

APPLICATION INSTRUCTIONS

HOW DO I APPLY?

Please send us all of the enclosed **application forms** duly completed in the name of the business to which the merchant account will be issued, and signed as follows.

- For a **sole trader**, the proprietor of the business must sign.
- For a **partnership**, two partners must sign.
- For a **company, trust, or charity**, two directors, or one director and the secretary, must sign.

Please send us the following supporting documents for every person who has signed the application.

- A photocopy of the person's **passport** or **photocard driving licence**, to confirm their identity.
- An original **utility bill**, to confirm the person's current home address. This bill must be recent, for a service provided directly to the home. Acceptable examples are gas, electricity, or landline telephone bills. Unacceptable examples are mobile telephone bills, vehicle registrations, or credit card statements.

Please send us the following supporting documents for the business to which the merchant account will be issued.

- An original **voided cheque**, to confirm the bank account details of the business. The cheque must show the name of the business to which the merchant account will be issued. A used cheque is not acceptable.
- Photocopies of the last 3 months' **card processing statements**, if the business currently accepts or recently accepted card payments. The statements must clearly show sales, refunds, and chargebacks.

WHERE DO I SEND MY APPLICATION?

Once all forms and supporting documents are ready, please post them to us at the following address.

Optimal Payments Ltd
Quern House
Mill Court
Great Shelford
Cambridge
CB2 5LD

WHAT HAPPENS NEXT?

Once all forms and supporting documents have been received, your application will be assessed. You will be contacted once a decision has been reached, or if there are any queries regarding your application.

HOW CAN I CONTACT YOU?

If you have any queries regarding the application process or the status of your application, you may contact us via any of the following methods, or via post at the address above.

Telephone: 01223 554023
Fax: 01223 554027
Email: compliance@optimalpayments.co.uk

APPLICATION FORM

MERCHANT SERVICES

Completing your application form...

- 1** Fill in this application form using a **black ball-point pen** and write clearly in **CAPITAL LETTERS**. Where asked, please mark the relevant box with a clear tick✓. (If you make a mistake just fill in the box and put a clear tick in the correct box.)
- 2** Please complete Sections **1, 2, 3, & 4** and ensure that you have signed all relevant sections where asked and return it with any necessary documents.

Go to Section 1 

Please fill in this application form using a black ball-point pen and write clearly in CAPITAL LETTERS.

Merchant Full Legal Name
Merchant Trading Name (if different)
Current Card Acquirer (if applicable)

If you are an existing customer please provide your Merchant ID number

Reason for changing Acquirer (if applicable) Rate Service Terminated Other Please Specify

New Account Type: Group Chain Single Outlet

Number of Outlets Chain Number Transaction Currency

LEGAL CHARACTER OF BUSINESS

Private Limited Company <input type="checkbox"/>	Trust <input type="checkbox"/>	Charity <input type="checkbox"/>
Public Limited Company <input type="checkbox"/>	Limited Liability Partnership <input type="checkbox"/>	Charity Registration Number <input style="width: 100px;" type="text"/>
Partnership <input type="checkbox"/>	Other <input style="width: 150px;" type="text"/>	Country of Registration <input style="width: 100px;" type="text"/>
Sole Trader <input type="checkbox"/>		
Company Registration Number <input style="width: 100px;" type="text"/>	Vat Registration Number <input style="width: 100px;" type="text"/>	Date of Incorporation <input style="width: 50px;" type="text"/> / <input style="width: 50px;" type="text"/> / <input style="width: 50px;" type="text"/>
		Date Commenced Trading <input style="width: 50px;" type="text"/> / <input style="width: 50px;" type="text"/> / <input style="width: 50px;" type="text"/>

Please provide details of your turnover in your previous financial year.

If you are a member of a group of companies please provide details of the group's turnover in the previous financial year.

If Member of Trade Association, please provide details

WHERE A COMPANY IS A SUBSIDIARY OF ANOTHER COMPANY, PLEASE PROVIDE NAME, REGISTRATION AND COUNTRY OF PARENT

Name	Registration Number	Country
Legal Address		
Town/City	County/Province	Post Code

TRADING DETAILS

Premises : Owned Rented If Rented Please Provide: Rented Since / / Lease Expires / /

Store Name		
Contact Name <input style="width: 150px;" type="text"/>	E-Mail Address <input style="width: 150px;" type="text"/>	
Trading Address		
Town / City	County / Province	Post Code
Business Telephone Number <input style="width: 100px;" type="text"/>	Fax Number <input style="width: 100px;" type="text"/>	Internet Web Address <input style="width: 100px;" type="text"/>

REGISTERED OFFICE ADDRESS

Registered Office Address		
Store Name	Phone Number	
Contact Name	E-Mail Address	
Head Office Address		
Town / City	County / Province	Post Code

Describe the goods, products or services to be paid for using Card Sales

Fax Number

PREFERRED ADDRESS FOR STATEMENT DELIVERY:

Registered Office Address

Trading Address

Internal Use: Portfolio #

Internal Use Only MCC CODE

METHOD OF SALES

Cardholder Present % Mail / Phone Order % Internet % 100%

Business to Business as a % of Total Card Turnover: % Recurring Transactions Yes No

Seasonal Sales Yes No

Quarterly Seasonal Percentages : January - March % April - June % July - September % October - December %

Total Annual Credit and Debit Card Sales

Expected Average Transaction Value

Total number of Transactions

FOR INTERNET BASED ORDERS

What is your Website Address? What is your email address for customer queries?

What countries will you accept orders from? (If necessary please complete on a separate sheet)

What sites do you have links to on your website?

Please describe your data security/encryption procedures:

Will you be using Verified by Visa (VbV) and SecureCode for all your internet orders? Yes No

Please describe any other security checks that you undertake:

FOR MAIL/PHONE ORDERS

Will you utilise CVV2/CVC2 for all your orders? Yes No

FOR TRAVEL AGENCIES / TOUR OPERATORS / AIRLINES / CRUISE LINES

Do you offer Bureau de Change facilities? Yes No

Are you a member of any Bonding Associations? Yes No

Name of Bonding Association: Membership Number/Bond Number Bond Amount

TRANSACTION DETAILS

For Credit Card sales, if goods are returned, within how many days do you submit the refund? 0-3 4-7 8-14 Over 14

Are your customers ever required/allowed to leave a deposit? Yes No

If Yes how often are deposits taken? All the time or % of the time

Size of deposit as a % of the total transaction value %

or specific value £/€

Are full payments ever taken prior to the actual supply of goods/services? Yes No

If Yes how often are full payments taken ahead?

All the time or % of anticipated Card turnover

The average time in advance of delivery of the goods/services that full payments are taken

Days Weeks Months

IF YOU TAKE PAYMENTS FOR ANY GUARANTEES OR EXTENDED WARRANTIES PLEASE SPECIFY

The % of anticipated Card turnover relating to payments for guarantees/warranties %

The average length of any guarantee/warranties sold Months Years

The average percentage of goods returned whilst under guarantee/warranty %

IF YOU TAKE ANY PAYMENTS FOR SUBSCRIPTIONS OR MEMBERSHIPS BY CARD PLEASE SPECIFY

The percentage of Card turnover relating to subscription/memberships %

The length of membership/subscription offered Months Years

(If more than one option, please specify all and give a % of how the card turnover would be split)

Does the Cardholder billing involve automatic renewals or recurring transactions?

Yes No If Yes, Cardholder must confirm/accept recurring transactions

in a specific Cardholder acceptance document

Are any of the goods sold by you owned by a third party? Yes No

If Yes, please give details

Are any stocks held at any address other than the trading address detailed above?

Yes No

If Yes please give details

Who performs the product/service fulfilment? You Third Party

BANKING INFORMATION

Name of Bank		Address of Bank	
Sort Code		Name on Bank Account	
Account Number	<input type="text"/>	Account Manager Name	
IBAN	<input type="text"/>	BIC or SWIFT Code	<input type="text"/>

PRINCIPAL / DIRECTORS DETAILS

Number of Principals

Where there are more than 5 Principals or where a Principal is not an individual please provide details on a separate sheet.

The word principal means an individual who is a:

Sole Trader; Partner; Trustee or Officer of any other unincorporated association; Director (in the case of a company); Member or Designated Member (Limited Liability Partnership)

NOTE: Unless otherwise noted, each Principal is deemed to be an authorised user under this application.

PRINCIPAL NUMBER 1

Title Mr Mrs Miss Ms (tick as applicable) Other

Full Name			
Date of Birth	Nationality	Country of Residence	
Home Address			
	Post Code	Home Telephone Number	Mobile Telephone Number
Business Address			
Occupation			
Date moved into above address	<input type="text"/>	Owner	<input type="checkbox"/>
	<input type="text"/>	Tenant	<input type="checkbox"/>
	<input type="text"/>	Living with Parents	<input type="checkbox"/>

Previous address if less than 3 years at present address

Years/Months at this address Years Months

To the extent that the information disclosed by me in this form comprises Personal Data within the meaning of the Data Protection Rules, (as defined in the Terms Of Service to which this application relates) I consent to the processing and use, including disclosure to any necessary third party (including to such credit reference agency as engaged by Elavon Financial Services Ltd for identification and financial crime prevention purposes, details of which will be provided on request) in connection with this Application and the performance of any agreement arising out of this Application. Processing of Personal Data in these circumstances may include transfer of such data outside Europe to countries that do not provide the same level of data protection as my country of residence.

Signature Date

PRINCIPAL NUMBER 2

Title Mr Mrs Miss Ms (tick as applicable) Other

Full Name			
Date of Birth	Nationality	Country of Residence	
Home Address			
	Post Code	Home Telephone Number	Mobile Telephone Number
Business Address			
Occupation			
Date moved into above address	<input type="text"/>	Owner	<input type="checkbox"/>
	<input type="text"/>	Tenant	<input type="checkbox"/>
	<input type="text"/>	Living with Parents	<input type="checkbox"/>

Previous address if less than 3 years at present address

Years/Months at this address Years Months

To the extent that the information disclosed by me in this form comprises Personal Data within the meaning of the Data Protection Rules, (as defined in the Terms Of Service to which this application relates) I consent to the processing and use, including disclosure to any necessary third party (including to such credit reference agency as engaged by Elavon Financial Services Ltd for identification and financial crime prevention purposes, details of which will be provided on request) in connection with this Application and the performance of any agreement arising out of this Application. Processing of Personal Data in these circumstances may include transfer of such data outside Europe to countries that do not provide the same level of data protection as my country of residence.

Signature Date

PRINCIPAL NUMBER 3Title Mr Mrs Miss Ms (tick as applicable) Other

Full Name			
Date of Birth	Nationality	Country of Residence	
Home Address			
	Post Code	Home Telephone Number	Mobile Telephone Number
Business Address			
Occupation			

Date moved into above address / / Owner Tenant Living with Parents

Previous address if less than 3 years at present address			
	Years/Months at this address	Years	Months

To the extent that the information disclosed by me in this form comprises Personal Data within the meaning of the Data Protection Rules, (as defined in the Terms Of Service to which this application relates) I consent to the processing and use, including disclosure to any necessary third party (including to such credit reference agency as engaged by Elavon Financial Services Ltd for identification and financial crime prevention purposes, details of which will be provided on request) in connection with this Application and the performance of any agreement arising out of this Application. Processing of Personal Data in these circumstances may include transfer of such data outside Europe to countries that do not provide the same level of data protection as my country of residence.

