2 and the disclaimers in Section 14.1, Elavon will be liable to Company for Company's documented and incurred Elavon Data Breach Losses, up to an aggregate amount not to exceed six months' average fees paid to Elavon by Company pursuant to the Agreement. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, SECTION 9.2(C) AND THIS SECTION 14.3 SET FORTH COMPANY'S EXCLUSIVE REMEDY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO DAMAGES, PENALTIES, COSTS, EXPENSES, OR LOSSES ARISING FROM A DATA BREACH.

15. **Purchased Equipment.** Elavon will ship to Company the Purchased Equipment described in Schedule A, any Statement of Work, additional application, setup, or order forms, or any addenda or schedules mutually agreed upon in writing by Elavon and Company for the purchase price stated thereon. Company has no right to cancel an order for Purchased Equipment. Unless otherwise agreed by the parties, Company will be responsible for all shipping costs, insurance, import and export duties and similar taxes and amounts.

16. **Third-Party Vendors.**

16.1. **Company Service Providers and Company Resources.**

- (a) Company may want to use a Service Provider to assist with Transactions. Company will cause each Service Provider and applicable Company Resource to undergo testing, approval and certification by Elavon before Company uses such Service Provider or applicable Company Resource in connection with accessing or using the Services. Company will ensure that each Service Provider or applicable Company Resource maintains certification and compatibility with the Services and that each Service Provider and applicable Company Resource is fully compliant with all Laws, Payment Network Regulations, and Security Programs. Failure of Company's systems, including Company's point-of-sale system or property management system, or any Service Provider systems to maintain certification under this section or to be compatible and function with the most recent version of the Services will excuse Elavon from all liability and all of its obligations under the Agreement to the extent that Elavon's provision of the Services is impaired by such failure.
- (b) Company is responsible for any violations of the Agreement that result from the acts or omissions of Company's Service Providers and any other person who, with or without Company's consent or cooperation, obtains access to Transaction Information from Company or access to systems under Company's or Service Provider's control (excluding acts or omissions to the extent attributable to Elavon's breach of the Agreement, gross negligence, or willful misconduct).
- (c) Elavon is not responsible for Service Providers or for the products or services offered by Service Providers, nor is it responsible for any Transaction until Elavon receives complete data for the Transaction in the format required by Elavon.
- (d) Elavon may terminate a Service Provider's access to or ability to integrate with Elavon's products, services, and systems immediately without prior notice if the termination results from:
 - (i) The Service Provider's breach of any Laws or Payment Network Regulations,
 - (ii) The requirement of any court order or Payment Network or application of Payment Network Regulations to the Services,
 - (iii) Elavon's reasonable determination that the Service Provider poses an unacceptable security risk to Elavon, Company or any Payment Network, or
 - (iv) The Service Provider's failure to maintain certification to Elavon or the expiration or termination of any agreement between Elavon and the Service Provider specific to certification to Elavon with respect to the Services.

16.2. **Liability for Direct Agreement with Third Party.** Elavon has no responsibility for, and will have no liability to

Company in connection with, any hardware, software or services Company receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Company and a third party, including any Service Provider, even if Elavon collects fees or other amounts from Company with respect to such hardware, software or services (and such third party will not be considered a third party contractor of Elavon).

- 16.3. **Elavon Third-Party Contractors.** Elavon may use third-party contractors in connection with the performance of its obligations under the Agreement. Elavon will be responsible for the performance of its obligations hereunder notwithstanding any use of or delegation of any responsibility to any Elavon third-party contractor. Elavon is responsible for any violations of the Agreement that result from the acts or omissions of its third-party contractors.

17. Professional Services.

- 17.1. Elavon will provide the Professional Services to Company as mutually agreed upon by the parties in a Statement of Work. Each executed Statement of Work will be deemed incorporated into the Agreement and will identify in reasonable detail the Professional Services that Elavon will perform, including: (a) the specific deliverables and services to be provided by Elavon; (b) any responsibilities of the parties in addition to those in the Agreement; (c) the fees and costs that Company is responsible for under the Statement of Work; and (d) any payment terms that are different from or in addition to the payment terms in the Agreement. As between Elavon and Company, Elavon will own all improvements to the Services made by or on behalf of Company that arise out of the Professional Services.
- 17.2. Elavon will perform the Professional Services in a workmanlike manner. Company will notify Elavon of any failure to so perform within 10 days following the completion of the applicable Professional Services. Elavon's entire liability and Company's sole remedy for Elavon's failure to so perform will be for Elavon to, at its option, (a) use reasonable efforts to correct such failure, or (b) terminate the applicable Statement of Work and refund the portion of any fees received that corresponds to such failure to perform.
- 17.3. Company will (a) provide sufficient, qualified, knowledgeable personnel capable of (i) making timely decisions necessary to allow Elavon to perform the Professional Services, and (ii) participating in the project and assisting Elavon in rendering the Professional Services; (b) if applicable, provide Elavon with reasonable access to Company's facilities during Company's normal business hours and otherwise as Elavon reasonably requests to enable Elavon to perform the Professional Services; (c) provide Elavon with working space and any other services and materials which may reasonably be necessary in connection with the performance of the Professional Services; and (d) perform such other duties and tasks as Elavon reasonably requests to facilitate Elavon's performance of the Professional Services. Company acknowledges that: (x) Elavon's ability to perform the Professional Services is conditioned upon Company's timely performance of Company's obligations and (y) the performance of these Company obligations is material to Elavon's ability to commence and proceed with the Professional Services.

18. General Provisions.

- 18.1. **Entire Agreement.** The Agreement (including the Operating Guide, all appendices, schedules, attachments, exhibits, addenda and other documents incorporated by reference) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other agreements, written or oral, are superseded by the Agreement. If a conflict exists between the documents comprising the Agreement, the following order of priority will apply:
- (a) Any schedules mutually agreed upon by the parties, with respect to the subject matter thereof;
 - (b) General Terms of Service and Appendices;
 - (c) The Operating Guide;
 - (d) Any signed Statement of Work; and
 - (e) Any Documentation provided to Company in writing by Elavon.
- 18.2. **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, without giving effect to its choice-of-law rules. All performances and Transactions under the Agreement will be deemed to have occurred in the state of Georgia, and Company's entry into and performance of the Agreement will be deemed to be the transaction of

business within the state of Georgia. Each party hereby submits to the exclusive jurisdiction (other than for collection actions by Elavon relating to amounts owed by Company under the Agreement) of the courts of the state of Georgia (Fulton County) or the United States District Court for the Northern District of Georgia and waives any objection to venue with respect to the actions brought in those courts.

- 18.3. **Exclusivity.** During the Term, Company will not enter into an agreement with any other entity for services similar to those Services Company has elected to receive from Elavon under the Agreement without Elavon's written consent.
- 18.4. **Construction.** The headings used in the Agreement are inserted for convenience only and will not affect the interpretation of any provision. Each provision is to be construed as if the parties drafted it jointly. The word "day" will mean "calendar day", unless specifically stated otherwise.
- 18.5. **Assignability.** Company will not assign the Agreement, directly, by operation of law, or by Change of Control of Company, without Elavon's prior written consent. If Company nevertheless assigns the Agreement without Elavon's consent, the Agreement will be binding on both the assignee and Company. Elavon will not transfer or assign the Agreement without Company's prior written consent, except for (i) an assignment or delegation to an Affiliate of Elavon, or (ii) an assignment or delegation to any entity into or with which Elavon will merge or consolidate, or who may acquire substantially all of Elavon's stock or assets.
- 18.6. **Notices.** Any written legal notice to the other party will be deemed received upon the earlier of (a) actual receipt, (b) five business days after being deposited in the United States mail, return receipt requested, or (c) two business days after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to Company's address on the Company Application or the last address shown on Elavon's records, or to Elavon at 7300 Chapman Highway, Knoxville, Tennessee 37920, with a copy to Two Concourse Parkway, Suite 800, Atlanta, GA 30328, Attn: General Counsel, or such other addresses as Elavon may designate in writing.
- 18.7. **Bankruptcy.** Company will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Company. Company will include Elavon on the list and matrix of creditors as filed with the bankruptcy court, whether or not a claim may exist at the time of filing. Company 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 Company, and, as such, cannot be assumed or assigned in the event of Company's bankruptcy. Company will be responsible to Elavon for any damages suffered by, and expenses incurred by, Elavon due to a Company Bankruptcy Proceeding.
- 18.8. **Telephone Recording.** For quality assurance and training purposes, Company authorizes Elavon to monitor and record customer service telephone conversations at any time, subject to Laws and applicable disclosures if required.
- 18.9. **Amendments.** Except as otherwise stated in the Agreement (including in [Section 6.3](#)), amendments to the Agreement will be in writing and signed by the parties. Notwithstanding the foregoing, Elavon may amend or modify the Agreement, to the extent such changes are required by changes in the Payment Network Regulations or other Laws, upon written notice to Company. Elavon will inform Company of such a change in the Payment Network Regulations or Laws in a periodic statement or other written notice, and such change will become effective at least 30 days after the issuance of the statement or notice.
- 18.10. **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired thereby. None of the failure to exercise, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor will such amend the Agreement. All waivers requested by a party must be signed by the waiving party.
- 18.11. **Independent Contractors.** Elavon and Company will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically stated in the Agreement. The Agreement has been entered into solely for the benefit of the parties to the Agreement and is not intended to create an interest in any third party except where explicitly stated otherwise.

