



## TERMS OF SERVICE

These Terms of Service are entered into as of the Effective Date by and among the **State of Wisconsin, Elavon, Inc. f/k/a NOVA Information Systems, Inc.** and **U.S. Bank National Association**. The TOS and the other portions of the Agreement govern the Merchant's participation in the Program.

### Section A – Definitions

#### 1) DEFINITIONS.

- a) **ACH:** Automated Clearing House.
- b) **Agreement:** This TOS, any Addendum (including the Bill Payment Addendum to the Terms of Service and the PIN-Based, Online Debit Card Addendum to the Terms of Service), the Merchant Application, the Merchant Operating Guide, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.
- c) **American Express:** The American Express Company.
- d) **Authorization:** Merchant's request for approval of a Transaction by an Issuer. Authorization is initiated by accessing the authorization center by telephone or electronic terminal.
- e) **Authorization Code:** The code sent by an Issuer in response to an Authorization request.
- f) **Automated Clearing House (ACH):** The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.
- g) **Bankruptcy Proceeding:** With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws or consent to an Involuntary Bankruptcy Proceeding; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.
- h) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of sale. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
- i) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
- j) **Cardholder:** (i) the individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose



name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.

- k) **Chargeback:** A sales Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- l) **Confidential Information:** All information or items proprietary to Elavon or Member, of which the Merchant obtains knowledge or access as a result of the Merchant's relationship with Elavon and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.
- m) **Convenience Fee.** Any fee or charge for the use of a Payment Device in a Transaction.
- n) **Credit Card:** A: (i) Visa card or other card bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); or (iii) any card bearing the symbol of any other Credit Card Association.
- o) **Credit Card Associations:** (i) Visa U.S.A., Inc.; (ii) MasterCard International Incorporated; (iii) American Express; (iv) Discover; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.
- p) **Credit Card Rules:** All applicable rules and operating regulations of the Credit Card Associations, and all rules, operating regulations, and guidelines for Credit Card Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.
- q) **Credit Transaction Receipt:** A document, in paper or electronic form, evidencing a Merchant's refund or price adjustment to be credited to a Cardholder account.
- r) **Debit Card:** A card with a magnetic stripe bearing the symbol(s) of one or more EFT Networks which enables the holder to make a payment by authorizing an electronic debit to the Cardholder's designated deposit account, including PIN-based, online debit Transactions.
- s) **Debit Card Rules:** All applicable rules and operating regulations of the EFT Networks, and all rules, operating regulations, and guidelines for Debit Card Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.
- t) **Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to Elavon and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement.
- u) **Diners:** Diners Club International Ltd.
- v) **Discover:** Discover Financial Services, Inc.
- w) **EBT Card:** A card utilized for electronic benefits transfers.
- x) **Effective Date:** The date set forth in the 2008 Enterprise Banking Services Contract.
- y) **EFT Networks:** (i) Interlink Network Inc., Maestro U.S.A., Inc., Visa, and MasterCard; and (ii) any other organization or association that hereafter authorizes Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
- z) **Elavon:** As applicable, Elavon, Inc. f/k/a NOVA Information Systems, Inc., a Georgia corporation, and any affiliate or subsidiary of Elavon, Inc. f/k/a NOVA Information Systems, Inc.



- that provides processing services to a Merchant related to Transactions. Elavon is a registered member service provider of each Member.
- aa) **Electronic Check Service Association:** Visa, NACHA, and any other organization or association hereafter designated as an Electronic Check Service Association by Elavon from time to time.
  - bb) **Electronic Check Service Rules:** All applicable rules and operating regulations of the Electronic Check Service Associations, and all rules, operating regulations, and guidelines for Electronic Check Service Transactions issued by Elavon from time to time, including without limitation, all amendments, changes, and revisions made thereto from time to time.
  - cc) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant or a Merchant uses the Internet to submit the Transaction for processing to Elavon.
  - dd) **Electronic Gift Cards (EGC):** A special card purchased by a customer that is redeemable for in-store merchandise or services.
  - ee) **Interchange:** The clearing and settlement system for Visa and MasterCard Credit Cards and Debit Cards where data is exchanged between Elavon and the Issuer.
  - ff) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
  - gg) **JCB:** JCB International Co., Ltd.
  - hh) **Laws:** All applicable state, federal and local laws, rules, regulations, orders and decrees, as amended from time to time.
  - ii) **Loyalty Cards:** A special card given to customers who are frequent shoppers of an establishment pursuant to which the customer may receive a discount or other reward.
  - jj) **Mail Order/Telephone Order (MO/TO) Transaction:** For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.
  - kk) **MasterCard:** MasterCard International Incorporated.
  - ll) **Member:** U.S. Bank National Association. The Member may be changed by Elavon at any time.
  - mm) **Merchant (or you):** The State of Wisconsin, and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B. The State of Wisconsin will not be responsible for any Merchant that joins this Agreement by executing a Participation Agreement.
  - nn) **Merchant Application:** Any document containing information regarding Merchant's business that is submitted to Elavon and Member in connection with Merchant's application for processing services, including documents submitted by Merchant as a part of the bid process, if applicable.
  - oo) **Merchant Operating Guide:** The operating manual provided by Elavon to its Merchants. The Merchant Operating Guide may be amended from time to time by Elavon in its sole discretion.
  - pp) **National Automated Clearing House Association (NACHA):** The national association that establishes standards, rules, and procedures to enable depository financial institutions that are members of regional ACH associations to exchange electronic payments.
  - qq) **Payment Device:** Any device used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device, including an Electronic Gift Card, check, (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.
  - rr) **Payment Network:** Any Credit Card Association, EFT Network, Electronic Check Service Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.



- ss) **Payment Network Regulations:** Individually and collectively, as the context may dictate, the Credit Card Rules, the Debit Card Rules, and/or the Electronic Check Service Rules.
- tt) **Person:** Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.
- uu) **POS Device:** A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Elavon and the applicable Payment Network.
- vv) **Prepaid Cards:** A reloadable card having available funds to the Cardholder paid for in advance.
- ww) **Program:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- xx) **Reserve Account:** The account established pursuant to Section (B)(6).
- yy) **Reserve Amount:** The amount established pursuant to the calculation set forth in Section (B)(6).
- zz) **Reserve Event:** The events designated in Section (B)(6).
- aaa) **Retrieval Request:** A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.
- bbb) **TOS:** These Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.
- ccc) **Transaction:** Any action by a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).
- ddd) **Transaction Receipt:** The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.
- eee) **Value Added Services:** Any product or service provided by a third party unaffiliated with Elavon or Member to assist Merchant in processing Transactions, including without limitation, Internet payment gateways, integrated POS Devices, inventory management and accounting tools, loyalty programs, fraud prevention programs, and any other product or service that participates, directly or indirectly, in the flow of Transaction data.
- fff) **Visa:** Visa U.S.A., Inc.

- 2) **RULES OF CONSTRUCTION.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word "day" shall mean "calendar day", unless specifically stated otherwise. In the event of a conflict between the terms of Section B - General Provisions, and any subsequent section of the TOS, the terms of the subsequent section shall prevail.