Signature Date **PRINCIPAL NUMBER 4**Title Mr Mrs Miss Ms (tick as applicable) Other

Full Name			
Date of Birth	Nationality	Country of Residence	
Home Address			
	Post Code	Home Telephone Number	Mobile Telephone Number
Business Address			
Occupation			

Date moved into above address / / Owner Tenant Living with Parents

Previous address if less than 3 years at present address			
	Years/Months at this address	Years	Months

To the extent that the information disclosed by me in this form comprises Personal Data within the meaning of the Data Protection Rules, (as defined in the Terms Of Service to which this application relates) I consent to the processing and use, including disclosure to any necessary third party (including to such credit reference agency as engaged by Elavon Financial Services Ltd for identification and financial crime prevention purposes, details of which will be provided on request) in connection with this Application and the performance of any agreement arising out of this Application. Processing of Personal Data in these circumstances may include transfer of such data outside Europe to countries that do not provide the same level of data protection as my country of residence.

Signature Date **PRINCIPAL NUMBER 5**Title Mr Mrs Miss Ms (tick as applicable) Other

Full Name			
Date of Birth	Nationality	Country of Residence	
Home Address			
	Post Code	Home Telephone Number	Mobile Telephone Number
Business Address			
Occupation			

Date moved into above address / / Owner Tenant Living with Parents

Previous address if less than 3 years at present address			
	Years/Months at this address	Years	Months

To the extent that the information disclosed by me in this form comprises Personal Data within the meaning of the Data Protection Rules, (as defined in the Terms Of Service to which this application relates) I consent to the processing and use, including disclosure to any necessary third party (including to such credit reference agency as engaged by Elavon Financial Services Ltd for identification and financial crime prevention purposes, details of which will be provided on request) in connection with this Application and the performance of any agreement arising out of this Application. Processing of Personal Data in these circumstances may include transfer of such data outside Europe to countries that do not provide the same level of data protection as my country of residence.

Signature Date

DECLARATION

References to “We”, “Us” or “Our” are references to Elavon Financial Services Ltd. (“Elavon”) Building E, Cherrywood Science & Technology Park, Loughlinstown, Co Dublin and/or the member as identified below.

By “Your Information” we mean the personal and financial information We obtain from you or from third parties (such as credit reference and fraud prevention agencies, joint account holders, other organisations who introduced Us, or act on your or Our behalf).

On the basis that it is kept confidential, We may at any time give your information to:

- Any organisation who introduced Us or who acts on Your or Our behalf;
- Service Providers and Agents;
- Card Schemes covered by the Terms of Service (the ‘TOS’); for any and all purposes set out in the TOS and, if applicable, the American Express Service Establishment Terms and Conditions (the “AMEX T&C”).
- Anyone who has a legal right to require disclosure of your information;

In addition, We may at any time give Your Information to any organisation that requires disclosure of Your Information for regulatory purposes or as a matter of law whether or not their power is derived from an Act/Acts of Government.

DATA PROTECTION

You have a right to ask for a copy of Your Information if you apply to Us in writing (a small fee is payable) and to ask Us to delete or correct any information We hold about you that is wrong. You consent to Us transferring your information to countries that do not provide the same level of data protection as your country of residence if necessary to provide services to you.

CREDIT REFERENCE AND FRAUD PREVENTION AGENCIES

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW MERCHANT SERVICES ACCOUNT. To ensure compliance with the Government’s **current legal and regulatory requirements aimed at preventing financial crime, money laundering and terrorist financing** and to enable Us to proceed with your merchant application (“Merchant Application”), We are required to obtain, verify and record information that identifies each person who opens up a merchant services account. We shall search your records at credit reference agencies who shall supply Us with information as well as information from the Electoral Register for the purpose of verifying your identity. Alternatively, We may ask you to provide physical forms of identification.

We may use credit-scoring or other automated decision making systems to assess this Merchant Application and to verify your identity. You and your representative(s) authorise Us prior to our acceptance of this Merchant Application and from time to time thereafter, to investigate the individual and business history and background of the Merchant, each such representative and any other officers, partners, proprietors and/or owners of the Merchant, and to obtain credit reports or other background investigation reports on each of them that We consider necessary to review the acceptance and continuation of this Merchant Application. You also authorise any person or credit reporting agency to compile information to answer those credit inquiries and supply Us with such information as well as information from the Electoral Register for the purpose of verifying your identity. Credit reference agencies will record any credit searches on their file whether or not this Merchant Application proceeds.

It is important that you give Us accurate details. We shall check your details with crime prevention agencies and if you give Us false or inaccurate information and We suspect fraud, We shall record this.

If We are satisfied with the credit checks and other enquiries, this Merchant Application, the Schedule of Fees etc., the TOS, the AMEX T&C (where applicable) and the Merchant Operating Guide, each updated by Us from time to time, will form your merchant agreement with Us.

You have the right of access to your personal records held by credit reference and crime prevention agencies (please call us on: 1850 202 120 (ROI) or 0845 608 0120 (NI/UK)).

For security and training purposes We may record and/or monitor your use of Our website and e-mail and telephone communications between Us. We may use cookies (small files stored on the hard drive of your computer which do not harm your computer) to enable Us to record your preferences. However, We do not store any personal information that other organisations could read and understand about you and We do not monitor your visits to websites not hosted by Us.

We shall, of course, continue to inform you about any important changes to the terms under which your account is opened.

THIS MERCHANT APPLICATION may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same Merchant Application. Delivery of executed counterparts of this Merchant Application may be accomplished by a facsimile transmission, and a signed facsimile copy of this Merchant Application shall constitute a signed original.

The Merchant must obtain an Authorisation Code via an electronic terminal or similar device before completing any Transaction. The Merchant understands that an **AUTHORISATION CODE IS NOT A GUARANTEE OF ACCEPTANCE OR PAYMENT OF A TRANSACTION. RECEIPT OF AN AUTHORISATION CODE DOES NOT MEAN THAT THE MERCHANT WILL NOT RECEIVE A CHARGEBACK FOR THAT TRANSACTION.** The Merchant further understands and acknowledges that the acceptance of Card Not Present Transactions is done entirely at their/its own risk.

It is very important that you read the Merchant Application Form, the TOS and the Merchant Operating Guide, and, if applicable, the AMEX T&C, before you sign below.

Merchant Declaration. By signing below, the Merchant and its representative(s) warrant and represent to Us that (i) all information provided in this Merchant Application is true and complete and properly reflects the business, financial condition and principal partners, owners or officers of the Merchant; and (ii) the persons signing this Merchant Application are duly authorised to bind the Merchant to all provisions of this Merchant Application and the TOS and, if applicable, the AMEX T&C. Transmission of a Transaction Receipt for a transaction to Elavon, shall be the Merchant’s acceptance of and agreement to the TOS and, if applicable, the AMEX T&C. Furthermore the Merchant agrees that the AMEX T&C and the TOS are separate legal agreements and where applicable Elavon may assign the AMEX T&C and the TOS to a third party without further consent of the Merchant.

The signature by a representative of the Merchant on the Merchant Application, or the transmission of a Transaction Receipt or other evidence of a Transaction to Us, shall be the Merchant’s acceptance of and agreement to the terms and conditions contained in the Merchant Agreement, comprising the TOS, this Merchant Application, the Merchant Operating Guide and, if applicable, the AMEX T&C. The Merchant agrees to comply with the TOS, the Merchant Operating Guide, the AMEX T&C (where applicable) and all applicable laws, rules and regulations including the rules and regulations of the Card Schemes, and understands that failure to comply with result in termination of processing services. Words and phrases not specifically defined in this Merchant Application shall have the same meaning as set out in the TOS.

KEEPING YOU INFORMED

You further acknowledge and agree that any information provided in connection with this Merchant Application and all other, relevant information, may be supplied by Us to our affiliates. Without limiting the previous sentence, you consent to Us telling you about products or services or invite you to take part in offers, of Ours and Our business partners that We think may benefit you. We may do this by post, by telephone (including by way of automatic dialling), by fax or via Our web site.

Tick this box if you do not wish to receive this information, but remember this shall preclude you from receiving any of our special offers or promotions.

Merchant Name		
Printed Name & Title	Signature	Date / /
Printed Name & Title	Signature	Date / /

CORPORATE RESOLUTION

I certify that I hold the office indicated below of the Merchant, organised and established under the laws of and that the following is a correct copy of certain resolutions adopted at a meeting of the board of directors/general partnership/manager or members of a limited liability company, as appropriate, in accordance with the Memorandum and Articles of Association or other governing document of the company held on the day of month year

1. Resolved that any one of the following officers of the company:

Name	Signature	Title
Name	Signature	Title
Name	Signature	Title

is authorised to:

execute on behalf of this company a Merchant Application and any agreements or other necessary documents including any amendments;
execute any document requested from time to time to be executed in furtherance of the Merchant Application or relationship resulting therefrom;

2. Resolved, that the Merchant Application and the resulting relationship is ratified and approved;
3. Resolved, that the entities receiving this Merchant Application are authorised to rely upon this Corporate Resolution until advised in writing by a similar certificate of any changes and are authorised to rely on such changed certification.

SECRETARY/DIRECTOR/OFFICER/OWNER/GENERAL PARTNER OWNER [circle one]

Name	Signature	Title
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SUBMITTED BY:

To the best of my knowledge, I certify that the information provided in this Merchant Application was provided by the Merchant and is true, complete and accurate. I further certify that, the signatures, were provided by the Merchant's owner(s) or officer(s), as appropriate.

Sales Manager Signature	Manager ID
Printed Name (Block Capitals)	Date / /

FOR OFFICE USE ONLY:

Accepted by Elavon Financial Services Limited Signature:		
Accepted by Member Signature:	For Bank:	Cards:

REFERRAL SOURCE:**SPONSOR:**

BOI	<input type="checkbox"/>	100	<input type="checkbox"/>
A&L	<input type="checkbox"/>	400	<input type="checkbox"/>
EMS	<input type="checkbox"/>		

TERMS OF SERVICE UK

These Terms of Service (“TOS”) and the other portions of the Agreement govern Merchant's receipt of Merchant Services. The TOS are incorporated into, and made part of, the Agreement and the signature by an authorised representative of Merchant on the Merchant Application, or the transmission of a Transaction or other evidence of a Transaction, shall be Merchant's acceptance of, and agreement to abide by, the terms and conditions contained in the Agreement. Merchant warrants that the authorised representative signing the Merchant Application is authorised to execute this Agreement on behalf of any subsidiary or Affiliate of the Merchant receiving Merchant Services hereunder. Merchant acknowledges that it has received, understands, and agrees to be bound by the Agreement.

GENERAL PROVISIONS

1. DEFINITIONS.

Capitalised terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the “Glossary” included as Part I to the TOS.

2. RULES OF CONSTRUCTION.

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 Part A - General Provisions, and any subsequent section of the TOS, the terms of the relevant subsequent section shall prevail. “You,” “yours,” “Merchant” and words of similar meaning are references to the business entity or other Person identified as receiving Merchant Services in the Merchant Application. “Us,” “ours,” “we” and words of similar meaning are references to Elavon Financial Services (“Elavon”), as the context may require. “Including” shall not be construed as exclusive or limiting, and shall generally mean “including but not limited to.” Any Affiliate or other Members may, in addition to Elavon, provide one or more services under this Agreement. Elavon shall notify Merchant of the appointment of any new Affiliate or other Members for purposes of this Agreement, which notification shall contain an acknowledgement by such Member agreeing to be bound pursuant to the terms of this Agreement in respect of the services such Member is providing to the Merchant.