- 18.12. **Survival.** All of the obligations of each party that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including Sections 3, 4.3, 4.4, 4.5, 5, 6, 8, 9, 12, 13, 14, 16, 18.2, and 18.12, will survive and remain binding upon and for the benefit of the parties.
- 18.13. **Counterparts; Electronic Delivery.** The Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which, taken together, will constitute one and the same agreement. Signed counterparts may be delivered by fax or electronic means (e.g., .pdf documents via e-mail), and will constitute signed originals.
- 18.14. **Force Majeure.** Neither party will be considered in default in performance of its obligations to the extent such performance is delayed by Force Majeure affecting such party's ability to perform. A "Force Majeure" means an act of God, natural disaster, war, act of terrorism, civil disturbance, action by governmental entity, strike, and other cause beyond such party's reasonable control. If a Force Majeure interrupts Elavon's provision of any Services, Company will continue to pay Elavon the fees for the Services owed under the Agreement and Elavon will make all reasonable efforts to restore such Services. If the Force Majeure continues for a more than 14 days, then Company may, upon notice to Elavon, as its sole and exclusive remedy, abate payment to Elavon to the extent Services are not performed and terminate the Agreement.
- 18.15. **Business Continuity.** Elavon will maintain and adhere to business continuity plans that are commercially reasonable within the industry for the Services.
- 18.16. **Tribal Governments.** If Company qualifies as a federally recognized or acknowledged tribal government or an instrumentality thereof, then Company expressly and irrevocably provides a limited waiver of its sovereign immunity (and any defense based thereon) from any suit, action or proceeding or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, exercise of contempt powers or otherwise) brought by Elavon relative to disputes between the Elavon and Company under the Agreement in the exclusive jurisdiction set forth in Section 18.2. Without prejudice to the limited waiver of sovereign immunity provided in the Agreement, no other waiver of Company's sovereign immunity from suit may be implied from any action or document. Company waives any requirement for Elavon to exhaust tribal court remedies that might otherwise require, as a matter of law or comity, that a dispute be heard first in the tribal court of Company. The waivers and consents described in this Section 18.16 will inure to the benefit of the parties hereto. The parties will be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief. The waivers of sovereign immunity and of the obligation to exhaust tribal court remedies and the consents to jurisdiction contained in this Section 18.16 are irrevocable and will survive termination of the Agreement. Company covenants that it has obtained and will maintain in effect all authorizations and consents necessary to grant the waiver of sovereign immunity and the obligations to exhaust tribal court remedies contained herein.

APPENDIX 1 – DEFINITIONS

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

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

“**ACH Rules**” means the NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.

“**Affiliated Entity**” means (i) an Affiliate of Company, or (ii) a person or entity operating a franchise under one or more of Company’s brands pursuant to a written franchise agreement with Company whereby the franchisee consistently displays external identification prominently identifying itself with Company’s trademarks; in each case as listed on Schedule C or an exhibit to an applicable schedule mutually agreed upon by Company and Elavon.

“**Affiliates**” means entities affiliated under the majority ownership or control of, under common ownership or control with, or which own or control, a party.

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

“**Bankruptcy Proceeding**” means, with respect to an entity, (i) that the entity or any subsidiary of such entity will: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file or be subject to a petition seeking to take advantage of any other applicable state or federal laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such entity or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable state or federal laws; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding will be commenced against the entity or any subsidiary of such entity in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (x) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (y) the appointment of a trustee, receiver, custodian, liquidator or the like of such entity or of all or any substantial part of the assets, domestic or foreign, of such entity or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.

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

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

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

“**Chargeback**” means a Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.

“**Company**” has the definition set out in the first page of the Agreement.

“**Company Application**” means the Company Application attached as Schedule B and any additional document containing information regarding Company’s business that is submitted to Elavon in connection with Company’s request for Services, including documents submitted by Company as a part of the bid process, if applicable.

“**Company Resources**” means all equipment, communications devices, databases, services, systems and other resources that Company maintains or operates in Company’s or its third party hosting provider’s locations and which enable Company to access and use the Services.

“**Confidential Information**” means all data and information, regardless of the form or media, relating to the business of the Disclosing Party of which the Receiving Party becomes aware as a consequence of, or through, the performance of its obligations under the Agreement, which has value to the Disclosing Party and is not generally known by its competitors, which is reasonably identified as confidential at the time of disclosure or which, under the circumstances surrounding disclosure, ought to be reasonably considered as confidential, including technical information, drawings, engineering data, performance specifications, cost and price information (except as provided otherwise in the Agreement), and other information, data and reports, and the terms and conditions of the Agreement. Confidential Information does not include any data or information which (i) is already known to the Receiving Party prior to disclosure by the Disclosing Party; (ii) has become generally known to the public through no wrongful act of the Receiving Party; (iii) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, a breach of an obligation of confidentiality running directly or indirectly to the other party; or (iv) is independently developed by the Receiving Party without use, directly or indirectly, of the Confidential Information received from the Disclosing Party. Cardholder Data and Transaction Information are not Confidential Information under this definition, and are addressed in Section 9.2(d).

“**Credit Card**” means a card or device bearing the symbol of any Credit Card Association and associated with a revolving line of credit that can be used to purchase goods and services from Company or to pay an amount due to Company.

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

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

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

“**Data Breach**” means unauthorized access to, use, disclosure or exfiltration of any Cardholder Data or Transaction Information provided by Company and received by Elavon in connection with Company’s use of the Services under the Agreement.

“**DDA (Demand Deposit Account)**” means the commercial checking account at an ACH participating financial institution designated by Company to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, and other payments due under the Agreement.

“**Debit Card**” means a card or device bearing the symbols of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from Company or to pay an amount due to Company by an electronic debit to the Cardholder’s designated deposit account. A “Debit Card” includes (i) a card or device that bears the symbol of a Credit Card Association and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct PIN-based, online debit Transactions.

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

“**Discover**” means DFS Services LLC.

“**Discover Network**” means the payment network operated and maintained by Discover.

“**Documentation**” means the Elavon standard written description for the Services, as applicable, that is delivered to Company under the Agreement, including user manuals and best practices guides, as may be amended by Elavon from time to time, but not including marketing materials, proposals, demonstrations or other promotional information.

“**Early Termination Fee**” means an amount equal to the sum of: (i) the greater of (A) the total fees paid by Company during the 12 months immediately prior to termination, and (B) the total fees that would be payable by Company during the 12 months immediately following termination (based, with respect to any per-Transaction fees, on Projected Monthly Transaction Volume), as reflected on Schedule A; and (ii) any up-front incentives afforded to Company.

“**EBT Card**” means a card used for electronic benefits transfers.

“**ECS (Electronic Check Services)**” means 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.

“**ECS Association**” means NACHA and any regional ACH association or network, the Federal Reserve (in its processing of ACH entries or demand drafts or other legal replacements or substitutes for a paper check, including under the Check Clearing for the 21st Century Act or under applicable provisions of the Uniform Commercial Code), and any other organization or association Elavon uses in connection with the ECS that is hereafter designated as an ECS Association by Elavon from time to time.

“**EFT Networks**” means (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes Elavon or a third party designated by Company to authorize, capture, and settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

“**Effective Date**” means the date stated in Elavon’s signature block on the signature page of the Agreement.

“**Elavon**” means Elavon, Inc., a Georgia corporation. Elavon is a registered member service provider of each Member. Elavon may also be referred to as “Servicer” in the Agreement, the Operating Guide or other documents provided to Company in connection with the Services.

“**Elavon Data Breach**” means a Data Breach that (i) originated within data operating systems controlled by Elavon, (ii) occurred due to a breach of the Agreement by Elavon, (iii) was not attributable to any act or omission of Company or its Service Providers, and (iv) does not relate to any Company provided data in user defined fields not required by Elavon or used to perform the Services.