### Section B - General Provisions

- 3) **ACCEPTANCE OF PAYMENT DEVICES.** Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as payment for goods and services. The terms and conditions for the acceptance of Credit Cards are set forth in the TOS. The terms and conditions for the acceptance of any Payment Devices or methods other than Credit Cards shall be set forth in one or more addenda (each an "Addendum"), which shall incorporate the TOS by reference. Each Addendum shall be governed by the TOS, as well as by the terms set forth in the Addendum.
- 4) **DEPOSIT OF TRANSACTION RECEIPTS.**
- a) **Funds.**
    - i) **Deposits.** You agree that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, Elavon, and Member will deposit to the DDA all funds evidenced by



- Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide you provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). You acknowledge that your obligation to Elavon and Member for all amounts owed under the agreement arises out of the same transaction as Elavon's and Member's obligation to deposit funds to the DDA.
- ii) **Provisional Credit.** All Transaction Receipts and deposits are subject to audit and final checking by Member and Elavon, and may be adjusted for inaccuracies or errors. You acknowledge that all credits for funds provided to you are provisional and subject to Chargebacks and adjustments in accordance with the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer. Member or Elavon may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and Elavon's sole discretion.
  - iii) **Original Transaction Receipts.** Under no circumstances will Member or Elavon be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Member and Elavon.
- b) **Chargebacks.** You are fully liable to Elavon and Member for all Transactions returned to Elavon or Member for whatever reason including all Chargebacks. You will pay Elavon and Member for all Chargebacks. You agree to accept for Chargeback, and will be liable to Member and Elavon in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason. You authorize Elavon and Member to offset from funds due the Merchant for Transaction activity and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding Chargebacks.
- 5) **DEMAND DEPOSIT ACCOUNT (DDA).**
- a) **Establishment and Authority.** You will establish and maintain with Member (or with an ACH receiving depository institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. You will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement. You irrevocably authorize Elavon and Member to debit the DDA for Chargebacks in accordance with the Payment Network Regulations and for returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You also authorize Elavon's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement when such products or services are requested by you. You must obtain prior consent from Member and Elavon to change the DDA. If you do not get that consent, Elavon or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. Elavon and Member have the right to rely upon written instructions submitted by you to request changes to the DDA. You may request from Elavon written confirmation of Elavon's and Member's consent to change the DDA.
  - b) **DDA.** If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (B)(4) of the TOS. Elavon and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. You authorize Member or Elavon to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH Authorization (defined below). To the extent required, you authorize and appoint Member to act as your agent to collect Transaction amounts from the Issuer. Member, in its sole discretion or at Elavon's direction, may grant you provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and Elavon and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the





Agreement. You shall maintain sufficient funds on deposit in your DDA to pay all items as they come due in the ordinary course of business.

- c) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. You must promptly examine all statements relating to the DDA and immediately notify Elavon and Member in writing of any errors in the statement Merchant received from Elavon. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Elavon within thirty (30) days after you receive the statement containing the asserted error. If you fail to provide such notice to Elavon within said thirty (30) days, Elavon and Member shall not be liable to you for any errors you assert at a later date. You may not make any claim against Member or Elavon for any loss or expense relating to any asserted error for sixty (60) days immediately following Elavon's receipt of your written notice. During that sixty (60) day period, Elavon will be entitled to investigate the asserted error, and you shall not incur any cost or expense in connection with the asserted error without notifying Elavon.
  - d) **Depository Institution.** Merchant authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA. You hereby release Elavon and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement.
  - e) **ACH Authorization.** You authorize Member, Elavon, and their respective vendors and agents to initiate debit/credit entries to the DDA and the Reserve Account, all in accordance with the Agreement. This authorization will remain in effect after termination of the Agreement and until all of your obligations to Elavon and Member have been paid in full. In the event you change the DDA, this authorization will apply to the new account and you shall provide Elavon and Member such information regarding the new DDA as they deem necessary. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from you to reflect in its system any change to your DDA.
- 6) **RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.**
- a) **Reserve Account.**
    - i) **Establishment.** Elavon may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing a source of funds to pay Member and Elavon for any and all amounts owed by you. Member and Elavon shall have sole control of the Reserve Account.
    - ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the Cardholder receives and is satisfied with the product. Further, for purposes of this calculation, Elavon will determine, in its sole discretion, the applicable period considering factors such as Merchant's sales growth and seasonality.
    - iii) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equal or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed 1% of the total dollar value of incoming items to Elavon, (c) Elavon's reasonable belief that Merchant has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against you, (e)



- termination of the Agreement for any reason, (f) nonpayment of amounts owed to Elavon or Member, and (g) the occurrence of an adverse change in your financial condition.
- iv) **Funding.** Member and Elavon may fund the Reserve Account up to the Reserve Amount by any one or more of the following means.
    - (1) Member and Elavon may require you to deposit into the Reserve Account funds in an amount determined by Elavon;
    - (2) Member and Elavon may deposit into the Reserve Account funds they would otherwise be obligated to pay you.
  - v) **Use of Funds in Reserve Account.** Member or Elavon may, without notice to you, apply funds in the Reserve Account against any outstanding amounts you owe or future amounts you will owe under the Agreement or any other agreement between you and Member or Elavon. Also, Member or Elavon may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or Elavon. Further, you agree that Elavon or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
  - vi) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, and any other payments due under the Agreement. In no event shall you be entitled to a return of any funds remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement.
- b) **Recoupment and Set-off.** Member and Elavon have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe you under the Agreement or any other agreement. You acknowledge that in the event of a Bankruptcy Proceeding, in order for you to provide adequate protection under Bankruptcy Code Section 362 to Elavon and Member, you must create or maintain the Reserve Account as required by Elavon and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations you may owe to Elavon and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the filing of the bankruptcy petition.
  - c) **Remedies Cumulative.** The rights conferred upon Member and Elavon in this section are not intended to be exclusive of each other or of any other rights and remedies of Member and Elavon under the Agreement, at law or in equity. Rather, each and every right of Member and Elavon under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.
- 7) **FEES; OTHER AMOUNTS OWED; TAXES.**
- a) **Fees.** You will pay Member and Elavon fees for services, supplies, and equipment in accordance with Schedule A, Schedule of Fees. Such fees will be calculated once each month for the previous month's activity. Elavon will send you an invoice reflecting the fees due, which you must pay within thirty (30) days of the invoice date. In addition to all other available remedies, and except in regard to good faith disputes under s. 16.528(e) of the Wisconsin Statutes, Elavon and Member may offset any outstanding or uncollected amounts that are more than ninety (90) days past due from (i) any amounts they would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon or Member may owe you under this Agreement or any other agreement. In addition, you will pay Elavon at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on your account. The fees set forth in the Agreement will not be amended by Elavon for the Initial



Term of the Agreement except to pass through to you increases in interchange, assessments, or fees imposed by a third party.

- i) **Participating Merchants.** Merchants who participate in this Agreement by executing a Participation Agreement may choose to be debited instead of invoiced for their fees. In such case, Elavon will calculate and debit the fees from the DDA once each month for the previous month's activity, or such fees will be deducted from the funds due that Merchant under the Agreement.
  - b) **Other Amounts Owed.** You will immediately pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of your Transaction processing), and any other payments due under the Agreement, except that any fees will be paid within thirty (30) days after receipt of invoice. Elavon or Member may debit these amounts (including any fees outstanding for more than 120 days) from your DDA by ACH, and in the event such ACH does not fully reimburse Elavon or Member for the amount owed, you will immediately pay Elavon or Member such amount except in regard to good faith disputes under s. 16.528(e), Wisconsin Statutes. Elavon will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.
  - c) **Taxes.** You are also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If you are a tax-exempt entity, you will provide Elavon and Member with an appropriate certificate of tax exemption.
- 8) **ACCURACY OF INFORMATION; HOLD HARMLESS; LIMITATION OF LIABILITY; PERFORMANCE.**
- a) **Accuracy of Information.** You represent and warrant to Member and Elavon that all information provided to Elavon in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is correct and complete. You must notify Elavon in writing of any changes to such information, including, without limitation, any additional location or new business at which you desire to accept payment services, type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at your place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. You will provide any additional information requested by Elavon within a reasonable time. You will hold harmless Member and Elavon for all losses and expenses incurred by Member or Elavon arising out of any such change, whether or not reported to Elavon, or your failure to provide requested information. Elavon may immediately terminate the Agreement upon notification by you of a change to the information in the Merchant Application. You authorize Elavon and Member to contact credit reporting agencies and your creditors to make inquiries and obtain reports regarding your credit standing upon Elavon's or Member's receipt of the Merchant Application.
  - b) **Hold Harmless.** As between Merchant, Elavon and Member, Merchant will be responsible for, and will at its own expense, defend itself against any and all suits, claims, losses, demands or damages, arising out of or in connection with any dispute with any Cardholder or third party relating to any Transaction or any breach by Merchant of any of its obligations under this Agreement for which Member and Elavon are not directly or indirectly at fault. Merchant hereby releases Elavon and Member from any and all liabilities, claims, losses, costs, expenses and demands of any kind or nature, arising out of or in connection with such Transactions and Merchant breaches.
  - c) **Limitation of Liability.** In addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the lesser of (a) the fees paid by you during the last three (3) months, exclusive of fees and variable costs incurred by Elavon and Member to process Transactions, such as Interchange costs, assessments, and fees imposed by a third party or, (b) fifty thousand dollars