3. CARD ACCEPTANCE.

- (a) **Acceptance.** The Agreement sets forth the terms and conditions upon which you can accept Cards and process Transactions. When you undertake a Transaction, you must follow the procedures set out in the Agreement. You may only accept the types of Cards specified in the Agreement as being Cards that you are authorised to accept. You may not process Card Not Present Transactions unless Elavon has agreed in writing that you may do so. You will accept all valid and current Cards of the types specified in the Agreement as payment for any of the full range of goods and services that you supply. You may not discriminate between such Cards for any reason, including because of any co-branding. You will not impose any financial limit in respect of Transactions, or otherwise establish minimum or maximum Card Transaction amounts. You will not use your personal/business Cards to conduct a Transaction in circumstances where you are acting as both Merchant and Cardholder.
- (b) **Currency.** Transactions can only be accepted in your local currency unless Elavon has agreed in writing that you may process DCC Transactions, in which event you will also be bound by separate terms contained at Part G herein that, in addition to the General Provisions, relate to and govern such Transactions.
- (c) **Price Distinctions in Form of Payment.** You must offer the goods and/or services you sell at the same price regardless of the form of payment unless otherwise agreed with Elavon.

Elavon Financial Services Limited is regulated as a credit institution by the Financial Regulator and is a member of the U.S. Bancorp group of companies.

- (d) **Other Cards.** Elavon may from time to time authorise you in writing to accept a Card for which a third party shall have responsibility for providing to you settlement in respect of Transactions effected using such Card. Such Transactions shall in all cases be at your own risk. Unless otherwise agreed in writing by Elavon, the obligations of Elavon in respect of such Transactions shall be limited to forwarding the electronic data/paper voucher relating to such Transactions to the relevant Issuer.
- (e) **Other Services.** Elavon may from time to time facilitate (in accordance with Section 14, where applicable) the provision of other services (e.g. by referring your name and other details) for which a third party shall have responsibility pursuant to a separate agreement with you. Acceptance of such services shall at all times be at your own risk, and you acknowledge and agree that no obligations shall attach to Elavon and no rights shall accrue to you by virtue of the Agreement in respect of your acceptance of such services.

4. MERCHANT'S BANK ACCOUNT; FUNDING.

- (a) **Establishment and Authority.**
 - (i) **Merchant Bank Account.** In order for Elavon to provide you with Merchant Services, you shall establish and maintain with a financial institution acceptable to Elavon one or more Merchant Bank Accounts to facilitate payment for Transactions. You will maintain sufficient funds in the Merchant Bank Account to accommodate all Transactions contemplated by the Agreement and all Chargebacks, Fees and Adjustments. The Merchant Bank Account must be established in the same name as appears on the Merchant Application form.
 - (ii) **Financial Institution other than Elavon.** Without limiting the foregoing, you shall authorise your financial institution to grant Elavon access to any and all information or records regarding such Merchant Bank Account. You authorise Elavon to direct your financial institution to hold funds in such Merchant Bank Account in an amount which Elavon, in its sole discretion, deems sufficient to fully protect Elavon's rights under the Agreement or to block or restrict Merchant's or others' access to funds in such Merchant Bank Account (whether or not such funds are specifically related to any previous deposit for any Transaction). You shall direct in writing the financial institution at which you maintain a Merchant Bank Account to promptly comply with any such direction from Elavon. If requested by Elavon, you will execute all such documents or instruments, and otherwise co-operate with Elavon, as convenient or necessary to further evidence or further effect the provisions of this Section.
 - (iii) **Agent for Collection.** You authorise and appoint Elavon to act as your agent to collect Transaction amounts represented by submitted Transactions received from Issuers and to otherwise control and administer Settlement Funds relating to such Transactions.
 - (iv) **Changes in the Merchant's Bank Account.** You must obtain prior written consent from Elavon before you change the financial institution at which the Merchant Bank Account is maintained. You must irrevocably authorise and instruct the new financial institution in accordance with Section 4(a)(ii) above to maintain the Merchant Bank Account. You must obtain prior written consent from us to modify, limit or revoke any Direct Debit Mandate relating to such Merchant Bank Account regardless of where such Merchant Bank Account is held or maintained. If you do not obtain any such required consent, the Agreement may be terminated forthwith, and Elavon may take any other action which it deems necessary to protect its interests hereunder.
- (b) **Direct Debit Mandate Authorisation.** You hereby authorise Elavon to initiate debit/credit entries to any Merchant Bank Account or any other account maintained by you at any institution in accordance with the Agreement (a "Direct Debit Mandate"). If requested by Elavon, you will execute all such documents or instruments, and otherwise co-operate with Elavon, as convenient or necessary, to further evidence or further effect the Direct Debit Mandate granted in accordance with the terms of the Agreement. This authorisation will remain in effect after termination of the Agreement until the later of (i) 270 days following termination of the Agreement, or (ii) until all of your obligations to Elavon have been paid and performed in full.
- (c) **Deposits of Settlement Funds.** Elavon will, pursuant to the Agreement and the Direct Debit Mandate, deposit to the Merchant Bank Account the Settlement Funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Rules (less set-off of any Chargebacks, Fees and Adjustments due under the Agreement). You acknowledge that your obligation to Elavon for all amounts owed under the Agreement arises out of the same transaction as Elavon's obligation to deposit funds to the Merchant Bank Account. On the next business day after receiving suitably evidenced Transaction Receipts, Elavon

shall issue deposit instructions for the total amount of the Transactions, unless pursuant to this Agreement, the fees and amounts owed described in Section 13(a) are deducted on a net basis as set out in Section 4(d) herein. You also acknowledge that once Settlement Funds are deposited to the Merchant Bank Account, thereafter the availability of or access to such funds is subject to the policies and procedures of the financial institution where such Merchant Bank Account is maintained. Elavon shall, where required by applicable laws, issue a VAT invoice and summary of Transactions.

- (d) **Provisional Credit.** All Transactions and deposits are subject to audit and final checking by Elavon, and may be adjusted for inaccuracies or errors. You acknowledge that all credits for Settlement Funds or other funds provided to you are provisional and subject to Chargebacks, Fees and Adjustments in accordance with the Rules and the Agreement, whether or not a Transaction is the subject of a Chargeback by the Issuer. Elavon may elect to grant conditional credit for individual or groups of Transactions. Final credit for Transactions will be granted within Elavon's reasonable discretion, and may be made on a net basis (e.g. less set-off of any Chargebacks, Fees and Adjustments due under the Agreement or otherwise in accordance with the Rules).
- (e) **Processing Limits.** Elavon may impose a cap on the amount (expressed in Merchant's local or other applicable currency) of Transactions that it will process for you, as indicated on the Merchant Application as your annual volume or as otherwise established by Elavon. This limit may be changed by Elavon from time to time, upon notice to you or as otherwise provided by the Agreement. If you exceed the established limit, Elavon may suspend the processing of Transactions, and either return all Transactions evidencing funds over the cap to you or hold those deposits in a separate account or Reserve.
- (f) **Interchange.** Interchange qualification requirements, as defined by the Card Schemes, affect Fees and Adjustments for Transactions. Merchant will pay a higher discount rate, and higher Fees and Adjustments, for Transactions that do not meet the best rate qualification criteria or have been processed in a manner other than for which Merchant was approved. In the event that Interchange fees, or any similar fees, are adjusted (whether as a result of your failure to meet the timescales for submission of Transactions under Section 7(i) or a result of sales Transactions effected by PAN key entry, adjustments implemented by any of the Card Schemes, or for any other reason), Elavon reserves the right to pass on the adjustment to you. For the avoidance of doubt any adjustments passed on pursuant to the terms of this sub-section, shall represent in their entirety, the adjustments implemented by the Card Schemes.
- (g) **Asserted Errors.** You must reconcile the statements regarding Transaction activity received from Elavon, any Card Scheme and any Third Party Vendor with the statements you receive for the Merchant Bank Account and your own records of Transactions for the period covered by the statement. You must promptly examine all statements relating to the Merchant Bank Account and immediately notify Elavon in writing of any errors in such statements. Your written notice must include: (i) Merchant name and account number; (ii) the amount of the asserted error (expressed in sterling or other applicable currency); (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 forty-five (45) days after the month-end date on the statement containing the asserted error. If you fail to provide such notice to Elavon within said forty-five (45) day period, Elavon shall not be liable to you for any errors you assert at a later date. You may not make any claim against 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 first giving Elavon five (5) Business Days' written notice thereof.

5. ELECTRONIC PROCESSING OF TRANSACTIONS; TERMINALS.

- (a) **Terminals; Required Use.**
 - (i) Unless alternative forms of processing are provided for by the Rules or applicable laws you shall use a Terminal for processing Transactions. You will process every Transaction by using a Terminal (where they are installed) regardless of the amount involved and notwithstanding any Authorised Floor Limit.
 - (ii) Elavon will install or cause to be installed, and you will accept on hire on Elavon's terms, Terminals for processing Transactions. Alternatively, by written agreement between you and Elavon, you may employ at your own expense Third Party Terminals, provided such Third Party Terminals are in all respects compliant with the requirements of the Card Schemes including all Card Scheme Requirements for the protection of cardholder information. You agree that the onus of showing such compliance shall rest with you. You agree to enter into a rental agreement for the Terminals where supplied by or through Elavon. If you elect to use a Third Party Terminal, you shall either effect the outright purchase of any such Third Party Terminal or shall ensure its continued and uninterrupted

availability by way of leasing or hiring or similar such arrangement. However, you may not use a Third Party Terminal until Elavon has tested and approved its location and relevant systems. In accordance with Sections 17(l) and 18(b), where you employ a Third Party Terminal, you will assume full responsibility and liability for any failure of the Third Party to comply with applicable laws and the Agreement and the Rules.

- (iii) The placement of the Terminals on your premises shall be agreed between the parties. Elavon reserves the right to withhold or withdraw its agreement to the placement of the Terminals (whether provided by Elavon or not) in the event of the location being, or becoming, unsatisfactory for that purpose.
 - (iv) You shall provide, maintain and pay for all power and telecommunications connections necessary to operate the Terminals in accordance with the requirements of Elavon and shall be responsible for all telecommunications, power and similar charges incurred by you in gaining access to and using the service provided by Elavon.
 - (v) You will operate and keep the Terminals in good working order and upgrade them as Elavon may require from time to time. You must at your own cost, arrange for your Third Party Terminals to be upgraded (as required by Elavon or the Card Schemes), maintained, repaired or replaced.
 - (vi) The fees (including rental charges) payable by you for Terminals supplied by Elavon will be debited to the Merchant Bank Account on a monthly basis by direct debit.
- (b) **Manual Processing (or “fall-back procedures”).** If for any reason your Terminals cease to function correctly or at all and it becomes impossible to process Transactions through them, you will, with respect to Credit Cards, revert to such manual or other fall-back processing procedures included as part of the Merchant Operating Guide or other Terminal user guide, and shall otherwise adhere to such procedures as shall be specified by Elavon.
- (c) **Wireless Terminals.** If you use a Wireless Terminal, you agree to the additional provisions set forth in Part E of the TOS.
- (d) **Merchant Operating Guide.** You must comply with the Merchant Operating Guide and any Terminal user guide provided by Elavon and relevant to the type of Terminals used by you and relevant to your processing environment. Notwithstanding the foregoing, when a disabled Cardholder is performing a Cardholder Present Transaction, you may vary the point of sale procedures prescribed in such instructions to take account of the Cardholder’s disability and in order to comply with applicable laws and the Rules.