“**Elavon Data Breach Losses**” means (i) any fine, penalty, assessment, or charge levied by any Payment Network or regulatory authority against Company, and paid by Company, due to an Elavon Data Breach; provided that, prior to any Payment Network or regulatory authority’s finalization of any fine, penalty, assessment, or charge for which Company will seek recovery from Elavon, Company obtains for Elavon the opportunity to discuss and attempt to negotiate such fine, penalty, assessment or charge with the applicable Payment Network or regulatory authority, (ii) amounts paid by Company to third parties to reimburse them for their direct losses resulting from or attributable to an Elavon Data Breach, to the extent Company is required by Laws (including by a statutory or contractual obligation or court order) to make such payments (excluding amounts paid under clause (i) above), and (iii) Company’s direct costs incurred in providing 12 months of credit monitoring to Cardholders affected by an Elavon Data Breach involving unauthorized access to unencrypted full primary account numbers (PANs) or social security numbers.

“**Elavon Materials**” means the specifications, documentation (including Documentation), application programming interfaces (APIs) and other interfaces, nonpublic or proprietary data import routines, sample code and materials provided to Company to enable Company to perform its obligations or exercise its rights under the Agreement, including integration to the Services.

“**Electronic Gift Card (EGC)**” means a special stored value card provided by or on behalf of Company that is redeemable for merchandise, services or other Transactions.

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

“**Force Majeure**” means has the meaning stated in Section 18.14.

“**Gateway Services**” means the hosted gateway services provided by Elavon, as further described in the Operating Guide.

“**Initial Term**” has the meaning stated in Schedule A.

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

“Internal Controls Assessment” has the meaning stated in Section 10.1.

“Issuer” means the financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.

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

“MasterCard” means MasterCard International Incorporated.

“Member” means the sponsoring Member designated on the Company Application or on a particular schedule, as applicable. Elavon may change any Member at any time and will provide Company notice of the change.

“NACHA” means the National Automated Clearing House Association, which establishes standards, rules, and procedures governing the ACH Network, including the ACH Rules.

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

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

“Payment Network” means any Credit Card Association, EFT Network, ECS Association or automated clearing house association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device or PayPal Payment Device (as defined in the Operating Guide) or operates a network on which a Payment Device is processed.

“Payment Network Regulations” means the rules, operating regulations, guidelines, specifications and related or similar requirements of any Payment Network.

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

“POS Device” means a terminal, software or other point-of-sale device at a Company location that conforms to the requirements established from time to time by Elavon and the applicable Payment Network.

“Processing Services” means Services other than Gateway Services, SAFE-T Services, and Professional Services.

“Professional Services” means the work Elavon performs for Company in connection with the installation or implementation of the Services, as more fully described in a Statement of Work.

“Projected Monthly Transaction Volume” means the projected monthly Transaction volume stated in Schedule A.

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

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

“Renewal Term” has the meaning stated in Schedule A.

“Reserve Account” means the ledger account established by Elavon on its books and records reflecting a contingent payment obligation from Elavon to Company.

“SAFE-T Services” means the integrated security services provided by Elavon, as further described in Schedule E.

“**Security Programs**” means the PCI-DSS, including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI-DSS regulations of Discover Network, and the security programs of any other Payment Network, and any modifications to, or replacements of, such programs that may occur from time to time.

“**Service Provider**” means any entity that stores, processes, transmits or accesses Cardholder Data or Transaction Information on behalf of Company or that provides software to Company for transaction processing, storage, or transmission, except to the extent such services are performed by the entity in its capacity as a third-party contractor of Elavon performing Elavon’s obligations under the Agreement.

“**Services**” means the services Elavon provides to Company pursuant to the Agreement as designated by Company on the Company Application, or as Professional Services, and any additional services, software, and hardware Elavon provides pursuant to a schedule or an addendum to the Agreement, mutually executed by the parties in accordance with the terms of the Agreement.

“**SSAE 16**” has the meaning stated in Section 10.1.

“**Statement of Work**” means a statement of work for Professional Services that references the Agreement and is executed by the parties.

“**Term**” means the Initial Term and any Renewal Term.

“**Transaction**” means any action between Company and a Cardholder or Payment Network that results in transmission of Cardholder Data or Transaction Information (e.g. payment, purchase, refund, return, chargeback, authorization request, settlement submission, transaction inquiry, decryption, conversion to/from Tokens).

“**Transaction Information**” means any data or information resulting from a Transaction. Transaction Information includes payment processing-related transactional information that may be collected or stored by Elavon, including the price paid for products or services, date, time, approval, unique transaction number, store identifier, and Customer bank information relating to a Transaction.

“**Transaction Receipt**” means the paper or electronic record evidencing the purchase of goods or services from, or payment to, a Company by a Cardholder using a Payment Device.

“**Transition Period**” has the meaning stated in Section 4.5(a).

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

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

“**Visa**” means Visa U.S.A., Inc.

SCHEDULE A

FEES

[Separately provided]

SCHEDULE B
COMPANY APPLICATION

[Separately provided]

SCHEDULE C
AFFILIATED ENTITIES

Check one:

- Company named on page 1 only, and all locations will operate under Tax ID Number _____.
- Company named on page 1, with Tax ID Number _____ and the following Affiliates or franchisees (a separate Form W-9 or Form W-8BEN, as applicable, must be submitted for each entity identified below):

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

COMPANY, on behalf of itself and each of the Affiliated Entities identified above: **ELAVON, INC.**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

(Schedule C "Effective Date")

ATTACHMENT SP

Service Provider Supplemental Attachment

This attachment is part of the agreement between Elavon, Inc. and the Treasurer's Office, County of San Mateo.

I. Terms

This is (36) month master agreement, from December 1, 2017 through November 30, 2020 for Merchant Card Services.

II. The Amount

The cost of Merchant Card Services varies depending on the usage of individual departments. Service fees are paid out of departmental budgets and are calculated on a per transaction basis and it is the responsibility of the user of the services to monitor the usages to align with the department budget. The approximate annual expenditure for merchant card services was \$170,000. ACH debit to the County's bank accounts will be for returns/reversals and chargebacks only, and other amounts specified in Section 6.4 of the Master Services Agreement. Other debits such as service fees or purchase of equipment must be invoiced. Elavon will provide invoice billing provided that Elavon has the right to offset any outstanding or uncollected amounts that are more than ninety (90) days past due from (i) any amounts Elavon would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon may owe under the Agreement.

III. EQUAL BENEFITS ORDINANCE

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

IV. EMPLOYEE JURY SERVICE

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor

certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments," is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

V. HISTORY OF DISCRIMINATION

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor in San Mateo County by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

VI. HOLD HARMLESS

See Section 1.3 of Schedule H.

SCHEDULE D

PROCESSING SERVICES TERMS

This Schedule D sets out additional terms (and modifications to terms in the General Terms and Conditions) that are applicable if Company is receiving certain Processing Services.

1. **Processing Services.** This Section 1 of Schedule D applies if Company is receiving Processing Services.
 - 1.1. **Company Compliance.** Company will not submit Transactions for processing to Elavon for any businesses, materially different products, or methods of selling other than those stated in the Company Application without Elavon's prior written consent.
 - 1.2. **Reserve Account.**
 - (a) **Establishment.** If a Reserve Event occurs, Elavon may establish a Reserve Account in the Reserve Amount to provide security and a source of funds to pay Elavon for all amounts that Company may owe under this Agreement. Elavon will have sole control of the Reserve Account, and, upon Company's delivery of funds to Elavon for creating credits in the Reserve Account (or Elavon's crediting the Reserve Account with amounts that otherwise would have been paid to Company), Company will have no further property interest in such funds (or rights to payment) other than with respect to a contingent right to payment from Elavon as described in this Agreement upon the termination of the Reserve Account.
 - (b) **Reserve Amount.** The "**Reserve Amount**" is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period plus 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 [number of 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 the applicable period considering factors such as Company's Transaction volume and seasonality.
 - (c) **Reserve Event.** The following will constitute "**Reserve Events**":
 - (i) Fraudulent activity in any monthly period that equals or exceeds 1% of Company's average monthly volume over the preceding 12-month period;
 - (ii) Chargebacks in any monthly period that equal or exceed 1% of the total dollar value of incoming items to Elavon;
 - (iii) Elavon's reasonable belief that Company, if not approved by Elavon to engage in delayed delivery transactions, has accepted deposits but has not delivered the goods or services;
 - (iv) The commencement of a Bankruptcy Proceeding by or against Company;
 - (v) Termination of the Agreement for any reason or the occurrence of an event listed in Section 4.2 of the Agreement giving Elavon the right to terminate the Agreement;
 - (vi) Nonpayment of amounts owed by Company to Elavon;
 - (vii) Fines, assessments, or charges imposed or reasonably expected to be imposed by the Payment Networks;
 - (viii) The occurrence of a material adverse change in Company's financial condition;
 - (ix) Assignment of the Agreement by Company in violation of Section 18.5 of the Agreement; and