- (\$50,000). In no event will Elavon, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.
- d) **Performance.** Neither Elavon nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of Elavon or Member and without the fault or negligence of Elavon or Member.
- 9) **REPRESENTATIONS AND WARRANTIES.** You represent and warrant to Elavon and Member as of the time the Agreement is effective, and reaffirm to Elavon and Member each time a Transaction is effected during the initial term or any renewal term of the Agreement, the following:
- a) **Information.** All information provided in the Merchant Application, in the bid process if applicable, or any other document submitted to Elavon is true and complete and properly reflects the business, financial condition and officers of Merchant. Elavon has the right to rely upon written instructions submitted by you to request changes to your business information. You may request written confirmation of Elavon's consent to the changes to your business information. You will not submit Transactions for processing to Elavon or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of Elavon.
- b) **Authority to Execute.** Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Elavon, now or in the future. Further, you represent and warrant that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which you are subject.
- c) **No Litigation.** There is no action, suit, or proceeding pending, or to your knowledge, threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), or, if you have, you have disclosed that fact to Elavon in writing.
- d) **Transactions.** All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from you or a return or adjustment related to such purchase. No Transaction involves a Cardholder obtaining cash from you unless allowed by the Payment Network Regulations and agreed to in writing with Elavon.
- e) **Compliance with Laws and Regulations.** You will comply with all Laws and Payment Network Regulations.
- f) **Business Use.** You are obtaining and using the processing services from Elavon for business purposes only and to facilitate lawful business Transactions between yourself and your customers. You also acknowledge that the DDA into which debits and credits are made is being used for lawful business purposes only.
- 10) **AUDIT AND INFORMATION.**
- a) **Audit.**
- i) **Elavon or Member Audit.** Subject to the applicable privacy and confidentiality provisions contained in Appendix 1 of the Enterprise Banking Services Contract, and in the event that Elavon or Member reasonably suspect that they are subject to a financial risk due to your actions or omissions, you authorize Elavon and Member to perform an audit or inspection of your operations to confirm compliance with the Agreement at Elavon or Member's expense.
- ii) **Payment Network Audit.** In the event of a known or suspected data compromise, security incident or the occurrence of suspicious activity, you will obtain and submit a copy of a forensic audit from a qualified incident response assessor of the information security of your business at your expense when requested by Elavon or Member as required by the Payment



Network Regulations. You acknowledge and agree that the Payment Networks have the right to audit your operations to confirm compliance with the Payment Network Regulations.

- b) **Information.**
  - i) **Authority.** You authorize Elavon and Member to make, from time to time, any business or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Elavon.
  - ii) **Financial Information.** Upon the request of either Elavon or Member, you will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by you. You further agree to provide to Elavon and Member such other information regarding your financial condition as Elavon and/or Member may request from time to time. Within 120 days after the end of each fiscal year, you 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.
  - c) **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, you must provide certain information and identifying documents to allow Elavon and Member to identify you.
- 11) **RESPONSIBILITY FOR ACTIONS.** You are responsible for the actions of or failure to act by your officers, directors, employees, agents, business invitees, and those of any other Person who, with or without your consent or cooperation, obtains access to information related to Transactions.
- 12) **FRAUD MONITORING.** You are solely responsible for monitoring your Transactions and the actions of your officers, directors, employees, agents, business invitees, third party vendors including Value Added Services, and those of any other Person who, with or without your consent or cooperation, obtains access to your Transactions, for fraudulent or other suspicious activity. Elavon and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.
- 13) **BUSINESS CONTINUITY.** Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction incurred by Merchant. Elavon is under no duty to recreate lost Transactions that have not been transmitted to Elavon in the proper format.
- 14) **THIRD PARTIES.**
  - a) **Products or Services.** You may desire to employ Value Added Services to assist you. You shall not utilize any Value Added Services, unless you have disclosed such use to Elavon previously in writing, and unless such Value Added Services are fully compliant with all applicable Laws and Payment Network Regulations. You must ensure that any Value Added Service used by you is registered with the Payment Networks prior to the performance of any contracted services on your behalf. Further, you will be bound by the acts and omissions of the third party offering such Value Added Services and you will be responsible for ensuring compliance by the third party offering such Value Added Services with all applicable Laws and Payment Network Regulations. You will hold Elavon and Member harmless from and against any loss, cost, or expense incurred in connection with or by reason of your use of any Value Added Service. Neither Elavon nor Member is responsible for the Value Added Services provided by an unaffiliated third party and neither Elavon nor Member is responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon. Elavon and Member will be responsible for any third parties retained by Elavon or Member to process Transactions for Merchant, provided that such third parties are identified on Schedule C.
  - b) **Use of POS Devices Provided by Others.** In addition to the foregoing, if you use Value Added Services for the purposes of data capture and/or authorization, you agree: (i) that the third party providing such services will be your agent in the delivery of Transactions to Elavon and Member



via a data processing system or network compatible with Elavon's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor Elavon will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither Elavon nor Member is responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.

15) **TERM AND TERMINATION.**

- a) **Term.** Unless terminated as set forth below, the Agreement will remain in effect for a period of six (6) years ("Initial Term") following the Effective Date. The Agreement may be renewed for two successive two (2) year terms ("Renewal Term"). Should Merchant continue processing Transactions after the Renewal Term, then the parties agree that the terms of this Agreement will govern such Transaction processing.
- b) **Termination.**
  - i) **Merchant.**
    - (1) The Agreement may be terminated by you by providing 180 days written notice.
    - (2) The Agreement may be terminated by you in the event of a material breach of the terms of the Agreement by Member or Elavon, provided you give Member and Elavon written notice of any alleged breach and such breach remains uncured for a period of sixty (60) days following receipt of written notice by the party you claim to be in breach of the Agreement.
    - (3) The Agreement may be terminated by you in the event that sufficient legislative appropriation is not available, provided that you give Elavon and Member notice prior to termination.
    - (4) The Agreement may be terminated by you if Member or Elavon files a petition in bankruptcy, becomes insolvent, or dissolves.
  - ii) **Elavon or Member.**
    - (1) The Agreement may be terminated by Member or Elavon effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to you at least one hundred twenty (120) days prior to the expiration of the then current term.
    - (2) The Agreement may be terminated by Elavon or Member immediately upon the occurrence of one or more of the following:
      - (a) The garnishment or attachment of your deposit accounts with Member, the DDA, the Reserve Account, or any of your property in the possession of Elavon or Member.
      - (b) The assignment of your assets generally for the benefit of creditors.
      - (c) The commencement of a Bankruptcy Proceeding by or against you.
      - (d) Any representation and warranty by a party is or becomes false or misleading in any material respect as of the date made, or becomes false or misleading at any time during the term of this Agreement.
      - (e) Any Payment Network requires Member or Elavon to terminate this Agreement or cease processing transactions for you.
    - (3) The Agreement may be terminated by Elavon or Member if, after providing one hundred twenty (120) days written notice, any of the following conditions remain:
      - (a) The occurrence of Excessive Activity (defined in Section C(24)(c)).
      - (b) The acceptance of Card Not Present Transactions without proper disclosure to Elavon and Member as set forth herein.
      - (c) The failure to pay Elavon or Member any amount you owe Elavon or Member.
      - (d) The failure by you to perform a material obligation of this Agreement.
      - (e) The occurrence of an adverse change in your financial condition.