6. PROCESSING TRANSACTIONS; CARDHOLDER IDENTIFICATION; AUTHORISATION.

- (a) **Cardholder Identification.** In Card Present Transactions (excluding PIN Transactions, in which event a successful PIN validation must be effected by the Cardholder), you will identify the Cardholder and carry out the security checks set out in the Merchant Operating Guide and any other communication provided to you by Elavon, including a check of the expiration date and signature on each Card, and you will not honour any Card if: (i) the Card has expired; (ii) the signature on the Transaction Receipt does not correspond with the signature on the Card or is blank, or uses language to the effect of “see id”; or (iii) the account number embossed on the Card does not match any account number appearing on the Card's reverse side.
- (b) **Authorisation for Transactions.**
- (i) **Authorised Floor Limit.** Unless Elavon has specifically agreed otherwise with you in writing, the Authorised Floor Limit for Transactions shall be zero; i.e., Authorisation shall be required for all Transactions.
 - (ii) **Authorisation Code Required.** You must obtain an Authorisation Code before completing any sales Transaction. An Authorisation Code generally verifies that the Card number is valid, the Card has not been reported lost or stolen at the time of the sales Transaction, and confirms that the amount of credit or funds requested for the sales Transaction is available. You will follow any instructions received during Authorisation. Upon receipt of an Authorisation Code, you may complete only the sales Transaction authorised and must ensure that the Authorisation Code is noted on the Transaction Receipt. For all Card Not Present Transactions, you must, as applicable, obtain the Card expiration date, Cardholder address and telephone number, and CVV2/CVC2 number and forward them as part of the Authorisation.
 - (iii) **Unreadable Magnetic Stripes.** For Card Present Transactions, if your Terminal is unable to read the magnetic stripe on the Credit Card, you must follow the manual processing procedures in the Merchant Operating Guide. In all events, an Authorization Code as contemplated above is required for every sales Transaction, whether obtained electronically through use of the Terminal or whether obtained verbally by calling for an Authorization Code in accordance with the Merchant Operating Guide.

- (c) **Effect of Authorisation Code.** An Authorisation Code does not: (i) guarantee Merchant final payment for a sales Transaction; (ii) guarantee that the sales Transaction will not be disputed later by the Cardholder or Issuer as any sales Transaction is subject to Chargeback; or (iii) protect Merchant in the event of a Chargeback regarding unauthorised sales Transactions or disputes involving the quality of goods or services. Authorisation Codes will not waive any provision of the Agreement or otherwise validate a fraudulent Transaction (even where “Code 10” procedures have been carried out) or a Transaction involving the use of an expired Card, a Transaction which otherwise does not comply with the Rules, or a Transaction which is otherwise invalid for any reason.
- (d) **Cardholder Authority.** Nothing in the Agreement, including receipt of an Authorisation Code, precludes you from the requirement to obtain authority to debit the Cardholder's account for each Transaction. Save for Mail Order and Telephone Order transactions, for which additional requirements apply as set out in Part C hereof, such authority shall be deemed given with respect to Card Present Transactions only when (i) the Cardholder signs the Transaction Receipt produced by the Terminal, or (ii) with respect to PIN Transactions, the Cardholder enters the PIN correctly into the Terminal, and a PIN verification by the Cardholder is promptly effected by approved means. Except with respect to PIN Transactions where the Cardholder has promptly effected a PIN verification as described in the Agreement, it shall be your sole responsibility to procure the signature of the Cardholder to the Transaction Receipt and you will be responsible for producing satisfactory evidence that authority was obtained for debiting the Cardholder's account. For the avoidance of doubt, where the Cardholder enters the PIN into the Terminal and promptly effects a successful PIN verification, the printed Transaction record produced by the Terminal shall constitute the Transaction Receipt and shall be evidence of the Cardholder's authorization to debit the amount of the Transaction from the Cardholder's account.
- (e) **Card Recovery.** You will use reasonable, peaceful means to recover any Card: (i) if you are advised by Elavon (or its designee), the Issuer, or the designated voice authorisation centre to retain it; (ii) if you have reasonable grounds to believe the Card is lost, stolen, counterfeit, fraudulent, or otherwise invalid, or its use is not authorised by the Cardholder; (iii) with respect to Visa Cards, if the four digits printed below the embossed account number do not match the first four digits of the embossed account number; or (iv) with respect to MasterCard Cards, if the four digits printed below the embossed account number do not match the first four digits of the embossed account number, or the Card does not have the “Twin Globes” hologram on the lower right corner of the Card face.
- (f) **Disputes with Cardholders.** All disputes between you and any Cardholder relating to any Transaction will be settled between you and the Cardholder. Elavon shall bear no responsibility for such Transactions or disputes, other than with respect to processing Chargebacks under the Rules or as otherwise set forth in the Agreement.
- (g) **No Claim against Cardholder.** You will not have any claim against, or right to receive payment from, a Cardholder or any other customer in respect of any Transaction unless Elavon refuses to accept the Transaction or revokes its prior acceptance of the Transaction (after receipt of a Chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for goods or services included in a Transaction that have been presented or will be presented to Elavon, and if you receive such payments, you will promptly remit them to Elavon.
- (h) **Return Policy.** You must properly disclose to the Cardholder, at the time of the sales Transaction and in accordance with the Rules and applicable laws, any limitation you have on accepting returned goods. Although the giving of a refund remains at your discretion and in all events is subject to applicable laws, you must provide Credit Transactions in each location where you offer refunds to your customers.
- (i) **“Code 10” Calls.** You must carry out a “Code 10” procedure as applicable in accordance with your Merchant Operating Guide when you are presented with a suspicious transaction or when prompted by your Terminal.

7. TRANSACTION RECEIPTS.

- (a) **Card Present and Card Not Present Transactions.** You will use a Transaction Receipt to document each Card Present and Card Not Present Transaction. Each such Transaction Receipt must include:
 - (i) the Card account number (truncated to the extent required by the Agreement or the Rules);
 - (ii) the Merchant name and location;
 - (iii) the Transaction amount, including applicable taxes;
 - (iv) the Transaction date;
 - (v) the Authorisation Code;

- (vi) Space for the Cardholder's signature for Card Present Transactions that are not PIN Transactions (In the case of Mail Order or Telephone Order transactions, the signature line must contain 'MO' or 'TO'. In the case of recurring sales transactions, Merchant must write 'Recurring Services' in the signature line. For a delayed or amended charge transaction, Merchant must write 'Signature on file');
 - (vii) Indication of who shall receive each copy of the Transaction Receipt (e.g., Merchant Copy, Elavon Copy, Cardholder Copy);
 - (viii) the terms and conditions of the sale, if restricted;
 - (ix) Name or trade name of the Card Issuer as it appears on the face of the Card, to the extent required by the Rules (e.g. with respect to MasterCard Cards); and
 - (x) Currency symbol (such as € or euro) or words clearly denoting the Transaction currency as part of the Transaction amount.
- (b) **Warranties for Transactions.** In presenting any Transaction to Elavon, you warrant and agree as follows:
- (i) That the Transaction is represented by a Transaction Receipt conforming with the requirements of the Agreement and the Rules, and the Transaction was conducted in all respects in accordance with the Laws and the Rules;
 - (ii) That all statements of fact contained in the Transaction Receipt are true and complete;
 - (iii) That the use of the Card by the Cardholder has been authorised and authenticated by the Cardholder in a manner appropriate to that Card, as prescribed from time to time;
 - (iv) That, except as contemplated by, and in strict compliance with, Sections 8(c), 8(d), or 8(e) below, no other Transaction Receipt has been or will be issued in respect of the same goods and/or services which are the subject of the Transaction to which such Transaction Receipt relates;
 - (v) That you will be liable for and indemnify, defend and hold harmless the Protected Parties as further provided by Section 15 of the TOS; and
 - (vi) That the burden shall be upon you to prove that the debit of the Cardholder's account was authorised by the Cardholder.
- (c) **Signatures.** In Card Present Transactions, a Transaction Receipt must be signed by the Cardholder. The requirement for the Cardholder's signature on the Transaction Receipt will be waived only if the Transaction is a PIN Transaction and PIN verification has been properly effected by the Cardholder, or if the Transaction is a valid Card Not Present Transaction which fully complies with the requirements set forth in the Agreement.
- (d) **Truncation.**
- (i) The Card account number must be truncated on all Transaction Receipts at such time and in such manner as may be specified by Elavon. Truncated digits should be replaced with a fill character such as "x," "*", " or "#," and not with blank spaces or numeric characters.
 - (ii) These truncation rules do not apply to Transactions in which the only way to record a Card account number is in handwriting or by making an imprint or copy of the Card.
- (e) **Invalid Transaction Receipts.** A Transaction Receipt shall be invalid if it is not issued in accordance with the Laws and the Rules, including but not limited to:
- (i) The Transaction in respect of which it is issued is for any reason illegal or of no legal effect, or, unless otherwise specifically agreed with Elavon in writing, has the result of making a refund or credit with respect to gaming or gambling winnings, unspent gaming or gambling chips, or any other value useable for gaming or gambling;
 - (ii) the signature on the Transaction Receipt (if required pursuant to the Rules) is incompatible with that on the Card;
 - (iii) The copy of the Transaction Receipt presented to Elavon is incompatible with the copy of the Transaction Receipt provided to the Cardholder;
 - (iv) The Card has expired or has not yet become valid at the time of the Transaction;
 - (v) The Card is listed in Elavon's void card list or any warning bulletins or other communications or advice (whatever form the same may take), from time to time issued or made available to Merchant;
 - (vi) The Transaction Receipt is incomplete;
 - (vii) Another Transaction Receipt has been issued in respect of the same goods and/or services which are the subject of the Transaction to which such Transaction Receipt relates (except as contemplated by, and in strict compliance with, Sections 8(c) or 8(d) below); or

- (viii) There has been any departure from the terms of the Agreement, Merchant Operating Guide or the relevant Rules in relation to the Transaction.
- (f) **Reservation of Rights.** Notwithstanding the foregoing, no objection shall be taken by you if Elavon treats any invalid Transaction as valid, though such treatment shall be without prejudice to Elavon's right subsequently to treat such Transaction as invalid. Elavon shall be under no obligation to give you notice of the invalidity or, as the case may be, validity of a Transaction or Transaction Receipt.
- (g) **Delivery 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.
- (h) **Retention of Transaction Receipts.** You will retain the "Merchant Copy" of the Transaction Receipt and Credit Transaction Receipts for at least eighteen (18) months following the date of completion of the Transaction (or such longer period as the Rules or the Laws may require).
- (i) **Presentment of Transactions to Elavon.** Unless otherwise agreed with Elavon in writing, you agree to present all Transactions to Elavon as soon as is practicable, in such form and in such manner as specified by Elavon, and in all events within one (1) business day of completion of such Transaction.