- (x) Revocation, termination, expiration or non-renewal of any guaranty, indemnity agreement, letter of credit or any other Alternate Security provided in connection with the Agreement, if applicable.
- (d) **Funding.** Elavon may fund the Reserve Account up to the Reserve Amount by any of the following means:
 - (i) Elavon may require Company to transfer funds to Elavon for credit to the Reserve Account;
 - (ii) Elavon may debit the DDA and provide a corresponding credit to the Reserve Account; or
 - (iii) Elavon may credit to the Reserve Account amounts it would otherwise be obligated to credit to Company.
- (e) **Use of Funds in Reserve Account.** Elavon may, without notice to Company, apply credits in the Reserve Account against any outstanding amounts Company owes under the Agreement. Additionally, Elavon may debit the Reserve Account to exercise its rights under the Agreement, including its rights of set-off and recoupment to collect any amounts due to Elavon.
- (f) **Termination of Reserve Account.** Credits in the Reserve Account will remain in the Reserve Account, and will be used only to pay amounts due to Elavon, until Company has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, and any other payments due under the Agreement. In no event will Company be entitled to a payment from Elavon in an amount equal to the credits remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement. Notwithstanding the foregoing, if Elavon determines that the Reserve Event that gave rise to the establishment of the Reserve Account has been sufficiently cured, then Elavon may terminate the Reserve Account or release credits from the Reserve Account, or both, prior to the termination of the Agreement.
- (g) **Alternate Security.** In lieu of or in addition to establishing and crediting a Reserve Account, Elavon may accept an alternative form of security (“**Alternate Security**”) for the purpose of providing a source of funds to pay Elavon for all amounts owed by Company. Elavon may at any time reevaluate Alternate Security it previously accepted and require funding of a Reserve Account so that the amount of credits in a Reserve Account, taken together with amounts represented by any Alternate Security Elavon accepts, equals the Reserve Amount.

1.3. **Recoupment and Set-off.**

- (a) Elavon has the right of recoupment and set-off, and may offset any outstanding or uncollected amounts owed to it hereunder from:
 - (i) Any amounts it would otherwise be obligated to deposit into the DDA;
 - (ii) The Reserve Account by reducing the credits thereto; and
 - (iii) Any other amounts it may owe Company under the Agreement.
- (b) Company acknowledges that in the event of a Bankruptcy Proceeding, in order for Company to provide adequate protection under Bankruptcy Code Section 362 to Elavon hereunder, Elavon may require the creation of a Reserve Account and will have the right to offset against the Reserve Account for all obligations Company may owe to Elavon, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.

- 1.4. **MATCHTM and Consortium Merchant Negative File.** Company acknowledges that Elavon is required to report Company’s business name and the name of Company’s principals to the MATCHTM 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. Company specifically consents to Elavon’s fulfillment of the obligations related to the listing of Company and Company information in such databases, and Company waives all claims and liabilities Company may have as a result of such reporting.

- 1.5. **Remedies Cumulative.** The rights conferred upon Elavon in this Schedule D, Section 1 are not intended to be exclusive of each other or of any other rights and remedies of Elavon under the Agreement, at law or in equity. Rather, each and every right of Elavon under the Agreement, at law or in equity, is cumulative and concurrent and in addition to every other right.
- 1.6. **Termination.** In addition to Elavon's termination rights in Section 4 of the Agreement, Elavon may terminate the Agreement:
- (a) If, after providing 30 days' written notice, either of the following conditions remain:
 - (i) Excessive Activity; or
 - (ii) The acceptance of Card Not Present or Convenience Fee Transactions without proper disclosure to Elavon in the Agreement (including in the Company Application) or an amendment to the Agreement.
 - (b) Immediately if any of the following occur:
 - (i) The levy, garnishment or attachment of the Alternate Security, the DDA, the Reserve Account, or any of Company's property in Elavon's possession;
 - (ii) Any change, not approved by Elavon, that constitutes a material change in the types of goods or services Company sells or in the methods by which Company sells them, or any change that results in Company's violation of Elavon's underwriting policy; or
 - (iii) Revocation, termination, expiration or non-renewal of any guaranty, indemnity agreement, letter of credit or other Alternate Security executed in connection with the Agreement.
- 1.7. **Member Responsibilities.** Member will facilitate ACH Transactions and comply with all ACH Rules as applicable to Member in providing Services under this Agreement. Member will have no liability to Company under this Agreement. Member is an entity governed by the Laws of the United States of America and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including the Laws promulgated by OFAC or any successor thereto.
- 1.8. **Company Information.**
- (a) **Authority.** Company authorizes Elavon to make, upon receipt of the Company Application and from time to time, any business credit or other inquiries it considers reasonably necessary to review the Company Application or continue to provide Services under the Agreement. Company also authorizes any person or credit reporting agency to compile information to answer those business credit inquiries and to furnish that information to Elavon.
 - (b) **Financial Information.** At Elavon's request, Company will provide Elavon audited financial statements prepared by an independent certified public accountant selected by Company. Within 120 days after the end of each fiscal year, Company will furnish Elavon, 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. Company also will provide Elavon such interim financial statements and other information as Elavon may request from time to time. Notwithstanding the requirements in this section, Company will not be obligated to provide financial statements or similar information required by this section other than those included in Company's filings with the Securities and Exchange Commission so long as Company 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.
- 1.9. **Company Data Incident.**
- (a) **Notice and Investigation.** Company acknowledges that Cardholder Data and bank account information it obtains in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Company will notify Elavon within 24 hours (and if notice is given

orally, it must be confirmed in writing within the same 24 hour period) if Company knows or suspects that Cardholder Data, Customer information, or Transaction Information has been accessed or used without authorization from Company or systems within Company's control (a "**Data Incident**"). The notice must include:

- (i) A detailed written statement about the Data Incident including the contributing circumstances,
- (ii) The form, number and range of compromised account information,
- (iii) Specific account numbers compromised, and
- (iv) Details about the ensuing investigation and Company's security personnel who may be contacted in connection with the Data Incident.

Company will fully cooperate with the Payment Networks and Elavon in the forensic investigation of the Data Incident. Within 72 hours of becoming aware of the Data Incident, Company will engage the services of a data security firm acceptable to the Payment Networks and to Elavon to assess the vulnerability of the compromised data and related systems. Company will provide weekly written status reports to Elavon until the forensic audit is complete. Company will promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks or Elavon may request. In addition, Company will provide all audit reports to Elavon, and such audits must be completed to the satisfaction of the Payment Networks and of Elavon. If Company fails to supply the forensic audits or other information required by the Payment Networks or by Elavon, Company will allow Elavon to perform or have performed such audits at Company's expense.

- (b) **Preservation of Records.** If there is a Data Incident, Company will take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Company will cooperate with Elavon to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon with (and obtaining any necessary waivers for) all relevant information to verify Company's ability to prevent future data incidents in a manner consistent with the Agreement.
- (c) **Liability for Data Incident.** Without waiving any of Elavon's rights and remedies, Company is liable for all fraudulent transactions related to any Data Incident and all costs Elavon incurs as a result of such Data Incident, including all (i) fees, fines, penalties or assessments by the Payment Networks, (ii) claims from third parties, and (iii) costs related to the notification of Cardholders or Customers, cancellation of Payment Devices (including underlying accounts), re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI-DSS review for a report of compliance.
- (d) **Data Incident and Payment Network Audit.** If there is a known or suspected Data Incident, or if required by the Payment Networks, then at Elavon's or any Payment Network's request, Company will obtain at its expense and submit to Elavon a copy of a forensic audit from a qualified incident response assessor of the information security of Company's business. Company acknowledges that the Payment Networks have the right to audit Company's operations to confirm compliance with the Payment Network Regulations.

2. **Payment Navigator Services.** This Section 2 of Schedule D applies if Company is receiving Payment Navigator Services.

2.1. **Additional provisions.**

- (a) **Section 13.2. Indemnification By Company.** In addition to Company's indemnification obligations in Section 13.2, Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against all Losses in connection with Claims arising from alleged infringement of patent, copyright or other intellectual property right, or misappropriation of trade secrets, of any third party by Payment Navigator as modified or altered by Company, its partners, employees, agents or contractors, or the use of any data submitted by Company.
- (b) **Section 18.3. Exclusivity.** This section is amended by adding to the end of Section 18.3 of the Agreement:

“Notwithstanding the foregoing, this exclusivity provision will not apply to any Company point-of-sale location that does not interface or interact with the Payment Navigator Services. The parties intend that this Section only applies to Company’s Affiliated Entities that interface with the Payment Navigator Services.”

3. Additional Definitions

“**Alternate Security**” has the meaning stated in Schedule D, Section 1.2(g).