Elavon's and Member's rights of termination under the Agreement are cumulative. A specific right of termination in this section shall not limit any other right of Elavon or Member to terminate the Agreement expressed elsewhere.

- c) **Notice of Termination.** Notice of termination by Merchant, Elavon, or Member must be given in writing. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's account with Elavon may take up to thirty (30) days following Elavon's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Elavon following termination by either Merchant or Elavon, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.
- d) **Action Upon Termination.**
  - i) **Accounts.** All your obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until you pay all amounts you owe Elavon or Member or amounts for which you are liable under the Agreement. You must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination. If a Reserve Account is established by Elavon, then any balance remaining after Chargeback rights have expired and all other amounts owed by you have been paid will be disbursed to you.
  - ii) **Equipment.** If your equipment is leased, you are obligated to honor the terms and conditions of your leasing contract. If your equipment is owned by Elavon, you must return all equipment owned by Elavon within ten (10) business days and immediately pay Elavon any amounts you owe for such equipment.
  - iii) **Return to Elavon.** All promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to you and not purchased by you or consumed in use will remain the property of Elavon and must be returned to Elavon or destroyed within ten (10) business days after termination of the Agreement. You will be fully liable for any and all loss, cost, and expense suffered or incurred by Elavon arising out of any failure to return or destroy such materials following termination.

16) **COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™.**

- a) **Compliance with Laws and Payment Network Regulations.** You agree to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or Elavon. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. You further agree to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; and (ii) electronic fund transfers; and (iii) confidential treatment of information. You will assist Member and Elavon in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. You will execute and deliver to Member and Elavon all documents they may from time to time reasonably deem necessary to verify your compliance with this provision.
- b) **MATCH™.** You acknowledge that Member and/or Elavon is required to report Merchant's business name and, if applicable, the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa pursuant to the requirements of the Payment Network Regulations. You specifically consent to the fulfillment of the obligations related to the listing by Elavon and Member, and the listing itself.
- c) **Security Program Compliance.** You must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard including the Cardholder Information Security Program (CISP) of Visa and the Site Data Protection Program (SDP) of MasterCard, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. You also



shall ensure that all third parties from whom you procure Value Added Services or third party POS Devices comply with the requirements of those programs. Upon request, Elavon will provide you with the respective website links to obtain the current requirements of the Visa and MasterCard programs. You are responsible for your own actions or inactions, those of your officers, directors, shareholders, employees and agents, including any third party vendors with whom you contract to perform services for you. You shall hold Elavon and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the program requirements by any of the individuals or entities listed in the immediately preceding sentence. Should you participate in a program with any other Payment Network or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, you must comply therewith and ensure that your officers, directors, shareholders, employees, and agents, including any third party vendors from whom you procure Value Added Services or third party POS Devices also comply with the program requirements of such Payment Network. Elavon and Member will be responsible for any third parties retained by Elavon or Member to process Transactions for Merchant, provided that such third parties are identified on Schedule C.

- d) Data Compromise.** You must notify us immediately (and if notice is given orally, it must be confirmed in writing within two (2) business days), if you know or suspect that Cardholder information has been accessed or used without authorization. You must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service. You must work with us to rectify any issues that may result, including providing us with (and obtaining any waivers necessary for) all relevant information to verify your ability to prevent future data incidents in a manner consistent with this Agreement. Without waiving any of our rights and remedies, you are liable for all fraudulent transactions related to any data incident that occurs in your systems or systems within your control including your employees and agents and Value Added Service providers, and all costs Elavon or Member incur as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance. You must provide to us, on request, audit reports of your computer systems or data incidents or allow us to perform such audits, at your expense. Audits must identify the cause of the data incident and confirm whether or not you were in compliance with the Payment Networks' PCI Data Security Standard at the time of the incident. If Elavon or Member suffer a data incident and Cardholder or customer information has been accessed from Elavon or Member, their employees or agents, or systems within Elavon's or Member's control, then Elavon and Member will follow all Payment Network Regulations with respect to such data incident and, solely with respect to the parties to this Agreement, will be liable for all costs Merchant incurs as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and the cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance.

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

- a) **Use of Trademarks.** You may display the promotional materials provided by Elavon in your place of business. Your use of Visa and MasterCard marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Your right to use all such marks will terminate upon termination of the Agreement. Your use of promotional materials, provided by Visa, MasterCard, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, or such other Payment Networks endorse any goods or services other than their own and you may not refer to Visa, MasterCard, or any other Payment Networks in stating eligibility for your products or services.
- b) **Confidentiality.**
- i) **Cardholder and Transaction Information.** You shall, at all times protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and





- Payment Network Regulations. You will not disclose Cardholder or Transaction information to any third party, except to an agent of yours assisting in completing a Transaction, or as required by Laws or the Payment Network Regulations. You must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorized personnel. You must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that you no longer deem necessary or appropriate to maintain. Further, you must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2/CVC2 data after authorization for record keeping or additional authorization processing. In accordance with Section B(16)(d), Merchant shall immediately notify Elavon of any Cardholder or Transaction information compromise of which it becomes aware whether such compromise occurred at: (i) the Merchant; (ii) a third party from whom Merchant procures Value Added Services; (iii) Elavon or Member; or (iv) elsewhere.
- ii) **Bankruptcy.** In the event of failure or other suspension of your business operations, including bankruptcy or insolvency, you must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. You must:
    - (1) Return this information to Elavon, or
    - (2) Provide acceptable proof of destruction of this information to Elavon.
  - iii) **Elavon or Member Confidential Information.** You shall at all times protect Elavon's and Member's Confidential Information. To the extent provided by law, including Wisconsin Public Record Law, subch. II, Chapter 19 of the Wisconsin Statutes, you will not disclose any of Elavon's or Member's Confidential Information to any third party except as required by Laws. The parties recognize that under s. 19.36, Wisconsin Statutes, computer programs and data, trade secrets, and financial identifying information are exempted from disclosure and Merchant agrees not to disclose such information.
  - c) **Passwords.** If you receive a password from Elavon to access any of Elavon's databases or services you will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Elavon if you believe Elavon's databases or services or your information has been compromised by use of the password. If you receive passwords from a third party, you must protect such passwords in the manner required by such third party and hold Elavon and Member harmless from any losses, costs, or expenses that arise from your use or misuse of such third party passwords.
  - d) **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Elavon. Nothing in the TOS shall be construed as granting Merchant any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Elavon's services, equipment, or software.
- 18) **MISCELLANEOUS PROVISIONS.**
- a) **Entire Agreement.** Deleted.
  - b) **Construction.** Any alteration or strikeover in the text of this preprinted TOS will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.



- c) **Assignability.** The Agreement may be assigned by Member or Elavon, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Elavon. If you, nevertheless, assign the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as you.
- d) **Notices.** Any written notice to the Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of Elavon. Any written notice to Elavon, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 7300 Chapman Highway, Knoxville, TN 37920, and shall be deemed received only upon actual receipt.
- e) **Bankruptcy.** You will immediately notify Elavon of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant. You will include Elavon on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to Elavon under applicable Payment Network Regulations or Laws. You acknowledge 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 you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.
- f) **Attorneys' Fees.** Deleted.
- g) **Customer Contact.** You authorize Member and Elavon to contact your customers or their Issuer if Member or Elavon determines that such contact is necessary to obtain information about any Transaction between you and a customer.
- h) **Telephone Recording.** For quality assurance and training purposes, you authorize Elavon to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in Elavon's discretion and pursuant to applicable Law.
- i) **Information Sharing.** You understand and agree that Elavon may disclose any information gathered by Elavon to (i) Elavon's "affiliates" (i.e., companies related to us by common control or ownership) that offer financial products or services, including those identified in the Agreement when such products and services are requested by you and to Elavon's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist Elavon in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).
- j) **Communication with Merchant.** You agree that Elavon and Member may provide you with information about the Program including, without limitation, information about new products and/or services by telephone or U.S. mail.
- k) **Amendments.** Member and Elavon may propose amendments or additions to Section C of the Agreement or the Merchant Operating Guide. Member or Elavon will inform you of a proposed change in a periodic statement or other notice. You will be deemed to have agreed to the change if you continue to present Transactions to Member and Elavon after thirty (30) days following the issuance of the notice. Elavon is entitled to pass through to you any fee increases imposed upon Elavon by Visa, MasterCard, any other Payment Network, and any other third party including telecommunications vendors. All changes to Section B of the Agreement will be in writing and signed by the parties.
- l) **Severability and Waiver.** If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalidity or unenforceability of that provision will not affect any of the remaining provisions and the Agreement will be construed as if the illegal or unenforceable provision is not contained in the Agreement. Neither the failure, the delay by Merchant, Elavon or



- Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement.
- m) **Independent Contractors.** Elavon, Member, and you will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. This Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
  - n) **Privacy Laws.** In addition to Section (B)(17)(b) above, Merchant, Elavon and Member must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information, using a standard of care at least equal to the standard required of Elavon to protect such information pursuant to applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act (HIPAA), the federal Gramm-Leach-Bliley Act or other applicable privacy laws. Further, a Merchant that is a “covered entity” or “business associate”, as defined under HIPAA, must not use any product to store, transmit, or otherwise maintain “protected health information” as defined by HIPAA. Elavon is not a “business associate” as defined by HIPAA and it is not Elavon's practice to store or accept any information that would cause it to be a “business associate” under HIPAA.
  - o) **Survival.** All obligations hereunder shall survive termination of the Agreement, including, without limitation, Sections (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(11), (B)(14), (B)(15)(d), (B)(16), (B)(17) and (B)(18)(f) of the TOS.
  - p) **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

### Section C – Acceptance of Visa and MasterCard

- 19) **ACCEPTANCE OF VISA AND MASTERCARD.** Merchant agrees to the following provisions in addition to the Definitions in Section (A) and the General Provisions of Section (B) above:
- 20) **VISA AND MASTERCARD DEFINITIONS.** For purposes of this Section, “Credit Card” shall be deemed to be limited to a: (i) credit/business product of Visa; (ii) consumer debit/prepaid product of Visa; (iii) credit/business product of MasterCard; or (iv) consumer debit/prepaid product of MasterCard as applicable. The credit/business products of Visa are those products for which transactions by the Cardholder are paid by the Cardholder at least fifteen (15) days after the transaction including: (i) consumer credit products (including co-branded and smart Visa versions) such as Classic, Gold, Platinum, Signature, and Infinite cards; and (ii) business products such as business credit, business debit, business line of credit, and smart Visa business, purchasing cards, corporate cards, fleet cards, and commercial prepaid cards. The consumer debit/prepaid products of Visa are those products that for which Transactions by the Cardholder are paid by accessing the Cardholder’s asset account immediately including: (i) consumer Visa check cards such as Classic, Gold, Platinum and Visa Check Card II; and (ii) consumer prepaid/EBT cards such as Visa Buxx, Visa Payroll, Visa gift cards (including incentives, promotional, and rebate), child support cards, unemployment cards, insurance claim cards, customer service cards, state disbursement cards (not including unemployment or child support), flexible spending account cards, general purpose reloadable and one-time use prepaid cards, and student aid college cards. The consumer debit/prepaid products of MasterCard include Cardholder signature debit cards, prepaid cards, stored value cards, EBT cards and payroll cards. The credit/business products of MasterCard include all other MasterCard products.
- 21) **HONORING CREDIT CARDS.**



- a) **Honoring Cards.** Merchant may choose to accept (i) only the credit/business products of Visa and/or MasterCard; (ii) only the consumer debit/prepaid products of Visa and/or MasterCard; or (iii) both the credit/business products and consumer debit/prepaid products of Visa and/or MasterCard. You must indicate your decision to accept a limited category of products on the Merchant Application and if you wish to discontinue acceptance of either category of products, you must provide Elavon with thirty (30) days advance written notice. If you choose to accept only one of the categories of products but later submit a Transaction outside of the selected category, Elavon and Member are not required to reject the Transaction and you will be charged our standard fees and expenses for that category of products. Further, if you choose a limited acceptance option, you must still honor all international cards presented for payment. Merchants who have decided to implement a limited acceptance policy are required to display appropriate signage to communicate that policy to Cardholders.
- b) **No Minimum or Maximum.** Merchant shall not establish minimum or maximum Credit Card Transaction amounts.
- c) **Cardholder Identification.** In Card Present Transactions, you will identify the Cardholder and check the expiration date and signature on each Credit Card. You will not honor any Credit Card if: (i) the Credit Card has expired; (ii) the signature on the Transaction Receipt does not correspond with the signature on the Credit Card, is blank, or uses language to the effect of "see id"; or (iii) the account number embossed on the Credit Card does not match the account number on the Credit Card's magnetic stripe.
- d) **Credit Card Recovery.** You will use reasonable, peaceful means to recover any Credit Card: (i) on Visa Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Member (or its designee), the Issuer, or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Credit Card is lost, stolen, counterfeit, fraudulent, or otherwise invalid, or its use is not authorized by the Cardholder; or (iv) for MasterCard Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number, or the Credit Card does not have the "Twin Globes" hologram on the lower right corner of the Credit Card face.
- e) **Surcharges.** You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Credit Card, except as permitted by the Credit Card Rules. This paragraph does not prohibit you from offering a discount to induce a person to pay by cash, check, or similar means rather than by Credit Card.
- f) **Convenience Fees.** You may not assess Convenience Fees unless you have disclosed such fees to Elavon previously in writing and you have been approved by Elavon to assess such fees. If you complete a Transaction and assess a Convenience Fee without having disclosed such fee previously in writing and obtained Elavon's consent, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Payment Network Regulations. Transactions that include a Convenience Fee must comply with each of the following requirements:
  - i. A Convenience Fee cannot be assessed in a face-to-face merchant environment.
  - ii. The Convenience Fee is permitted only for one-time payments and may not be imposed on recurring payments or transactions. Examples of recurring charges include, but are not limited to, insurance premiums, subscriptions, Internet service provider monthly fees, membership fees, tuition or utility charges.
  - iii. You must provide a true "convenience" in the form of an alternative payment channel outside of your customary payment channels, and the Convenience Fee must be disclosed by you to the Cardholder as a charge for the alternative payment channel convenience that is provided.



- iv. The Convenience Fee must be disclosed prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not want to pay the fee.
- v. The Convenience Fee must be included in the total amount of the Transaction; it cannot be "split" out from the Transaction amount. The only exception is for card acceptance programs involving only MasterCard Credit Cards where Visa Credit Cards are not accepted.
- vi. If a Convenience Fee is assessed it must be for all payments (Visa, MasterCard, Discover, AMEX, ACH, and check) within a particular payment channel (mail, telephone, and internet).
- vii. Additional Visa Convenience Fee Requirements are as follows: (i) it must be a flat fee; (ii) it cannot be tiered or percentage based regardless of the value of the payment due; (iii) it must not be authorized and settled separately from the primary transaction; (iv) the fee must be assessed by the *same Merchant actually providing the goods and services*; and (v) the fee may not be assessed by a different merchant.
- viii. Additional MasterCard Convenience Fee Requirements are as follows: (i) the fee may be tiered, percentage based, or flat; and (ii) the fee may be authorized and settled separately from the primary transaction.
- ix. Merchants who accept both Visa and MasterCard Credit Cards are restricted to assessing Convenience Fees equally across card types and as such the Merchant is restricted to a flat Convenience Fee and must combine all charges into one authorization and clearing Transaction.
- x. To the extent Merchant's state or other governing body has passed legislation that requires Convenience Fee assessment by government agencies as a component of card acceptance, such laws may conflict with the Payment Network Regulations. Merchant bears all responsibility for, and agrees to hold Elavon and Member harmless from, all liability associated therewith, including all fees, fines and penalties levied by the Payment Networks.
- xi. Convenience Fees may be prohibited by Laws in some States. Merchant may not charge Convenience Fees where prohibited by Laws.
- xii. In no event is a Convenience Fee to be referred to as a surcharge or advertised as an offset to processing fees.
- xiii. If you have received approval from Visa to participate in the Tax Payment Pilot Program, then you may assess a variable service fee so long as: (i) only eligible tax payments are accepted (personal income, personal property, real property, unemployment, business income and sales and use taxes); (ii) Cardholders are notified of the fee and given the opportunity to opt-out of the Transaction; (iii) the variable fee must be processed as a separate Transaction and not combined with the tax payment; (iv) the variable fee may be assessed on all payment channels and the fee cannot be higher than any other card-based payment offered through the same channel; and (v) you submit appropriate reports of CISP compliance to Visa and receive Visa approval and certification annually.
- g) **Return Policy.** You must properly disclose to the Cardholder, at the time of the sales Transaction and in accordance with the Credit Card Rules, any limitation you have on accepting returned merchandise.
- h) **No Claim Against Cardholder.** You will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Transaction unless Member or Elavon refuses to accept the Transaction Receipt or revokes its prior acceptance of the Transaction Receipt (after receipt of a Chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Transaction Receipt, and if you receive such payments, you will promptly remit them to Elavon.