8. SPECIAL CATEGORIES OF TRANSACTIONS.

- (a) **Recurring Transactions.** For recurring sales Transactions (e.g., payment of insurance premiums or subscriptions), for acceptance of which you must obtain specific authority of Elavon, you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account. Such written request must contain the frequency of the recurring charge, and the duration of time during which such charges may be made. You must notify the Cardholder of any change to the Transaction details at least 14 days prior to the first Transaction so changed. You will not complete any recurring sales Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) a notice from Elavon that authority to accept recurring sales Transactions has been revoked; or (iii) a response that the Card is not to be honoured. You must print legibly on the Transaction Receipt the words "Recurring Transaction." You will comply with any applicable Rules requiring registration of recurring sales Transactions or other applicable Transaction security requirements.
- (b) **Other Transactions requiring Prior Written Consent of Elavon.** For the avoidance of doubt, other Transaction types for acceptance of which you must obtain Elavon's prior written consent include, without limitation; Purchases with Cashback; Assured Reservations; Bureau de Change Transactions; Express Checkout Transactions; Foreign Currency Card Transactions; Purchasing Card Transactions.
- (c) **Multiple Transaction Receipts.** You will process 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 cheque 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 Rules.
- (d) **Deposits.** You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future unless you have disclosed in writing such method of sale to, and obtained the prior consent of, Elavon; otherwise, 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 Rules. 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 Rules. You 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 present the Transactions labelled or otherwise attributable to the "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 Transactions to Elavon for processing (whether by electronic means or otherwise) that relate to the sale of goods or services for future delivery unless you have disclosed such method of sale to Elavon previously in writing. If you have disclosed such method of sale to Elavon previously in writing, you represent and warrant to 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 future

date; such working capital shall be independent of any credit or proceeds resulting from Transactions in connection with future delivery sales Transactions.

- (f) **Credits and Refunds.** In order to evidence your refund or price adjustment to be credited to a Cardholder's account, you will issue a Credit Transaction Receipt, instead of issuing cash or a cheque, as a refund for any previous sales Transaction.
- (i) You will only make a refund to the Cardholder's account which was (or was to be) debited for the Transaction in respect of which the refund has been sought and shall give a copy thereof to the Cardholder. Elavon will debit the Merchant Bank Account for the total face amount of each Credit Transaction submitted to Elavon. Unless Elavon otherwise agrees, in no event will Elavon be obligated to process returns, refunds, or adjustments related to Transactions not originally processed by Elavon. In no event will you present a Credit Transaction that exceeds the amount of the original Transaction.
- (ii) In presenting any Credit Transaction (whether in paper or electronic form) to Elavon, you warrant to Elavon and agree as follows: (aa) that all statements of fact contained therein are true and complete; (bb) that the use of the Card by the Cardholder for the original sales Transaction has been authorized by the Cardholder in a manner appropriate to that Card, as prescribed by Elavon from time to time and in accordance with the Agreement; and (cc) and that no other Credit Transaction Receipt has been, or will be, issued in respect of the same goods or services which are the subject of the Transaction to which such Credit Transaction Receipt relates. Elavon may, in its sole discretion, refuse to accept any Credit Transaction for processing.
- (g) **Purchase with Cashback.** You may offer purchase with Cashback Transactions pursuant to the following procedures; provided, however, in all events you may only perform purchase with Cashback Transactions if prior approval has been given by Elavon and only in relation to Debit Card Transactions where purchaser receives goods or services in addition to cash and on Terminals approved for such use by Elavon:
- (i) For each purchase with Cashback, You shall transmit in its Transaction message the amount of cash given to the Cardholder (if permitted by Elavon's systems and/or the Debit Networks);
- (ii) If a request for Authorisation of a purchase with Cashback is denied solely because the cash requested exceeds the Debit Card Issuer's limit for cash withdrawals, you shall inform the Cardholder of the reason for the denial and that a new purchase Transaction in the amount of the purchase alone might be approved;
- (iii) The amount of cash available to a Cardholder in a Cashback Transaction may be limited by the Debit Networks or Issuer and you will not carry out a Cashback Transaction in excess of such amount limit as notified to you from time to time.
- (iv) Transactions involving Cashback are carried out on all occasions entirely at Merchant's risk. Any Transaction disputed by a Cardholder involving purchase with Cashback may be subject to Chargeback even where you have fully complied with the provisions of this Agreement and even where Authorisation has been given.
- (v) You may not offer purchase with Cashback in respect of Transactions carried out under Section 5(b) herein (i.e. transactions involving "Manual Processing" or "fall back procedures").

9. RETRIEVAL REQUESTS AND CHARGEBACKS; REPROCESSING; FINANCIAL CRIME; AND FACTORING.

- (a) **Obligation to Cooperate and Assist.** You agree that you will provide all reasonable assistance to resolve any disputes arising from your receipt of Merchant Services, and shall comply with the Transaction Receipt retention obligations of the Agreement, including the provisions of Section 7(h) of the TOS.
- (b) **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 be responsible for any Chargeback relating to the Transaction in question, and such Chargebacks cannot be reversed.
- (c) **Chargebacks.** You shall be fully liable to Elavon for all Transactions returned to Elavon for whatever reason including, but not limited to, Chargebacks. You agree to accept Chargebacks and will be liable to Elavon in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason. You will pay Elavon on demand the value of all Chargebacks. You authorise Elavon to offset from incoming Transactions and/or to debit the Merchant Bank Account or any Reserve, or any other account held at Elavon (or any of its Affiliates) or at another financial institution with the amount of all Chargebacks. You will fully cooperate with Elavon in complying with the 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 you with an indication of 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) unauthorised use of a Credit Card as alleged by the Cardholder;
 - (iii) dispute by the Cardholder over the quality of goods or services;
 - (iv) failure to provide goods or services;
 - (v) for a Card Present Transaction, the Transaction Receipt does not bear the Cardholder's signature (other than with respect to a PIN Transaction where PIN verification by the Cardholder has been properly effected);
 - (vi) the Transaction Receipt represents a sales Transaction for which Authorisation was initially declined and was subsequently obtained by means of multiple Authorisation 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 Rules or Laws;
 - (viii) the sales Transaction was completed under circumstances constituting a breach of the Agreement.
- (d) **Excessive Activity.** Your presentation to Elavon of "Excessive Activity" will be a breach of the Agreement and cause for immediate termination of the Agreement. Unless Elavon has agreed with you in writing to the contrary, "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 and/or returns in excess of the levels set by the Card Schemes (as notified to you from time to time) or in excess of the level acceptable to Elavon (in its sole discretion). You authorise, upon the occurrence of Excessive Activity, Elavon to take such additional action as it may deem necessary including, without limitation, immediate suspension of processing privileges or creation or maintenance of a Reserve in accordance with these TOS. You accept responsibility for any fines or other penalties imposed by the Card Schemes as a result of Excessive Activity. You will be notified by Elavon of the occurrence and level of any fines to which this Section relates.
- (e) **Reprocessing.** You will not resubmit or reprocess any Transaction that has been the subject of a Chargeback.
- (f) **Financial Crime 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 authorised by the Cardholder. You will not present any Transaction representing the refinancing of an existing obligation of a Cardholder. You agree that Elavon may, in its sole discretion, suspend the disbursement of funds relating to Transactions for any reasonable period of time required to investigate suspicious or unusual Transaction activity. Elavon will have no liability for any losses you may attribute to any suspension of funds disbursement pursuant to this clause (9)(f). In all events, you must give reasonable assistance to Elavon in the prevention and detection of financial crime at your locations.

10. RESERVE.

- (a) **Establishment.** Elavon may establish a Reserve at any time for the purpose of providing a source of funds to pay Elavon for any and all amounts owed by you. ALL FUNDS AND AMOUNTS HELD IN ANY RESERVE, AND ALL RIGHT, TITLE AND INTEREST IN AND TO SUCH FUNDS AND AMOUNTS, SHALL BE HELD EXCLUSIVELY BY AND FOR THE BENEFIT OF, AND SHALL VEST IN, ELAVON. At the reasonable discretion of Elavon, any such Reserve may be funded as described in Section 10(b) below. The Reserve shall be maintained with sums sufficient to satisfy your current and/or future obligations as determined by Elavon. Elavon shall have sole control of the Reserve. Elavon may, at any time, require that the amount on deposit in the Reserve be increased. You shall enter into any and all documentation requested by Elavon in order to reflect properly the exclusive right, title and interest of Elavon in the Reserve. For the avoidance of doubt, you shall have no ability to withdraw any amounts from the Reserve.
- (b) **Funding.** At the reasonable discretion of Elavon, Elavon may fund the Reserve by any one or more of the following means:
- (i) Elavon may require you to deposit into the Reserve funds in an amount determined by Elavon;
 - (ii) Elavon may, subject to applicable regulations debit the Merchant Bank Account in any amount for deposit to the Reserve;

- (iii) Elavon may deposit into the Reserve funds they would otherwise be obligated to pay you pursuant to this Agreement.
- (c) **Use of Funds in Reserve.** Elavon may, without notice to you, apply funds in the Reserve against any outstanding or future Chargebacks, Fees and Adjustments, and other amounts you owe or will owe under any other agreement between you and Elavon from time to time. Also, Elavon may debit the Reserve to exercise its rights under the Agreement, including withdrawing any amounts that they might otherwise withdraw from the Merchant Bank Account and exercising their rights of set-off to collect any Chargeback, Fees and Adjustments, or other amounts due to Elavon. Further, you agree that Elavon may be required to send funds in a Reserve to a Competent Authority or other third party in response to a tax levy or other court order or otherwise as necessary to comply with applicable laws.
- (d) **Termination of Reserve.**
 - (i) Funds held in the Reserve not otherwise withdrawn or applied by Elavon in accordance with the Agreement will remain in the Reserve until the Agreement has been terminated and you have paid in full all amounts or that, in the sole discretion of Elavon, reasonably exercised, could ever be owed by you under the Agreement, including all Chargebacks, Fees and Adjustments, and any other payments due under the Agreement, and you have otherwise fully paid or performed all Obligations (such time being deemed "Complete Performance," which in no event shall be deemed to have occurred earlier than 270 days following the effective date of termination of the Agreement). If the amount in the Merchant Bank Account and the Reserve is not adequate to pay in full all amounts owed by you under the Agreement, you will pay on demand the amount then due under the Agreement, together with all costs and expenses incurred by Elavon in collecting the sum due, including all legal fees. For the avoidance of doubt, and notwithstanding the provisions of Section 10(d)(ii) below, in the event of any Insolvency Proceeding, all right, title and interest in and to the Reserve will continue to be vested exclusively in Elavon.
 - (ii) At the time of Complete Performance, any amount then held in the Reserve will be disbursed to you, subject to the Agreement, applicable laws, and the Rules.