“**Card Not Present**” means the processing environment where the Payment Device is not physically presented to Company by the Cardholder as the form of payment at the time of the Transaction.

“**Convenience Fee**” means a fee charged by Company for an added convenience to the Cardholder for the use of a Payment Device in a Transaction in accordance with the Payment Network Regulations.

“**Excessive Activity**” means the occurrence, during any monthly period, of Chargebacks or Retrieval Requests in excess of 1% of the gross dollar amount of Company’s Transactions or returns in excess of 2.5% of the gross dollar amount of Company’s Transactions.

“**Reserve Amount**” means the amount established pursuant to the calculation stated in Schedule D, 1.2(b).

“**Reserve Event**” means the events designated in Schedule D, Section 1.2(c).

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

SCHEDULE H

GOVERNMENT TERMS

The terms in this Schedule H are applicable only in the event Company (i) has selected the checkbox on the signature page of the Agreement indicating that these terms apply, and (ii) qualifies as a “government entity” or “government institution” under applicable local, state or federal law. Except as expressly modified pursuant to this schedule, all terms and conditions of the Agreement, including all other schedules and addenda to the Agreement, remain in full force and effect and will govern the relationship between Elavon and Company.

1. Services for government entities and institutions. The Agreement is modified as follows for government entities and institutions:

1.1. Section 4.2. Company will have the following termination right added to the Agreement as 4.2(f):

“(f) Company may terminate the Agreement on 60 days’ prior written notice to Elavon if sufficient legislative appropriation is not available.”

1.2. Section 4.4, Early Termination Fee, is deleted and replaced with “Intentionally Omitted.”

1.3. Section 13.1 is revised as follows:

“**13.1 Elavon Responsibilities.** In addition to Elavon’s obligations in Section 13.5, 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; (b) Elavon’s or its third party contractors’ gross negligence or willful misconduct; (c) Elavon’s or its third party contractors’ violation of applicable Laws or Payment Network Regulations; (d) Elavon’s alleged infringement or other violation of a U.S. or Canada patent, copyright or trademark of a third party by the Services in the form delivered or Company’s use thereof; or (e) any personal injury or real or tangible personal property damage to the extent caused by Elavon or its third party contractors.”

1.4. Section 13.2 is revised as follows:

“**13.2 Company Responsibilities.** As between Company and Elavon, Company will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of (a) any Transaction processed under the Agreement; (b) Company’s breach of the Agreement; (c) Company’s or its Service Providers’ gross negligence or willful misconduct; (d) Company’s or its Service Providers’ violation of Laws or Payment Network Regulations; (e) any action taken by Elavon with respect to the DDA (and, if Company is receiving Processing Services, the Reserve Account) in accordance with the Agreement; or (f) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers. Company will not make any claims against Elavon 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.”

1.5. Sections 13.3 is deleted.

1.6. Section 13.4 is revised as follows:

13.4. Procedure.

(a) If an Infringement Claim (as defined in Section 13.5) is subject to Elavon’s obligations in Section 13.5 of the Agreement, Company will:

(i) Provide Elavon prompt notice of the Infringement Claim (provided that any delay in notification will not relieve Elavon of its obligations under this Section 13.4 except

to the extent that the delay materially impairs its ability to fully defend the Infringement Claim);

- (ii) Subject to Section 13.4(b), give Elavon the right to exercise exclusive control over the preparation and defense of the Infringement Claim, including appeals, negotiations and any settlement or compromise thereof, provided that Elavon will notify Company in writing of its election regarding the assumption of control of the preparation and defense of such Infringement Claim within 15 days following receipt of Company's written notice of such Infringement Claim, but, in any event, no later than 10 days before the date on which any written response to a complaint, summons, or other legal filing is due; and
- (iii) Provide such assistance in connection with the defense and settlement of the Infringement Claim as Elavon may reasonably request, at Elavon's expense. Elavon will not enter into any settlement that imposes any liability or obligation on Company, or contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without Company's prior written consent.

(b) Company may join in the defense, with its own counsel, at its own expense.

1.7. Section 13.5 is revised as follows:

“13.5. Infringement Claims.

(a) Elavon will defend Company and its employees, officers, and agents in connection with claims, actions, demands or proceedings (made or threatened) brought by a third party, and will pay the final award of damages assessed against Company, its employees, officers or agents in a final judgment by a court of competent jurisdiction, including awarded costs, or any amount in settlement or compromise authorized by Elavon in writing, arising out of Elavon's alleged infringement or other violation of a U.S. or Canada patent, copyright or trademark of a third party by the Services (but not Equipment) in the form delivered or Company's use thereof (an “Infringement Claim”).

(b) If any part of the Services or the use of the Services becomes, or in Elavon's opinion is likely to become, the subject of an Infringement Claim, and as a result of such Infringement Claim Company's use of the Services may be enjoined or interfered with, then Elavon will, at its option and expense, either, and in addition to defending Company and paying the final amount of damages as provided for in this section, (i) obtain a license for Company to continue using the alleged infringing component(s) of the Services; (ii) modify the alleged infringing component(s) of the Services to avoid the infringement in a manner that still permits the Services to perform in all material respects in accordance with the Agreement; or (iii) replace the alleged infringing component(s) of the Services with compatible, functionally equivalent, and non-infringing component(s). Elavon will use commercially reasonable efforts to accomplish the remedies identified in this section in a manner that minimizes the disruption to Company's business operations. If Elavon is not able to accomplish the above remedies within a commercially reasonable time frame and on commercially reasonable terms, Elavon may terminate the Agreement upon written notice to Company. Upon such termination, Elavon will promptly refund any fees paid for Services not performed as of the date of termination.

(c) Elavon will have no liability for any Infringement Claim to the extent caused by (i) access to or use of the Services other than as specified under the Agreement and the related Documentation, (ii) combination or use of the Services with non-Elavon products or services (whether or not provided to Company by Elavon), (iii) any hardware, devices, software, services or other resources not provided by Elavon, (iv) failure or refusal by Company to install, implement or use any Update or correction provided by Elavon, (v) modification or alteration of the Services

by anyone other than Elavon without Elavon’s prior written consent, (vi) Company’s goods or services, or (vii) the negligence, gross negligence or willful misconduct of, or breach of the Agreement by, Company.

(d) THIS SECTION 13.5 SETS FORTH THE EXCLUSIVE REMEDY OF COMPANY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO ANY INFRINGEMENT CLAIMS.”

1.8. Section 18.2, Jurisdiction and Venue; Governing Laws, is deleted and replaced with “Intentionally Omitted.”

1.9. Section 18.3, Exclusivity, is deleted and replaced with “Intentionally Omitted.”

1.10. Section 1.8(b) of Schedule D, Financial Information, is revised as follows:

“**1.8(b) Financial Information.** At Elavon’s request, Company will provide Elavon audited financial statements prepared by an independent certified public accountant selected by Company, or if Company is audited by a governmental authority, then Company will provide financial statements from such governmental authority. Within 120 days after the end of each fiscal year (or in the case of a government entity, when available), Company will furnish Elavon, 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. Company will also provide Elavon such interim financial statements and other information as Elavon may request from time to time.”

2. Elavon Fee Collection Models

2.1. Direct Debit Fee Collection Model. If Company elects the Direct Debit fee collection model on Schedule B, then Section 6.1 of the Agreement will remain unchanged and in full force and effect.

2.2. Invoice Fee Collection Model. If Company elects and is approved for the invoice fee collection model on Schedule B, then the second sentence of Section 6.1 of the Agreement is deleted and replaced with the following:

“Such fees will be calculated once each month for the previous month’s activity. Elavon will send Company an invoice reflecting the fees due, which Company will pay within 30 days of the invoice date. In addition to all other available remedies, Elavon may offset any outstanding or uncollected amounts that are more than 90 days past due from (i) any amounts it would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon may owe Company under the Agreement.”

SCHEDULE A - SCHEDULE OF FEES

ASSUMPTIONS / Merchant PROFILE

Legal Entity Name	San Mateo County
Business Segment	Services Government
Category Description	Government Services-Not Elsewhere Classified
MCC	9399
Multiple MCCs?	No
Locations	43

	Annual Volume	Avg. Ticket	Annual Transactions
VISA	\$9,000,000	\$39.00	230769
MasterCard	\$5,000,000	\$39.00	128205
Discover	\$100,000	\$22.00	4545
Union Pay			0
American Express	\$150,000	\$22.00	6818
JCB & Diners			0
PIN-Debit	\$1,795,000	\$39.00	46026
Checks			0
EBT			0
Total	\$16,045,000	\$32.20	416364

Projected Monthly Trans Volume	Average Ticket
34697	\$32

TERM

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

PROCESSING SERVICES AVAILABLE TO COMPANIES GENERALLY

CARD PROCESSING FEES

Billing Method:

Interchange fees will be assessed on net (sales minus returns) Visa, MasterCard, Discover, and UnionPay settled volume. Assessments will be paid on all settled volume. Assessments are not refunded on returns or

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

Tiered Rate

The rate will be determined by the data elements passed at the time the transaction settled.