- i) **Disputes With Cardholders.** All disputes between you and any Cardholder relating to any Transaction will be settled between you and the Cardholder. Neither Elavon nor Member bears any responsibility for such Transactions or disputes, other than with respect to processing Chargebacks under the Credit Card Rules.

22) **AUTHORIZATION.**

- a) **Required on all Transactions.** You must obtain an Authorization Code before completing any sales Transaction. An Authorization Code verifies the Credit Card number is valid, the Credit Card has not been reported lost or stolen at the time of the sales Transaction, and confirms the amount of credit or funds requested for the sales Transaction is available. You will follow any instructions received during Authorization. Upon receipt of an Authorization Code, you may consummate only the sales Transaction authorized and must note the Authorization Code on the Transaction Receipt. In any Card present Transaction, whether or not an Authorization Code is provided, you must obtain a swiped or imprinted sales draft signed by the Cardholder. For all Card Not Present sales Transactions, you must obtain the Credit Card expiration date, Cardholder address and telephone number, and CVV2/CVC2 number and forward them as part of the Authorization.
- b) **Effect.** An Authorization Code does not: (i) guarantee the Merchant final payment for a sales Transaction; (ii) guarantee that the sales Transaction will not be disputed later by the Cardholder as any sales Transaction is subject to Chargeback; or (iii) protect you in the event of a Chargeback regarding unauthorized sales Transactions or disputes involving the quality of goods or services. Authorization Codes will not waive any provision of the TOS or otherwise validate a fraudulent sales Transaction or a sales Transaction involving the use of an expired Credit Card.
- c) **Unreadable Magnetic Stripes.** For Card Present Transactions, if you authorize and present Transactions electronically and your terminal is unable to read the magnetic stripe on the Credit Card, you must obtain the following in addition to key-entering the Transaction into the POS Device for processing: (i) a physical imprint of the Credit Card using a manual imprinter and (ii) the Cardholder's signature on the imprinted Transaction Receipt.

23) **PRESENTMENT OF TRANSACTION RECEIPTS.**

- a) **Transaction Receipts.**
  - i) **Card Present and Card Not Present Transactions (other than Electronic Commerce Transactions).** You will use a Transaction Receipt to document each Card Present and Card Not Present Transaction. Each such Transaction Receipt must include:
    - (1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
    - (2) Merchant name and location.
    - (3) Location Code (i.e., merchant identification number issued by Elavon).
    - (4) Transaction amount, including applicable taxes.
    - (5) Transaction date.
    - (6) Space for Cardholder signature for Card Present Transactions.
    - (7) Indication of who shall receive each copy of the Transaction Receipt (e.g., Merchant Copy, Bank Copy, Cardholder Copy).
    - (8) Authorization Code.
    - (9) Terms and conditions of the sale, if restricted.

If the Merchant is accepting consumer debit products of Visa or MasterCard, no data referencing the Cardholder's PIN number shall be printed on the receipt.

- ii) **Electronic Commerce Transactions.** You will use a Transaction Receipt to document each Electronic Commerce Transaction. Each such Transaction Receipt must include:
  - (1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
  - (2) Merchant name.
  - (3) Merchant online address.

- (4) Purchaser name.
  - (5) Authorization Code.
  - (6) Transaction amount.
  - (7) Transaction date.
  - (8) Customer service contact, including telephone number.
  - (9) Terms and conditions of the sale, if restricted.
- b) **Signatures.** In Card Present Transactions, Transaction Receipts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Transaction Receipt will only be waived if the Credit Card Transaction is a valid Card Not Present Transaction which fully complies with the requirements set forth in the TOS.
- c) **Reproduction of Information.** For Card Present Transactions, if the following information embossed on the Credit Card is not legibly imprinted on the Transaction Receipt, you will legibly reproduce on the Transaction Receipt the: (i) Cardholder's name; (ii) account number; (iii) expiration date; and (iv) Merchant's name and place of business. Additionally, for MasterCard Transactions, on the Transaction Receipt you will legibly reproduce the name of the bank that issued the Credit Card as it appears on the face of the Credit Card.
- d) **Truncation.**
- i) The Credit Card account number must be truncated on all Cardholder-activated Transaction Receipts. Truncated digits should be replaced with a fill character such as "x," "\*", or "#," and not with blank spaces or numeric characters.
  - ii) Effective July 1, 2003, all new POS Devices must suppress all but the last four digits of the Credit Card account number and the entire expiration date on the Cardholder's copy of the Transaction Receipt generated from electronic (including Cardholder-activated) POS Devices. Effective July 1, 2006, all existing POS Devices must comply with the rule set forth in this subsection.
  - iii) These truncation rules do not apply to Transactions in which the only way to record a Credit Card account number is in handwriting or by making an imprint or copy of the Credit Card.
- e) **Delivery and Retention of Transaction Receipts.** For Card Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder at the time of the Transaction. For Card Not Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder promptly following completion of the Transaction in either electronic (e.g., e-mail or fax) or paper (e.g., handwritten or terminal-generated) format. You will retain the "Merchant Copy" of the Transaction Receipt or Credit Transaction Receipt for at least eighteen (18) months following the date of completion of the Credit Card Transaction (or such longer period as the Credit Card Rules or the Laws may require).
- f) **Electronic Transmission.** If you utilize electronic Authorization and/or data capture services, you will enter the data related to Transactions into a POS Device and settle the Transactions and transmit the data to Elavon or its designated agent in the form specified by Elavon no later than the close of business on the date the Transactions are completed. If Member or Elavon requests a copy of a Transaction Receipt, Credit Transaction Receipt, or other Transaction evidence, you must provide it within the time frame specified in the request.
- 24) **RETRIEVAL REQUESTS AND CHARGEBACKS; CREDITS; REPROCESSING; FRAUD; AND FACTORING.**
- a) **Retrieval Requests.** You must respond to a Retrieval Request with a legible copy of the Transaction Receipt within the time frame specified. If you fail to provide a legible copy of the Transaction Receipt, you will receive a Chargeback that cannot be cured.
  - b) **Chargebacks.** You are fully liable to Elavon and Member for all Transactions returned to Elavon or Member for whatever reason including, but not limited to, Chargebacks. You agree to accept for Chargeback and will be liable to Member and Elavon in the amount of any sale for which the Cardholder or Issuer disputes the validity of the sale for any reason. You will pay Elavon and



Member on demand the value of all Chargebacks. You authorize Elavon and Member to offset from incoming Transactions and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with Elavon and Member in complying with the Credit Card Rules regarding Chargebacks. The following is not to be considered a complete listing of the reasons for which you may incur a Chargeback. It is intended only to provide the most commonly encountered situations where a Chargeback may occur.