11. SET-OFF. Elavon shall have the right of set-off. This means that Elavon may offset any outstanding or uncollected amounts owed by you (including, for the avoidance of doubt, any subsidiary or Affiliate of yours) to us from time to time from: (i) any amounts we would otherwise be obligated to deposit into or with respect to the Merchant Bank Account or the Reserve (including any Merchant Bank Account or Reserve established in relation to any subsidiary or Affiliate of yours for which we provide Merchant Services); and (ii) any other amounts we may owe you or any subsidiary or Affiliate of yours, including Settlement Funds, under the Agreement or any other agreement. You acknowledge that in the event of an Insolvency Proceeding, you must maintain the Merchant Bank Account as required by Elavon and Elavon shall have the right, subject to applicable law, to offset against the Merchant Bank Account any and all obligations you may owe to us, without regard to whether the obligations relate to Transactions initiated or created before or after the initiation of the Insolvency Proceeding.

12. GUARANTEE/SECURITY INTEREST You hereby irrevocably covenant with Elavon that you shall forthwith and from time to time execute and do all such further deeds, documents, acts and things which Elavon, at its sole and absolute discretion shall from time to time request, consider necessary and/or advisable to secure the performance of your obligations under this Agreement including, but not limited to, entering into a Security Document and/or procuring the giving of a Guarantee in favour of Elavon. Upon receipt of any such request, you shall promptly do all such acts and enter into all such documents as shall be necessary to create and give effect to any Security Interest required by Elavon under this Section 12.

13. FEES; AMOUNTS OWED; TAXES.

Fees; Amounts Owed. You will pay Elavon fees for services, supplies, and equipment in accordance with the Agreement and any additional application or setup forms. In addition, you will immediately pay Elavon any amount incurred by Elavon attributable to the Agreement, including, without limitation, Chargebacks, Fees and Adjustments, and any other payments due under the Agreement. For the avoidance of doubt, you agree that all fees and other charges payable under this Agreement may be recovered by Elavon in one Direct Debit transaction. Such amounts will be calculated and debited from the Merchant Bank Account once each day or week or once each month for the previous day's, week's or previous month's activity as applicable (and in the event such debit does not fully reimburse Elavon for the amount owed, you will immediately pay Elavon such amount), or will be deducted from the Settlement Funds or other funds due to you under the Agreement in such manner and at such times as Elavon deems appropriate. In addition, you will pay Elavon at its standard fee,

based on an hourly rate, as notified to you in advance from time to time for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on your account. Elavon may, subject to any statutory requirements, adjust the fees in accordance with Section 20(k) below.

- (a) **Taxes.** You shall be obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement, and all amounts billed to you in connection with the Agreement are exclusive of VAT.
- (b) **Interest.** You shall be obligated to pay interest at the rate of 4% over the then base rate of Elavon, compounded daily, from the due date until the date of payment on any overdue sum pursuant to the Agreement.
- (c) **Fees for Elavon Account.** Elavon may introduce new fees and amend existing Merchant Service fees on provision of reasonable written notice to you. For the avoidance of doubt, Merchant acknowledges that all fees, charges, costs and other expenses are being charged and assessed by Elavon for its own account.

14. DATA PROTECTION; CONFIDENTIALITY.

(a) Data Protection.

- (i) To the extent that the information disclosed by you or information disclosed in the Merchant Application (or elsewhere in the Agreement) is comprised of personal data, within the meaning of the Data Protection Rules, you confirm that such personal data may be used, processed or disclosed (including, without limitation, to and by any Affiliate, agent or representative of Elavon and/or any third party service provider) for such purposes as may reasonably be required in connection with performance of the Agreement and for the purpose of enabling Elavon to fulfil its duties and obligations pursuant to the Agreement and the Rules. Further, you represent and warrant that you have the authority to disclose any personal data, within the meaning of the Data Protection Rules, which you disclose or otherwise provide to us regarding Persons other than yourself. To the extent that the information disclosed by you or information disclosed in the Merchant Application (or elsewhere in the Agreement) is comprised of personal data, you or the individual to whom the information relates shall be entitled (on payment of the appropriate fee) to access such personal data and to have any incorrect or misleading personal data relating to him or her amended or erased, to object to the use of the data and to block any specific uses of the data, in each case in accordance with the Data Protection Rules. However, you acknowledge that the erasure, blocking or objecting to the use of personal data held by Elavon may result in Elavon being unable to continue to provide Merchant Services and, consequently, may result in termination of the Agreement.
 - (ii) Without prejudice to the immediately preceding paragraph, you acknowledge and agree that the personal data referred to in Section 14(a)(i) above may be used, disclosed or processed by Elavon and its Affiliates for any or all of the following purposes: to comply with Laws and the Rules, a court order or other legal process; to provide Merchant Services to you; to administer and operate the Agreement, including, where applicable, conducting identity checks on you and your principals, and to conduct, monitor and analyse Elavon's businesses or those of their Affiliates; to market and sell to you products and services offered by Elavon or its Affiliates or third parties, whether relating to Merchant Services or otherwise; to obtain advice from professional advisors; to third party investors or potential investors in Elavon or its respective Affiliates in the event of the sale, disposal, merger or transfer of the business of Elavon or their Affiliates, or obtaining financing for Elavon's business, or negotiations in connection with that purpose. You acknowledge and agree that personal data provided by you may be transferred outside of the European Economic Area for any and all of the foregoing reasons.
 - (iii) You agree that your processing of any personal data received in performance of this agreement shall comply with applicable Data Protection Rules.
 - (iv) You confirm that those persons other than yourself whose personal data you have disclosed also understand and agree to the processing of their personal data as necessary in accordance with this section 14(a) and these Terms of Service.
- (b) **Credit Inquiries.** You authorise Elavon (and its Affiliates, agents and representatives of Elavon) to make, from time to time, any business or personal credit and other inquiries which may be desirable or necessary to evaluate the continuance of the Agreement. You irrevocably authorise for the duration of the Agreement any credit reference or reporting agency or other Person to answer all such credit inquiries and to furnish that information to Elavon. Credit reference or reporting agencies may record any credit searches on their file(s). Elavon may also disclose details of how Merchant conducts its

business and account to such agencies. This information may be used by credit grantors for making credit decisions about you or people with whom you are financially associated. The information may also be used for prevention of financial crime, money laundering prevention and occasionally for tracing debtors.

- (c) **VMAS™ and MATCH™.** You acknowledge that Elavon is required to report Merchant's business name and the name of Merchant's principals to the Visa VMAS™ and MasterCard MATCH™ (formerly known as the Combined Terminated Merchant File) listings maintained by Visa and MasterCard pursuant to the Rules. You specifically consent to the fulfilment of the obligations related to the listing by Elavon, the listing itself, and you waive and hold harmless Elavon from all claims and liabilities you may have as a result of such reporting.
- (d) **Information Sharing.** Without prejudice to Sections 14(a)(i) or 14(a)(ii) above, you understand and agree that Elavon or its Affiliates may disclose any information gathered by it or on its behalf (including personal data referred to in Section 14(a)(i)) to (i) Elavon's Affiliates that offer products or services, and to Elavon's administrative or service units that perform functions in connection with such products or services or in connection with Merchant Services generally; (ii) to any Persons that Elavon may consider "marketing partners," which are Persons with whom Elavon has marketing arrangements to offer products or services, or with whom Elavon has agreements to provide marketing services on Elavon's behalf; (iii) to non-affiliated Persons to assist Elavon in providing the Merchant Services; (iv) to credit reference or rating agencies (as described further in Section 14(b) above); (v) as required by the Rules or the Laws (e.g., for tax reporting purposes or in response to a court order); and (vi) to third parties to offer products or services to you; and for the avoidance of doubt, any of the parties aforesaid may contact you directly for these reasons, unless you have indicated otherwise.
- (e) **Communications with Merchant.** Unless you have indicated otherwise, you confirm your prior consent and agree that Elavon and its Affiliates (and any party referred to in Section 14(d)) may provide you with information about (and otherwise market and solicit you with respect to) Merchant Services and/or other goods or services, including, without limitation, information about products and/or services offered by Elavon and/or its respective Affiliates or third parties, by personal visit, telephone, post, electronic mail (including SMS), facsimile, and/or other similar means.
- (f) **Protection of Cardholder Information.** Without limiting the foregoing provisions of this Section 14:
- (i) You shall not, without the prior written consent of the relevant Cardholder, sell, purchase, provide, disclose, remit, share or exchange Card information, including, without limitation, details of Cardholders, or information and/or data regarding them or their Transactions, or regarding the Card Schemes or the Rules, howsoever obtained and whatsoever the form the same shall take (including but not necessarily limited to CCTV footage), to any third party (other than to Merchant's Third Party Vendors for the sole purpose of assisting you in your business and/or performing your obligations under the Agreement, and only then upon the written agreement of such Third Party Vendors to hold such information confidentially and to otherwise comply with applicable laws, the Rules and the Agreement with respect to such information). Account and Transaction information belongs to Elavon, and, where applicable, the Card Schemes, and, without limiting the foregoing, you agree to use Account and Transaction Information only for the sole purpose of processing Transactions and complying with the Agreement, the Rules, and applicable law.
- (ii) You shall store and handle in all respects (including with respect to disposition and disposal) all Cardholder account information (including Account and Transaction Information) and other personal data, including Card numbers, whether in paper or electronic form, in a secure manner to prevent access by, or disclosure to, anyone other than Merchant's authorised personnel and in compliance with the Data Protection Rules and any other applicable rules, laws or regulations from time to time. You shall at all times comply with the Data Protection Rules, and ensure that any Third Party Vendors that you use similarly comply with all Data Protection Rules. Prior to discarding any such Cardholder account information, you shall destroy it in such a manner as to render it unreadable. Your obligations pertaining to the security of Account and Transaction Information shall survive the termination of this Agreement.
- (iii) You shall take all reasonably necessary measures to ensure Cardholder information is not disclosed to an unauthorized third party or otherwise misused. You may not at any time retain or store magnetic stripe or other Cardholder data, including but not limited to CVV, CVV2, CVC2, iCVV data (as defined herein) after authorisation for any purposes.
- (iv) You shall immediately notify Elavon of any Cardholder or Transaction information compromise of which you become aware, whether such compromise occurs at or with respect to: aa) you or your business location; bb) a third party from whom Merchant procures Value Added Services; cc) Elavon; or dd) elsewhere.

- (v) You shall be responsible for the actions of, or failure to act by, your officers, directors, employees, agents, Third Party Vendors, business invites and those of any other Person who, with or without your consent or cooperation (and other than as a result of Elavon's breach of the Agreement), obtain access to information related to Transactions.
- (g) **Elavon's Confidential Information.**
 - (i) You shall at all times protect Elavon's Confidential Information. You will not disclose any of Elavon's Confidential Information to any third party except as required by Law.
 - (ii) If you receive a password from Elavon to access any of Elavon's databases or services you will: keep the password confidential; not allow any other Person to use the password or gain access to Elavon's databases or services; be liable for all action taken by any user of the password, and 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 on behalf of, or in connection with, Elavon or otherwise in connection with Merchant Services or Transactions, you must protect such passwords in the manner required by such third party, and except to the extent (and only to the extent) as may be a direct result of the gross negligence or breach by Elavon of the Agreement, you will be liable for and indemnify, defend and hold harmless the Protected Parties from and against all Claims or Loss resulting from or relating to your use or misuse of such third party passwords.
- (h) **Merchant's Confidential Information and Transaction Data.** For the avoidance of doubt and without prejudice to the other provisions of this Section 14, Elavon and its Affiliates and designated Member(s) may, to the extent of and for the purposes permitted by the Rules and applicable law, disclose to the Card Schemes (i) confidential information furnished by Merchant and (ii) any information furnished by Merchant that would enable the Card Schemes or their Affiliates to determine an individual's identity, including a Card Scheme account number. For the avoidance of doubt, Elavon may also disclose financial information concerning your transaction turnover to third parties through which you were introduced to Elavon for the purpose of calculation and payment of applicable commission and other fees to such third parties.