	%	Per Item (\$)
Qualified Debit Rate		
Qualified Credit Rate		
Qualified Rewards Rate		
Mid-Qual Credit Rate		
Commercial Credit Rate		
Non-Qual Credit Rate		

Select Tier Option that applies:

Beginning on the Agreement Effective Date, Merchant will be assigned to one of the following count/pricing tiers based on Merchant's anticipated annual Transaction count (the aggregate annual number of all Visa, MasterCard, Discover, and UnionPay Transactions processed by Servicer). If Merchant's actual aggregate Transaction count during any rolling twelve (12) month period qualifies Merchant for a tier with lower pricing, Merchant may so notify Servicer in writing and the new tier pricing will be applied on the first day of the calendar month following Servicer's receipt and verification of Merchant's notification. If Merchant's actual aggregate Transaction count during any rolling twelve (12) month period qualifies Merchant for a tier with higher pricing, Servicer may so notify Merchant in writing and the new tier pricing will be applied on the first day of the calendar month following such notification to Merchant.

Tiers	Annual Transaction Ranges		Auths	Settle \$	Settle %
	Min	Max			
Tier 1					
Tier 2					
Tier 3					
Tier 4					

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. Servicer Transaction processing fees include:

	%	Per Item (\$)
Visa	0.00%	\$0.180
MasterCard	0.00%	\$0.180
Discover	0.00%	\$0.180
UnionPay	0.00%	\$0.180
PIN-Debit	0.00%	\$0.180

Enhanced 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. Servicer Transaction processing fees include:

	%	Per Item (\$)
Qualified Debit Rate		
Qualified Credit Rate		
Qualified Rewards Rate		
Mid-Qual Credit Rate		
Commercial Credit Rate		
Non-Qual Credit Rate		

AUTHORIZATION FEES - Servicer

Telecom Method	IP/DIAL
Additional Fee for Telecom	
	Per Authorization Fee
Visa	\$0.180
MasterCard	\$0.180
Discover	\$0.180
UnionPay	Not Quoted
PIN Debit	\$0.180
American Express	\$0.700
Diners	Not Quoted
JCB	\$0.150
EBT	Not Quoted
Other Card Type	Not Quoted
Frame Relay	Not Quoted
Dial Back-Up for Frame Relay	Not Quoted
Voice (VRU) Authorization	\$0.750
Voice Authorization with Address Verification	\$0.750
Operator-Assist Authorization	\$2.000
Bank Referral Authorization	\$4.000

OTHER TRANSACTION FEES

REPORTING

FOREIGN NETWORK

Using a third party network or gateway below requires Servicer to add an additional fee per authorization. For foreign networks, this is a separate authorization fee, and for gateways, this Servicer fee will be added to the Servicer authorization fee noted in Section IV.

Networks

Foreign Network:

Concord (Bypass)	
Global (Mapp or NDC)	
Dial	
Debit	Credit
\$0.104	\$0.104
\$0.250	\$0.250
IP	
Debit	Credit
\$0.104	\$0.104
\$0.170	\$0.170
IP SSL	
Debit	Credit
\$0.104	\$0.104
\$0.170	\$0.250

PROFESSIONAL SERVICES

EQUIPMENT/SOFTWARE

Purchase			
Equipment Type	Price/Unit	Monthly Fee	Application
VX520 EMV Terminal	\$459.00		
ICT250 EMV Terminal	\$389.00		
IWL250G (Wireless) w/ Sim	\$950.00	\$19.00	
Magtek uDynamo	\$50.00		Converge Mobile
Mini-Wedge Encrypted	\$82.00		Converge Mobile
VX820 Pin Pad	\$270.00		

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

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.

DCC & MCC
ACCOUNT IMPLEMENTATION & MAINTAINENCE FEES
ELECTRONIC GIFT CARDS
BILL PAYMENT PORTAL (BPP) & ENTERPRISE BILLING SOLUTIONS (EBS)
ACCULYNK (INTERNET PIN-BASED DEBIT CARDS SERVICES)

PAYMENT NAVIGATOR SERVICES

CONVERGE SERVICES

PETROLEUM SERVICES
ELECTRONIC CHECK SERVICE:SERVICE LEVEL AND PROCESSING FEES

Optional ECS Services

Deferred Settlement Option per manual Paper Check image match (including MICR misreads)
 Select Yes, if Applicable

NSF Service Fee Amount: Max Allowed (state max is default) or Specified Service Fee Amount

NSF Service Fee Processing @ \$2 per NSF item. Not applicable for Guarantee Service
 NSF Service Fee Amount: Max Allowed or Specified Service Fee Amount \$_(State Max is default)
 ACH Echeck NSF Service Fee Amount: \$15 (default) or Specified Service Fee Amount \$__

Custom Returns File Management

Returns File Delivery to Merchant or Designated Agent per file

Fatal Returns Data Entry per fatal return item

WebEx

In-person

Enquire Online Reporting per user ID per month

PROCESSING SERVICES AVAILABLE TO COMPANIES OPERATING IN CERTAIN CATEGORIES
NON-PROCESSING SERVICE AVAILABLE TO COMPANIES GENERALLY

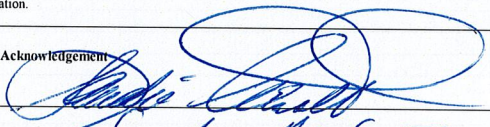
CONVENIENCE FEE AND GOVERNMENT/PUBLIC INSTIUION SERVICE FEES (GPISF)
PCI

Channel: Direct

Start Date:	12/1/2017	
MID Type:	Multi-MID Pricing - Same Owner, Same Address	
MIDS:	6+	
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 \$45.00 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: Sandie A. Nott
 Title: Measure - Tax Collector
 Date: 11/7/17

SECTION II – SCOPE OF WORK

A. DESCRIPTION

1. The County is seeking a qualified firm to process debit and credit card payments via Point of Sale (POS) locations at multiple County departments.

Response:

We deliver flexible, secure and innovative solutions while providing value at every point in our customer and partner relationships. We offer a wide array of processing options and environments, ensuring that your business remains well connected including:

<ul style="list-style-type: none"> • Visa® • MasterCard® • American Express® • Discover® • Diner's Club® • JCB® • UnionPay® • Debit Cards Debit Cards (signature, PIN based and Internet PIN based) • Electronic Benefits Transfer (EBT) • Petroleum Services including Fleet Cards 	<ul style="list-style-type: none"> • Biller Direct Services – Elavon offers two types of services: <ul style="list-style-type: none"> ◦ Enterprise Billing Solutions – including Internet, CSR/Admin, IVR (English and Spanish), and Integrated Point of Sale, and, where applicable, Convenience Fees, Government/Public Institution Fees and Utility Program ◦ Bill Payment Portal, designed as a cost-effective solution for small billers 	<p>Industry Services</p> <ul style="list-style-type: none"> • Hospitality • Airline • Healthcare • Restaurant • Business Services • E-Commerce • Government, utilities • Higher Ed
<p>Other Payment Types</p> <ul style="list-style-type: none"> • Electronic Check Service (ECS) <ul style="list-style-type: none"> ◦ Point of Purchase (POP) ◦ Accounts Receivable Conversion (ARC) ◦ Back Office Conversion (BOC) ◦ ACH Processing ◦ In certain instances: Internet (WEB), Telephone (TEL), and Prearranged Payment and Deposit (PPD) • No Signature Required Program Services 	<p>Global processing</p> <ul style="list-style-type: none"> • Dynamic Currency Conversion • Multi-Currency • Processing Services in Europe, Canada, Mexico and Puerto Rico 	<p>Data Security</p> <ul style="list-style-type: none"> • Tokenization • Encryption
	<p>Wireless Services</p> <ul style="list-style-type: none"> • Gateway Services • Mobile Services • Contactless Services 	
	<p>Loyalty Solutions</p> <ul style="list-style-type: none"> • Electronic Gift Cards (EGC) • Fanfare (Loyalty and Gift) 	