- i) Failure to respond to a Retrieval Request or failure to provide a legible, complete, or proper copy of a Transaction Receipt in response to a Retrieval Request,
  - ii) Unauthorized use of a Credit Card as alleged by the Cardholder,
  - iii) Dispute by the Cardholder over the quality of goods or services,
  - iv) Failure by Merchant to provide goods or services,
  - v) The Transaction Receipt does not bear the Cardholder's signature,
  - vi) The Transaction Receipt represents a sales Transaction for which Authorization was initially declined and was subsequently obtained by means of multiple Authorization attempts or other means not permitted hereunder,
  - vii) The Transaction Receipt fails to comply with the terms and conditions of the Agreement or fails to comply with the Credit Card Rules,
  - viii) The sales Transaction was completed under circumstances constituting a breach of the Agreement.
- c) **Excessive Activity.** Your presentation to Elavon of Excessive Activity will be a breach of the Agreement and cause for termination of the Agreement as set forth in Section B(15)(b)(ii)(3). "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or merchant identification numbers, Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of your sales Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of sales Transactions. You authorize, upon the occurrence of Excessive Activity, Member and Elavon to take additional actions as either of them may deem necessary including, without limitation, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with the TOS.
- d) **Credits.**
- i) **Credit Transaction Receipt.** You will issue a Credit Transaction Receipt, instead of issuing cash or a check, as a refund for any previous sales Transaction. Member will debit the DDA for the total face amount of each Credit Transaction Receipt submitted to Elavon. You will not submit a Credit Transaction Receipt relating to any Transaction Receipt not originally submitted to Elavon, nor will you submit a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt. You will, within the time period specified by applicable Laws or the Credit Card Rules, whichever time period is shorter, provide Elavon with a Credit Transaction Receipt for every return of goods or forgiveness of debt for services that was the subject of a previous sales Transaction in accordance with the Credit Card Rules.
  - ii) **Revocation of Credit.** Member or Elavon may, in their sole discretion, refuse to accept any Credit Transaction Receipt for processing.
  - iii) **Reprocessing.** You will not resubmit or reprocess any Transaction that has been charged back.
- e) **Fraud and Factoring.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a transaction directly between you and a Cardholder or any Transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of fraudulent Transactions will be referred to law enforcement officials. You will not deposit any Transaction Receipt representing the refinancing of an existing obligation of a Cardholder. You agree that Elavon may, within its sole discretion, suspend the disbursement of funds from Transaction Receipt for any reasonable period of time required to investigate

suspicious or unusual deposit activity. Elavon and Member will have no liability for any losses you may attribute to any suspension of funds disbursement.

25) **OTHER TYPES OF TRANSACTIONS.**

- a) **Mail Order/Telephone Order (MO/TO).** You may not solicit or accept MO/TO sales Transactions unless you have disclosed such method of sale to Elavon previously in writing. If you complete a MO/TO sales Transaction without having disclosed such method of sale previously in writing, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules, and you may have to pay a surcharge on each such Transaction. You understand that Transactions processed via MO/TO are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to MO/TO sales Transactions. You may be required to use an address verification service (“AVS”) on MO/TO sales Transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a fraudulent Transaction. You will obtain the expiration date of the Credit Card for a MO/TO sales Transaction and submit the expiration date when requesting Authorization of the sales Transaction. For MO/TO sales Transactions, you will type or print legibly on the signature line of the Transaction Receipt the following applicable words or letters: telephone order or “TO,” or mail order or “MO,” as appropriate. Elavon recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by Cardholder for MO/TO sales Transactions.
- b) **Recurring Transactions.**
  - i) **Requirements.** For recurring Transactions (e.g., payment of insurance premiums or subscriptions), you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder’s account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) a notice from Elavon or Member that authority to accept recurring Transactions has been revoked; or (iii) a response that the Payment Device is not to be honored. You must provide a subsequent order form to the Cardholder when a Recurring Transaction is renewed by the Cardholder. Merchant is responsible for ensuring its compliance with Laws with respect to recurring Transactions.
  - ii) **Limitations on the Resubmission of Recurring Transactions.** In some limited instances, you may resubmit a preauthorized recurring Transaction up to four (4) times within sixteen (16) calendar days of the original Authorization request, provided that the decline response is one of the following: (i) authorization denied; (ii) insufficient funds; (iii) exceeds approval amount limit; or (iv) exceeds withdrawal frequency.
  - iii) **Recurring Transaction Receipts.** You must print legibly on the Transaction Receipt the words “Recurring Transaction.” You must obtain the Cardholder’s signature, including an electronic signature or other similar authentication that is effective under Laws, on the Transaction Receipt. For an Electronic Commerce Transaction, you must also include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Receipt.
  - iv) **Electronic Commerce Recurring Transactions.** In addition to the above, for an Electronic Commerce Transaction, you must also provide a simple and easily accessible online cancellation procedure that complies with Laws, if the Cardholder’s request for goods or services was initially accepted online.
  - v) **Recurring Transactions With Varying Amounts.** For Recurring Transactions of varying amounts, all of the following apply: (i) the order form must allow the Cardholder to specify a minimum and maximum Transaction amount to be charged, unless the Cardholder will be notified of the amount and date of each charge, as specified in the remainder of this section; (ii) you must inform the Cardholder of their right to receive, at least ten (10) calendar days



- prior to each scheduled Transaction Date, written notification of the amount and date of the next charge; and (iii) the Cardholder may choose to receive the notification in any of the following ways: (a) for every charge; (b) when the Transaction amount does not fall within the range of amounts specified on the order form; or (c) when the Transaction amount will differ from the most recent charge by more than an agreed upon amount. Merchant is responsible for ensuring that all communications with, and disclosures to, Cardholders comply with Laws.
- c) **Multiple Transaction Receipts.** You will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt unless: (i) partial payment is entered on the Transaction Receipt and the balance of the Transaction amount is paid in cash or by check at the time of the sales Transaction; or (ii) a Transaction Receipt represents an advance deposit in a sales Transaction completed in accordance with the Agreement and the Credit Card Rules.
- d) **Deposits.**
- i) **Prior Consent.** You will not accept for payment by Credit Card any amount representing a deposit or partial payment for goods or services to be delivered in the future unless you have disclosed such method of sale to Elavon previously in writing. If you accept a Credit Card for payment or partial payment of goods or services to be delivered in the future without having disclosed such method of sale to Elavon previously in writing, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules.
- ii) **Acceptance.** If you have disclosed such method of sale to Elavon previously in writing, then you will complete such sales Transactions in accordance with the Agreement, Laws, and Credit Card Rules. Merchant must execute one Transaction Receipt when processing the deposit Transaction and a second Transaction Receipt upon processing the balance of the Transaction. You will note the words “deposit” or “balance” on the applicable Transaction Receipt, as appropriate. You will not deposit the Transaction Receipt labeled “balance” until the goods have been delivered to Cardholder or until you have fully performed the services.
- e) **Future Delivery.** You will not present any Transaction Receipt or Credit Transaction Receipt to Member or Elavon for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery unless you have disclosed such method of sale to Elavon previously in writing and you have been approved by Elavon to submit such Transactions. If you have disclosed such method of sale to Elavon previously in writing, you represent and warrant to Member and Elavon that you will not rely on any proceeds or credit resulting from such sales Transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Transaction Receipts or other Credit Transaction Receipts in connection with future delivery sales Transactions or until you have fully performed the services.
- f) **Electronic Commerce.**
- i) **Electronic Commerce.** You may not solicit or accept Electronic Commerce sales Transactions unless you have disclosed such method of sale to Elavon previously in writing, and you may process such Transactions only if the Transactions have been encrypted by a third party vendor acceptable to Elavon and Member. If you submit Electronic Commerce sales Transactions without having disclosed such method of sale to Elavon previously in writing, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and the Payment Network Regulations. You understand that sales Transactions processed via the Internet are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to Electronic Commerce Transactions, whether or not: (i) such Transactions have been encrypted; and (ii) you have obtained Elavon’s consent to





engage in such Transactions. Encryption is not a guarantee of payment and does not waive any provision of the TOS or otherwise validate a fraudulent Transaction. Elavon recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by the Cardholder for all Electronic Commerce sales Transactions. All communication costs and compliance with Laws related to Electronic Commerce Transactions will be your responsibility. You understand that Elavon will not manage the telecommunications link for Electronic Commerce Transactions and that it is your responsibility to manage that link. Merchant authorizes Elavon and Member, at Merchant's costs and expense, to perform an annual audit and examination of Merchant's website and a due diligence review as required by the Payment Network Regulations for Electronic Commerce Merchants.