15. INDEMNIFICATION; LIMITATIONS OF LIABILITY.

(a) Indemnification.

- (i) Except to the extent (and only to the extent) as may be a direct result of the gross negligence or breach by Elavon of the Agreement, you will be liable for and indemnify and keep indemnified, defend, and hold harmless Elavon, its Affiliates, designated Member(s) employees, officers, directors, contractors and agents (collectively, "Protected Parties") from and against all claims made by third parties against any Protected Party arising out of the Agreement, and for all other claims (third party or otherwise), actions, proceedings, loss, damages, liability, legal fees and all other costs and expenses (collectively, "Claims or Loss") paid or incurred by any Protected Party in the enforcement of the Agreement, as well as with respect to Claims or Loss, or fines (including without limitation fines levied by the Card Schemes) resulting from or relating to: (aa) any Transaction processed under the Agreement; (bb) any breach by you of, or Event of Default under, the Agreement including any infringement of the IPRs; (cc) the Merchant Bank Account and any Reserve, and (dd) any Insolvency Proceeding or other Event of Default. Elavon shall be entitled at its discretion to accept, dispute, compromise or otherwise deal with any Claims or Loss and shall be under no liability in respect thereof to you. Without limiting the foregoing, you will be liable for, indemnify and keep indemnified, defend and hold harmless the Protected Parties from and against any Claims or Loss made resulting from or relating to any act or omission by you giving rise to a claim under the Consumer Credit Act 1974 or other applicable laws (whether or not such claim is proven).
 - (ii) Without limiting the foregoing, and except to the extent (and only to the extent) as may be a direct result of the gross negligence or breach by Elavon of the Agreement, you will be liable for and indemnify and keep indemnified, defend and hold harmless the Protected Parties from and against all Claims or Loss resulting from or relating to the use or operation or malfunction of the Terminals or in relation to any matter arising out of its presence on the premises of Merchant or in connection with any work done or service to the Terminals provided by Elavon, its servants, agents and/or sub-contractors and/or any person resulting from the Agreement including all actions, claims and/or proceedings occasioned by or arising out of the negligence of Elavon, its Affiliates, servants or agents, sub-contractors or other persons acting on their behalf as aforesaid.
- (b) **General Limitation of Liability.** Merchant acknowledges that Elavon's fees for the services provided to Merchant are minimal in relation to the Settlement Funds advanced to Merchant for Transactions and

consequently Elavon's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in no event (except as provided by Section 15(g) below) will the liability of Elavon under the Agreement, whether to you or any other party, whatever the basis of the liability and whether arising in respect of any one event or series of events arising from the same cause of action, exceed in the aggregate an amount equal to the fees paid by you during the twelve (12) months immediately prior to the first act or omission that formed the principal basis of the loss or claim being asserted.

- (c) **Indirect or Consequential Loss.** IN NO EVENT WILL ANY OF THE PROTECTED PARTIES BE LIABLE FOR LOSS OF PROFITS OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE (HOWSOEVER ARISING), INCLUDING ANY, LOSS OF SALES, LOSS OF BARGAIN, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, LOSS OF COMPUTER EQUIPMENT, SOFTWARE OR DATA, OR LOSS OF TIME WHICH MAY ARISE IN CONNECTION WITH THE AGREEMENT OR MERCHANT SERVICES, EVEN IF SUCH LOSS WAS REASONABLY FORESEEABLE OR WITHIN THE CONTEMPLATION OF THE PARTIES.
- (d) **Limitation of Warranties.** Elavon will perform all services required to be performed by it in accordance with the Agreement using reasonable care and skill. Elavon hereby warrants that it shall provide you with all necessary title to use the Terminals, if any, supplied to you by Elavon for the purpose of the Agreement. Except as specifically provided by the foregoing, Elavon makes no other warranties, guarantees or undertakings, express or implied, regarding the performance of such services, and nothing contained in the Agreement will constitute such a warranty. You expressly agree and acknowledge that all other conditions, terms, undertakings and warranties, express or implied, whether statutory or otherwise, in respect of the services (including but not limited to quality, performance, suitability or fitness for a particular purpose) are hereby excluded to the fullest extent permitted by law.
- (e) **Misuse.** Elavon shall not be liable for any loss suffered as a result of misuse by you of Merchant Services or any Terminal or other equipment.
- (f) **Force Majeure.** Elavon shall not be liable to you for any failure, delay, breach of performance, or loss you suffer due to circumstances beyond our control which leads to the services provided being wholly or partially unavailable for such reasons as, but not limited to, a technical failure, industrial dispute, communications or power failure. In all such circumstances we will expect you to prevent or reduce your loss by telephoning us or sending us a facsimile message advising us of such failure.
- (g) **No Limitation on Liability in Certain Instances.** Notwithstanding the foregoing provisions of this Section 15, no provision of the Agreement, including any indemnity given by you pursuant to this Clause 15 in favour of Elavon, shall have the effect of limiting the liability of a party for death or personal injury arising from its own negligence or of limiting the liability of a party for fraudulent misrepresentation.

16. REPRESENTATIONS AND WARRANTIES.

You represent and warrant to Elavon as of the time the Agreement is effective, and reaffirm to Elavon each time a Transaction is initiated during the Initial Term or any Renewal Term of the Agreement, the following:

- (a) **Information.** All information provided to Elavon in the Merchant Application or otherwise in the Agreement was true, correct and complete as of the date originally given and that all changes to such information have been properly notified to Elavon in accordance with Section 17(e) hereof. You are a body corporate, private limited company, public limited company, partnership, sole trader, unincorporated association, registered charity, or other entity or concern, validly existing and organized in the United Kingdom or in such other jurisdiction as shall have been approved by Elavon. All information provided in the Merchant Application or any other document submitted to Elavon in connection with the Merchant Application is true and complete and properly reflects the business, financial condition and principal partners, owners, or officers of the Merchant.
- (b) **Corporate Power.** Merchant and the person signing the Agreement have the power to execute and perform the Agreement, the person executing the Agreement is duly authorised to bind Merchant to all provisions of the Agreement, and such person is authorised 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, the Merchant's signing and/or performing in accordance with the Agreement will not violate any Law or Rule, or conflict with any other agreement to which the Merchant is 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™ or Visa VMAS systems, or, if you have, you have clearly and conspicuously disclosed that fact to Elavon in writing.

- (d) **Transactions.** All Transactions are bona fide. Save where permitted in writing by Elavon and subject to applicable law and the Rules, no Transaction involves the use of a Card 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 Rules and the Agreement, and agreed to in writing with Elavon.
- (e) **Business Use.** You are obtaining and using Merchant Services for legitimate business purposes only and to facilitate lawful business Transactions between yourself and your customers. Your business and the manner in which you conduct it comply with all applicable laws. The Merchant Bank Account into which debits and credits are made is being used for lawful business purposes only.
- (f) **Applicability of Consumer Law.** In entering into the Agreement, you warrant to Elavon that this is not a consumer credit agreement for purposes of the Consumer Credit Act, 1974, and you are not a consumer for purposes of other applicable consumer protection law.

17. COVENANTS.

You covenant and agree that as of the time the Agreement is effective, and reaffirm to Elavon each time a Transaction is effected during the Initial Term or any Renewal Term of the Agreement, the following:

- (a) **Nature of Transactions.** Without the prior written consent of Elavon, you will not submit Transactions for processing to Elavon for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time you apply for services.
- (b) **Provision of Identifying Information.** To help prevent the funding of terrorism and money laundering activities, the Laws require us to obtain, verify, and record information that identifies each person who opens an account. Prior to services being made available under the Agreement and at any time during the Term, you shall supply to Elavon such information as Elavon may require, either for credit assessment purposes, or to allow Elavon to comply with any obligations placed on it by Law from time to time, including certain information and identification documents to allow Elavon to identify you for anti-money laundering purposes.
- (c) **Financial Information.** Upon the request of Elavon, you will provide to Elavon audited financial statements prepared by an independent chartered accountant selected by you. You further agree to provide promptly to Elavon such other information regarding your financial condition as Elavon may reasonably request from time to time. You will furnish Elavon, on request, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.
- (d) **Guarantee/Security Document.** You will at all times promptly comply with any request made by Elavon pursuant to Section 12. For the avoidance of doubt, all costs, fees (including legal fees) and expenses incurred by the Merchant in complying with the provisions of Section 12 shall be for the account of the Merchant.
- (e) **Insolvency Proceeding.** You will immediately notify Elavon of any Insolvency Proceeding, receivership, bankruptcy, examination or similar action or proceeding initiated by or against Merchant or any of its principals. Failure to do so will be cause for immediate termination of the Agreement and shall permit the pursuit of any other action available to Elavon under applicable Rules or Laws.
- (f) **Accuracy of Information.** You will promptly notify Elavon in writing of any changes to information provided by or about you or your business included in the Merchant Application or elsewhere in the Agreement (including but not limited to any information that may make the representations contained in Section 16 untrue or incomplete in any respect), including, without limitation, any additional location or new business at which you desire to receive Merchant Services or otherwise accept or process Transactions, the identity of principals and/or owners, the asset structure (i.e. the sale of all or a material part of the business) or the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided, trading terms and how sales are completed (i.e., by telephone, mail, internet, or in person at your place of business). The notice must be received by Elavon at least ten (10) Business Days prior to the proposed change. You will provide any additional information requested by Elavon (including, without limitation, product information, copies of trading terms, supplier invoices) within a reasonable time. Without limiting the foregoing, and except to the extent (and only to the extent) as may be a direct result of the gross negligence or breach by Elavon of the Agreement, you will be liable for and indemnify and shall keep indemnified, defend and hold harmless the Protected Parties from and against all Claims or Loss resulting from or relating to (i) any such change, whether or not reported to Elavon, or (ii) your failure to timely provide requested information. Elavon may immediately terminate the Agreement upon notification by you of a change to the information in the Merchant Application.