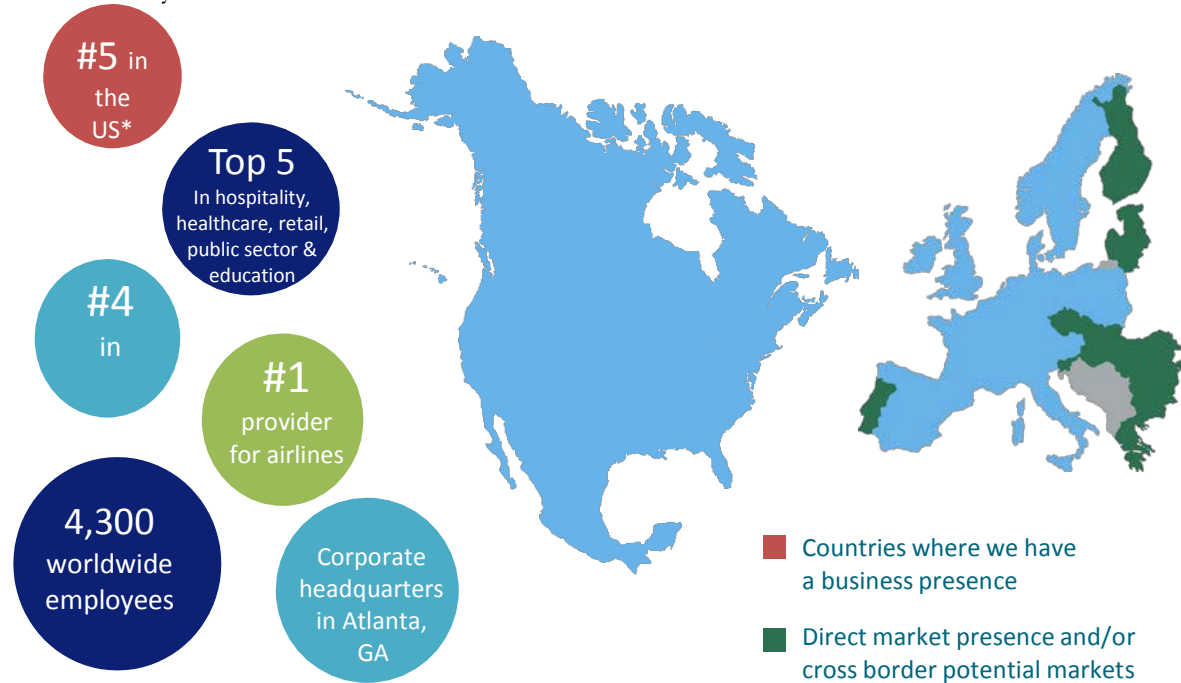
2. Proposers must have a minimum of five (5) years of experience in providing merchant credit card services to government entities of a similar size to San Mateo County.

Response:

Elavon has been a leader in processing payments for over twenty years, leveraging the world's best technologies for our customers, from large worldwide enterprises to locally-owned small businesses. We extend powerful payment solutions for all payment types and processing environments, ensuring that your business, whatever the size, remains well connected.

Our Global Acquiring Solutions organization (formerly known as NOVA Information Systems in the U.S. and euroConex in Europe) was founded in 1991. Elavon, Inc. is headquartered in Atlanta, Georgia and maintains sales offices in major cities nationwide. Elavon's primary U.S. operations facilities are located in Knoxville, Tennessee and Englewood, Colorado. In July 2001, Elavon became a wholly owned subsidiary of U.S. Bank, National Association.

A Global Payments Leader



- Proposers must demonstrate technical expertise, technical capability and functional capacity to process San Mateo County transaction volumes, amounts and information accurately and on time without interruption.

Response:

We have designed and operate a highly reliable platform with locations in two different U.S. cities. Elavon's network maintains two production systems and one completely separate test system to ensure that development and testing have no impact on production systems.

Further, to ensure complete security and redundancy, our primary and back-up processing sites are fully redundant and capable of processing 100% of the company's normal transaction volume. Elavon could completely lose one data center without any interruption in service. Also, Elavon's network routes transactions through two completely separate telecommunications networks to ensure consistent dial-up connections.

4. Proposers must be capable of providing a web-enabled electronic summary on a monthly basis to each user department within the County. The report should detail all transactional activity for all card types. A sample report should be submitted with your proposal.

Response:

We work with our customers to provide the information necessary to consolidate and manage settlement and transaction data through advanced custom reporting systems designed to meet their specific needs. Data can be summarized or detailed through a variety of hierarchies — from chain, to region, to department and to individual batch.

To better serve our customers, we offer various types of reporting tools:

Online Reporting & Support Tools

Payments Insider®, our interactive customer portal, empowers you to manage all aspects of your payments business. We'll take care of the payment activity while you focus on what you do best, growing your business! Designed from the ground up to be intuitive and easy to use, the portal gives you secure online access to your business information, and engaging content like the latest industry news, security/compliance articles and important notifications.

Payments Insider offers comprehensive and interactive reporting functionality. You can access up to a year's worth of reporting (up to two years for chargeback and retrieval) information on multiple MIDs and "drill down" into your data to view batches of transactions grouped by components like card type, batch number, settlement amount and more. Hierarchical reporting enables you to aggregate data from multiple locations.

Payments Insider offers powerful reporting:

Customizable reports include useful funding, sales, chargeback and downgrade Intel
Download reports and statements in multiple formats for easy reconciliation
User-friendly interactive dashboard widgets display at-a-glance information
Interactive online statements that drill down to detailed information

Billing Statements

Our billing statements are available online for up to 13 months for Payments Insider users. These statements help customers reconcile funding activity with their accounting systems and banking activity. We offer a variety of statement types, each containing varying levels of detail:

The Chain Merchant Summary statement is used by companies with multiple locations. This statement combines several current chain statements into one chain summary level statement and provides summaries of total fees paid by the chain, as well as for each chain location. The statement includes the following features:

- Customer recaps are month-to-date and year-to-date data.
 - Customer locations are sorted by store number, if that information is provided.
 - The deposit section of the statement includes batch numbers and all card types. This section displays the amount deposited by Elavon and by other card organizations. In addition, the customer may select further deposit detail by card type (Visa®, MasterCard®, and Discover® etc.)The fee sections break out fees for Visa/MasterCard, Discover, etc., chargebacks, the payment device, debits and other fees. Fee information is organized in an easy-to-understand format.
 - Billing statements are tied to a customer's billing cycle. The statement frequency can be daily, weekly or monthly as requested.
 - Statements can be delivered by snail mail and/or electronically.
5. All transaction fees are to be paid by each user department within the County. Cost to the County for the necessary equipment, software and services should be at little or no cost.

Response:

Elavon offers the option to invoice each individual department so they can pay their outstanding fees. Please see our attached Master Service Agreement Schedule A for an explanation of cost/fees.

6. The successful proposer shall be solely responsible for handling all customer claims and transaction related disputes, and will have customer and client support available during County business hours with preference given to both internet and telephone support options.

Response:

Elavon has the ability to support customer claims and transaction related disputes through our industry leading chargeback department.

Elavon's Chargeback Department:

- Processes an average of 60,000 chargebacks per month and 15,000 retrieval requests per month.
- An average retrieval fulfillment rate of 97.5% is maintained.
- Elavon's Chargeback Department is able to handle approximately 15% to 20% of chargebacks without customer involvement which means fewer chargebacks for our customers and a lower overall cost of card acceptance.
- Chargebacks that require documentation from the issuing bank are processed within an average of 10 days.
- Chargebacks that do not require documentation from the issuing bank are processed within an average of 5 days.

A proprietary chargeback system called Automated Dispute Resolution Processing is used to work chargeback and retrieval activity. This single point of entry system stores data related to each dispute. Elavon implemented this system in 2001 and continues to invest and enhance the system to assist in the dispute process:

- Auto Decision functionality has been integrated into the system based on payment brand regulations for specific reason codes. This logic allows the system to determine if items should be represented to the issuing bank or debited to the merchant.

- A proprietary facsimile draft is used to fulfill copy retrieval requests whenever possible and in compliance with Payment Network Regulations to minimize the number of requests to the merchant. If the required data elements are available, and it is within brand rules, the request is automatically fulfilled. If original drafts are required, a request will be sent to the merchant. Any retrieval request that is not responded to by the merchant before the 25th day is auto-fulfilled with a facsimile draft. This is an attempt to protect our merchants from exposure and lower costs.
- An optional Auto feature is built into the system allowing email or fax notification of a chargeback or retrieval to be sent to the merchant the same day it is received, thereby giving our merchants more time to respond.
- The system generates a fifteen-day reminder notice for all outstanding retrieval requests for merchants set up with the Auto Fax feature. This notification can be changed to 5, 10, or 21 days as requested.
- Outgoing notifications are bar-coded, allowing auto-indexing to the appropriate case to occur when returned with the merchant response. This expedites the chargeback process and allows the chargeback representatives to review and work the merchant responses quicker.