- ii) **Requirements.** For goods to be shipped on Electronic Commerce sales Transactions, you may obtain authorization up to seven (7) days prior to the shipment date. You need not obtain a second authorization if the Transaction Receipt amount is within fifteen percent (15%) of the authorized amount, provided the additional amount represents shipping costs. Further, your Web site must contain all of the following information: (a) complete description of the goods or services offered; (b) returned merchandise and refund policy; (c) customer service contacts, including electronic mail address and/or telephone number; (d) complete address (street address, city, state, zip code, and country) of the permanent establishment of the business; (e) complete address of the permanent establishment of the business on either the checkout screen (which displays the total purchase amount) or within the sequence of Web pages presented to the Cardholder during the checkout process; (f) Transaction currency (such as U.S. or Canadian dollars); (g) export or legal restrictions, if known; (h) delivery policy; (i) customer data privacy policy; and (j) your method of Transaction security. If you store Cardholder account numbers, expiration dates, or other personal Cardholder data in a database, you must follow the applicable Payment Network rules on securing such data. You may not retain or store CVV2/CVC2 data after authorization for record keeping or additional authorization processing.
- 26) **INTERCHANGE.** Interchange qualification requirements, as defined by the Credit Card Associations, affect the Merchant's fees or surcharges owed for Transactions. Merchant will pay a higher discount rate, higher fees, and surcharges for Transactions that do not meet the best rate qualification criteria or have been processed in a manner other than for which the Merchant was approved.

#### **Section D – Acceptance of American Express, Discover, Diners or JCB**

- 27) **ACCEPTANCE OF AMERICAN EXPRESS, DISCOVER, DINERS, AND/OR JCB CARDS.** If Elavon provides authorization and/or data capture services to Merchant for American Express, Discover, Diners, and/or JCB Transactions, Merchant agrees to the following provisions, in addition to the Definitions in Section (A) and the General Provisions of Section (B) above.
- 28) **ACCESS.** Upon request and fulfillment of the following conditions, Elavon will provide access to authorization and/or data capture services for American Express, Discover, Diners, and/or JCB Transactions to Merchants who have been approved by American Express, Discover, Diners, and/or JCB and who have entered into a separate agreement with American Express, Discover, Diners, or JCB, respectively; provided, however that neither Elavon nor Member shall be responsible for funding such Transactions.
- 29) **FORWARDED INFORMATION.** Elavon will forward certain information pertaining to Merchant, including, but not limited to, contact information and DDA numbers, to one or more of such Card Associations, unless Elavon receives from Merchant written instructions to the contrary.



**SCHEDULE A**  
**SCHEDULE OF FEES**

See response to Section 12.2 of the RFP (attached) or Appendix 3,  
as discussed in Section F of the 2008 Enterprise Banking Services Contract



**SCHEDULE B  
AFFILIATED ENTITIES**

<b>EIN</b>	<b>EIN Name</b>
39-2038117	ADOL PREGNANCY PREV BOARD
39-0806261	MEDICAL COLLEGE OF WISCONSIN
39-1286049	OFFICE STATE EMPLOYMENT RELATIONS
39-6006492	UNIVERSITY OF WISCONSIN SYSTEM
39-0806261	UW HOSPITALS & CLINICS
39-6028867	WI ADMINISTRATION, DEPARTMENT OF
39-6006422	WI AGRICULTURE, TRADE & CONSUMER PROTECTION, DEPT OF
39-1187694	WI ARTS BOARD
39-6006425	WI ASSEMBLY CHIEF CLERK
39-6008090	WI ASSEMBLY SGT.
39-1911568	WI BOARD OF COMMISSIONERS OF PUBLIC LANDS
39-1388102	WI BOARD ON AGING & LONG TERM CARE
39-0988984	WI CIRCUIT COURT
39-1361032	WI COMMERCE, DEPARTMENT OF
39-1652221	WI CORRECTIONS, DEPARTMENT OF
39-6006489	WI COURT OF APPEALS
39-1657652	WI DISTRICT ATTORNEYS, DEPARTMENT OF
39-1155267	WI EDUCATIONAL COMMUNICATIONS BOARD
39-1206337	WI ELECTIONS BOARD
39-1103756	WI EMPLOYE TRUST FUNDS, DEPARTMENT OF
39-6006441	WI EMPLOYMENT RELATIONS COMMISSION
39-1286049	WI EMPLOYMENT RELATIONS, DEPARTMENT OF
39-1190583	WI ETHICS BOARD
39-1835272	WI FINANCIAL INSTITUTIONS, DEPARTMENT OF
39-6006469	WI HEALTH & FAMILY SERVICES, DEPARTMENT OF
39-1051231	WI HIGHER EDUCATIONAL AIDS BOARD
39-6006447	WI HISTORICAL SOCIETY
39-1209764	WI HOUSING AND ECON DEV AUTH
39-6006451	WI INSURANCE, OFFICE OF THE COMMISSIONER OF
39-6006423	WI INVESTMENT BOARD
39-1313200	WI JUDICIAL COMMISSION
39-6006427	WI JUSTICE, DEPARTMENT OF
39-1078038	WI LEGISLATIVE AUDIT BUREAU
39-6006453	WI LEGISLATIVE COUNCIL
39-1141451	WI LEGISLATIVE FISCAL BUREAU
39-1026074	WI LEGISLATIVE REFERENCE BUREAU
39-1934253	WI LEGISLATIVE TECHNOLOGY SERVICE BUREAU
39-6006456	WI LIEUTENANT GOVERNOR, OFFICE OF THE
39-1646004	WI LOWER WISCONSIN STATE RIVERWAY BOARD
39-6006460	WI MILITARY AFFAIRS, DEPARTMENT OF
39-6006436	WI NATURAL RESOURCES, DEPARTMENT OF
39-6006443	WI OFFICE OF THE GOVERNOR
39-1286051	WI PERSONNEL COMMISSION
39-1271286	WI PUBLIC DEFENDER BOARD
39-6006487	WI PUBLIC INSTRUCTION, DEPARTMENT OF
39-6006468	WI PUBLIC SERVICE COMMISSION
39-1089259	WI REGULATIONS & LICENSING, DEPARTMENT OF
39-6006473	WI RETIREMENT COMMITTEE
39-6006491	WI REVENUE, DEPARTMENT OF



39-6006474	WI REVISOR OF STATUTES BUREAU
39-6006476	WI SECRETARY OF STATE
39-1257323	WI STATE FAIR PARK BOARD
39-6006479	WI STATE SENATE
39-6006489	WI SUPREME COURT
39-6006494	WI TECHNICAL COLLEGE SYSTEM
39-1911760	WI TECHNOLOGY FOR EDUCATIONAL ACHIEVEMENT
39-1834745	WI TOURISM, DEPARTMENT OF
39-6006446	WI TRANSPORTATION, DEPARTMENT OF
39-6006488	WI TREASURER, STATE
39-6006493	WI VETERANS AFFAIRS, DEPARTMENT OF
39-6006449	WI WORKFORCE DEVELOPMENT, DEPARTMENT OF

This Schedule B to the Terms of Service is dated as of the Effective Date.



(State of Wisconsin) TERMS OF SERVICE v.06.30.06 dtd 05.29.08 FINAL

**SCHEDULE C**  
**THIRD PARTIES RETAINED BY ELAVON OR MEMBER**