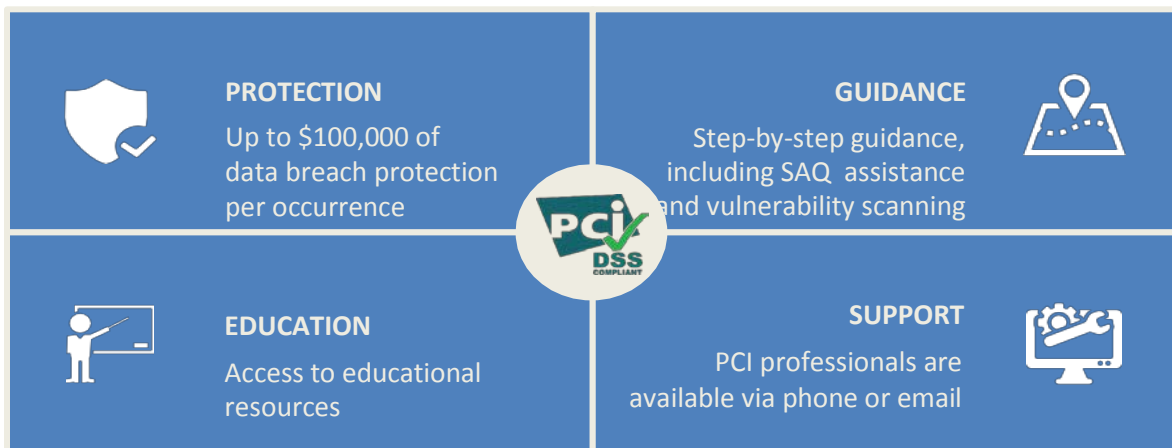
7. Proposers must be Payment Card Industry – Data Security Standard (PCI-DSS) compliant and shall utilize tokenization technology, Point-to Point Encryption (P2PE) or other secure technology to shield against fraudulent activity. An advanced suite of fraud management tools to help quickly detect fraud activity should be included.

Response:

Yes, not only is Elavon Data Security compliant, we adhere to the strictest PCI and security standards, making cardholder data protection a key priority. Our solutions support the latest security technologies.

PCI DDS Compliance

Streamline the PCI Certification Process



Elavon PCI-DSS Compliance

Elavon adheres to the strictest PCI and security standards, making cardholder data protection a key priority. Our solutions support the latest security technologies.

Elavon is PCI DSS compliant and is noted on the VISA Validated Service Providers list at <http://www.visa.com/splisting/searchGrsp.do>, page 37. In addition, Elavon's latest Attestation of Compliance Letter from our security assessor TrustWave will be included with this RFP.

8. A description of fraud detection technology and procedures should be included with the proposal.

Response:

Protecting a business against fraud losses is becoming an increasing challenge in the industry. We have built extensive fraud monitoring and control features into our network, products and operations. These include risk management and fraud prevention tools as well as a layered security approach to keep transactions secure through the payment cycle.

- Advanced Risk Management System: a proprietary, robust set of risk management and fraud prevention tools that contains empirically derived scorecards that identify risk prior to and post customer funding. In addition, the system has a business rules-based engine that triggers customer risk situations for review by investigative analysts. The Risk System is designed to protect Elavon's financial exposure as well as provides added protection for Elavon's customers.
- Code 10 authorization requests: These are typically sales that represent larger than normal amounts and customers requesting shipment to non-U.S. countries. This authorization is requested by calling the authorization center and requesting a "Code 10" authorization. This notifies the operator that the sale or customer is suspicious. The authorization center contacts the card issuer in an effort to validate the sale prior to processing through the point-of-sale terminal. Elavon offers this service for non-face-to-face transactions in addition to face to face transactions.
- A layered security approach from authorization to settlement with optional layered security including EMV, encryption and tokenization.
- Supports EMV technology on PIN pads reducing fraud risks for your business and your customers
- Encryption and Tokenization enable your business to streamline the process of compliance while reducing expenses associated with the security effort. These solutions effectively remove cardholder data from your environment.

Additionally, Elavon provides education for customers on fraud trends and methods.



Loss Prevention

We Keep Your Business Safe



Special Investigations Unit works Law Enforcement to pursue perpetrators of fraud against Elavon & our customers.

Validate transactions with financial institutions & confirm legitimacy with card issuers and transaction originators.

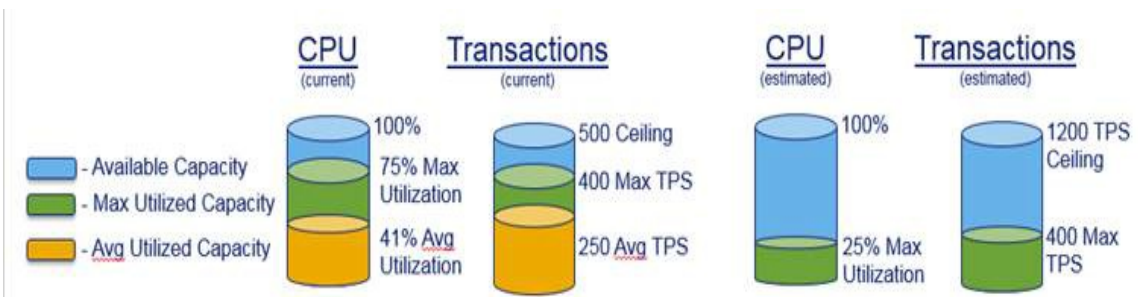
70 investigators and 8 managers complete an average of 30,000 investigations monthly, monitoring transactions for fraudulent activity.

- Proposers must describe and demonstrate that they have the technical expertise, technical capability and functional capacity to process San Mateo County's transaction volume, amounts and information accurately and on time without interruption.

Response:

Our core processing platform is built on proven, dependable and redundant Stratus switch technology that delivers maximum uptime.

- Speed- Average transaction processing time is 10 milliseconds
- Scalable- System supports 1200 transactions per second
- Reliable- Our Stratus System regularly achieves 99.99% uptime
- Secure- Sensitive data is secure, reducing compliance costs



10. Proposer's ability to provide County departments with the individualized capability to accept credit/debit payments online.

Response:

Elavon offers a variety of stand-alone terminals and credit card processing solutions that will allow individualized payment acceptance of credit cards.

Converge

Our Converge gateway is a flexible, secure payment solution designed to grow with your business. Using a variety of payment choices, including online, mail order/ back office mail and phone, in store (retail and service) and Mobile, Converge is the Next Generation platform for your commerce experience.

Simple, yet robust

- Supports all payment environments whether in-person or when card is not physically present, including e-commerce
- Offers full range of payment options – credit and debit cards, electronic checks, ACH electronic gift cards, and more
- Allows up to 5,000 users/merchant IDs to grow with your business

Security that Matters

- Supports EMV technology on PIN pads reducing fraud risks for your business and your customers
- Minimizes stored data liability and reduces your PCI compliance efforts
- Support encryption and tokenization
- Available security features help protect your customers' data throughout the payment lifecycle

Efficient and Cost Effective

- Fully hosted, cloud-based solution requires no hardware/software
- Keeps upfront costs manageable by taking payments online directly from your PC
- Easily add payment environments as your business needs evolve
- Cost-effective peripherals are available to process in-person payments with ease





Elavon’s Converge Mobile is a secure, complete payment solution that transforms mobile devices into terminals, allowing you to accept payments quickly and securely anywhere, any time without a major investment of money or effort. Our secure mobile solution is a natural extension of our full service offerings that builds on over 20 years of industry experience by providing flexible, secure and scalable payment solutions to businesses of all sizes.

With Converge Mobile you can utilize existing hardware, technical infrastructures and communications providers to enable mobile commerce and accept most card payments. It supports Purchase and Authorization Only transactions and works with Smartphone devices including most Apple® and Google® Android mobile devices.

The Converge software is built around a simple platform with access to numerous additional features to help reduce your PCI scope, reduce fraud risk, improve your approval rates, or any combination of the above.

Tokenization – Our secure token vault allows a cardholder’s private information to be stored securely on Elavon’s servers for future use. Using a proprietary encryption code, we convert the existing card number into a secured 16 digit token number matching the last 4 digits of the card holder’s credit card. This token number is tied to your unique account, meaning that even if compromised, the cardholder’s information is secure and the token is completely useless outside of your merchant account. Tokenization is available for both face to face and non-face to face transactions, but most often utilized in a card-not-present environment. By removing cardholder information entirely from your systems, Tokenization protects your cardholder’s from breach and may reduce your PCI burden.

Please reference Exhibit 9 EMV Terminals for information regarding our terminal recommendations.

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

a. Employs fewer than 15 persons.

X b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person: Janet Wright

Name of Contractor(s): U.S. Bank

Street Address or P.O. Box: 9996 W. Hollandale Drive

City, State, Zip Code: City, State, Zip Code: Boise, ID 83709

I certify that the above information is complete and correct to the best of my knowledge

Signature:

Title of Authorized Official: EVP & General Manager USA

Date: October 6, 2017

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."