- (g) **Audit.** You authorise Elavon to perform an on-site audit of your business, at any time and with such reasonable prior notice as is permitted by the Rules, to confirm compliance with the Agreement. Such audit may take the form of an on-site review prior to us providing Merchant Services to you. In addition, you will obtain and submit a copy of an audit from a third party acceptable to Elavon of the financial, physical, information security (physical security and information security), and operational facets of your business at your expense when reasonably requested by Elavon. Further, you acknowledge and agree that the Card Schemes have the right to audit your business to confirm compliance with the Rules.
- (h) **Financial Crime Screening Services.** You agree to comply with all Financial Crime Screening Services and/or guidelines issued by Elavon from time to time and to implement such third party screening processes as stipulated from Elavon from time to time. Further, you shall comply with all applicable Rules pertaining to financial crime screening. You shall only use the Financial Crime Screening Services provided or approved by Elavon from time to time. Any deviation from this requirement may result in termination of the Agreement forthwith by Elavon.
- (i) **Disaster Recovery.** You are solely responsible for developing and maintaining a business continuity and disaster recovery plan. As part of your disaster recover plan you will maintain in place appropriate disaster recovery arrangements with Third Party Vendors, including providers of Third Party Terminals. You should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing business continuity and disaster recovery capability to your business.
- (j) **Insurance.**
- (i) You shall comprehensively insure and keep insured all Terminals, equipment or goods provided to you by Elavon against all injury to, loss, damage or destruction and, in the case of equipment or goods that are the property of Elavon, whether distinct or incorporated in whole or in part with equipment or goods that are your property or in your possession. In this regard, unless waived in writing by Elavon, you shall have the interest of Elavon noted on the policy covering the foregoing risks, such notation to be in the manner required by the Elavon. Elavon may at any time require you to produce copies of the insurance policies and/or evidence of payment of the policies, in which event you shall make available forthwith a copy of the insurance policy together with a copy of the most up to date receipt in respect of payment of insurance premiums. If you make a claim in respect of any Terminal under any insurance policy, any monies received shall be applied towards repairing or replacing the Terminals, as appropriate, and compensating Elavon in respect of any loss or damage suffered by it. In the event of your failure to comply with this obligation, Elavon shall be entitled (but not obliged) to effect such policy in its own name and to compel payment thereof by you.
- (ii) You acknowledge and agree that it is your responsibility to effect public liability insurance on your own behalf, which shall (for the avoidance of doubt and without limitation) include coverage on an indemnity basis for liability to Elavon for negligent acts and omissions and fraud on the part of your employees and in respect of those matters for which the indemnity set out in Section 15(a)(ii) above is given, and you agree that you will arrange for your underwriters and/or insurers to renounce their rights of recourse (if any) against Elavon and to verify the existence of such public liability insurance to Elavon on request.
- (k) **Compliance with Laws and Rules.** You agree to comply with the Rules and with any instructions, policies and procedures provided by Elavon in order to facilitate such compliance. You further agree to comply with all applicable laws. You will assist Elavon in complying in a complete and timely manner with all Laws and Rules now or hereafter applicable to any Transaction or the Agreement. You will execute and deliver to Elavon all such instruments it may from time to time reasonably deem necessary to verify your compliance with this provision.
- (l) **Security Programme Compliance.** You must comply with the requirements of the Account Information Security Programme of Visa ("AIS") and the Site Data Protection Programme of MasterCard ("SDP") (collectively known as their Payment Card Industry Data Security Standards ("PCI DSS")), as applicable, and any modifications to or replacements of such programmes that may occur from time to time. You also shall ensure that all Third Party Vendors from whom you procure Value Added Services or Terminals comply with the requirements of those programmes. Upon request, Elavon will provide you with copies of a summary of the current requirements of the Visa and MasterCard programmes. You shall be responsible for your own actions, omissions or failures to act, those of your Affiliates, officers, directors, shareholders, employees and agents, including any Third Party Vendors with whom you contract to perform services for you. Except to the extent (and only to the extent) as may be a direct result of the gross negligence or breach by Elavon of the Agreement, you will be liable for, indemnify and keep indemnified, defend and hold harmless the Protected Parties from and against all Claims or Loss resulting from or relating to the violation of any of the

programme requirements by any of the Persons listed in the immediately preceding sentence. Should you participate in a programme with any other Card Scheme or Issuer, or accept a Card of any other Card Scheme that has a security programme in place, you must comply therewith and ensure that your officers, directors, shareholders, employees, contractors and agents, including any Third Party Vendors from whom you procure Value Added Services or Terminals, also comply with the programme requirements of such Card Scheme.

- (m) **Display of Card Scheme Marks.** Unless otherwise informed by Elavon, Merchant shall prominently display the most current versions of the Card Schemes' names, symbols, and/or service marks, as appropriate, at or near the POS Device and may display such marks on promotional materials to inform the public that such Cards will be honoured at Merchant's place of business. Merchant's use of such marks must comply with the requirements of each mark's owner. Merchant's right to use or display such marks shall continue only long as the Agreement remains in effect and such right shall automatically terminate upon termination of the Agreement.
- (n) **Use of Trademarks.** In processing Transactions you will only use stationery and other materials provided by Elavon or for which you have received Elavon's prior written approval from time to time. You will display prominently on each of your premises promotional materials provided by Elavon. Your use of Visa and MasterCard marks, as well as marks of other Card Schemes, will fully comply with the Rules. Your right to use all such marks will terminate upon termination of the Agreement. Your use of promotional materials provided by or on behalf of Visa, MasterCard, and/or other Card Schemes will not indicate, directly or indirectly, that Visa, MasterCard, or such other Card Schemes endorse any goods or services other than their own and you may not refer to Visa, MasterCard, or any other Card Schemes in stating eligibility for your products or services.
- (o) **Proprietary Interest.** You covenant and agree that you have no interest whatsoever, including, without limitation, copyright interests and related rights (including rights in respect of software), trademark rights (including service marks, trade names and business names), design rights, database rights (whether or not any of these is registered and including any application for registration of any such rights), know-how, **confidential** information, trade secrets, franchise interests, license interests, patent rights (including utility models and inventions), property rights, or other interest in any services, software, or hardware provided by Elavon (IPRs). Nothing in the Agreement shall be construed as granting you 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, reverse assemble, reverse compile, de-compile or dissemble the whole or any part of any of Elavon's services, equipment, or software.

18. THIRD PARTIES.

- (a) **Products or Services.** You may choose to employ Value Added Services to assist you. You shall not utilize any Value Added Services unless you have disclosed such use, and the Third Party Vendor, to Elavon previously in writing, and unless such Value Added Services and the Third Party Vendor are fully compliant with all applicable laws and the Rules. Further, you will be bound by the acts and omissions of the Third Party Vendor offering such Value Added Services and you will be responsible for ensuring compliance by the Third Party Vendor offering such Value Added Services with all applicable laws and the Rules. Except to the extent (and only to the extent) as may be a direct result of the gross negligence or breach by Elavon of the Agreement, you will be liable for, indemnify and keep indemnified, defend and hold harmless the Protected Parties from and against all Claims or Loss resulting from or relating to your use of any Value Added Service or Third Party Vendor. Elavon shall not be responsible for the Value Added Services provided by any Third Party Vendor, nor shall Elavon be responsible for any Transaction effected, processed or relating to such Value Added Services until Elavon receives data for the Transaction in the format required by Elavon.
- (b) **Use of Terminals Provided by Others.** In addition to the foregoing, if you use Value Added Services for the purposes of data capture and/or authorization or otherwise with respect to Terminals leased, hired or purchased from Third Party Vendors, you agree: (i) that the Third Party Vendor providing such services will be your agent in the delivery of Transactions to Elavon via a data processing system or network similar to Elavon's; and (ii) to assume full responsibility and liability for any failure of that Third Party Vendor to comply with applicable laws and the Rules and the Agreement. Elavon shall not 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 Terminal. Further, Elavon shall not be responsible for any Transaction effected, processed or relating to such Value Added Services until Elavon receives data for the Transaction in the format required by Elavon.

19. TERM AND TERMINATION.

- (a) **Term.** Unless terminated as set forth below, the Agreement will remain in effect for a period of three (3) years ("Initial Term") following the date of acceptance of the Merchant Application by Elavon, which date shall be the date upon which the Agreement becomes effective. Thereafter, the Agreement will renew for successive two (2) year terms ("Renewal Term") unless terminated as set forth below.
- (b) **Termination.** The Agreement may be terminated as follows:
- (i) By Merchant:
- aa. The Agreement may be terminated by you effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Elavon at least thirty (30) days prior to the expiration of the then current term.
- bb. The Agreement may be terminated by you in the event of a material breach of the terms of the Agreement by Elavon, provided you give Elavon written notice of any alleged breach and such breach remains uncured for a period of thirty (30) days following receipt of written notice by Elavon.
- (ii) By Elavon:
- aa. The Agreement may be terminated by Elavon at any time with or without cause during the Initial Term or any Renewal Term.
- bb. Without limiting the foregoing, Elavon may terminate this Agreement at any time in the event of a breach of the terms of the Agreement by you or a withdrawal by a Guarantor of any Guarantee pertaining to this Agreement, an Insolvency Proceeding, or any other Event of Default.
- cc. Elavon'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 to terminate the Agreement expressed elsewhere.
- (iii) Notice of Termination. Notice of termination given in compliance with this Section 19(b) by Merchant or Elavon may be given orally or in writing, but if given orally, must be confirmed in writing as soon as practical. Termination shall be effective on the date specified in the oral or written notice.
- (c) **Action Upon and Effect of 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 until you pay all amounts you owe Elavon under the Agreement or amounts for which you are liable under the Agreement. You must maintain enough funds in the Merchant Bank Account following termination to cover all Chargebacks, Fees and Adjustments, and other amounts due under the Agreement until such time as Complete Performance has occurred. If a Reserve is established by Elavon, then termination of such Reserve shall be governed by Section 10(d).
- (ii) Return of Terminals. If your Terminals are leased, you shall be obligated to honour the terms and conditions of your leasing contract. If your Terminals are owned by Elavon, you must return them within ten (10) Business Days following termination of the Agreement and immediately pay Elavon any amounts you owe for such equipment. A terminal recovery fee ("Terminal Recovery Fee") as notified to you will become payable. In the event that any such Terminal is not duly returned, Elavon may charge you the fair market value of each such unreturned Terminal. Upon termination of the Agreement Elavon may charge to the Merchant Account the replacement cost of the Terminal, which shall be refunded upon receipt of Terminal by Elavon. Moreover, in the event of damage to any returned Terminal, Elavon may charge you an appropriate amount to cover such repairs and/or replacement as may be necessitated due to such damage.
- (iii) Early Termination by Merchant. Without prejudice to anything contained in this Section 19 or Section 13 herein, in the event that you terminate this Agreement during the Initial or any Renewal Term other than in accordance with Section 19(b)(i) herein, an early termination fee ("an Early Termination Fee") shall become payable. You acknowledge that the Terminal Recovery Fee and Early Termination Fee are administrative charges only, payment and acceptance of which shall not amount to a waiver of any damages, compensation or other fees due to Elavon as a result of your early termination of this Agreement.
- (d) **Promotional Materials.** 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, including any infringement of IPRs, arising out of any failure to return such materials following termination.

20. MISCELLANEOUS PROVISIONS.

- (a) **Survival.** Upon termination of the Agreement for any reason whatsoever, all provisions contained in the Agreement that by their sense and context are intended to survive completion of performance, termination or cancellation of the Agreement shall survive and continue in full force and effect.
- (b) **Entire Agreement.** The Agreement (including the Merchant Application Form, any schedule of fees or Merchant Operating Guide notified to Merchant), the Rules, and any amendment or supplement to the aforesaid, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement; provided, however the Agreement shall not supersede any Security Document and/or any Guarantee entered into in favour of Elavon, which shall be deemed to remain an agreement separate and distinct from the Agreement. In the event of a conflict between the documents comprising the Agreement, excluding any Security Document and/or any Guarantee, the following order of priority will apply: (i) these TOS; (ii) the Merchant Application; (iii) any other Merchant Agreement you have entered into with Elavon for similar or related services; (iv) Merchant Operating Guide; and (v) any other guides or manuals provided to Merchant from time to time; provided, however, in the event of a conflict between the Agreement and the Rules, the Rules will govern and control and the Agreement will be interpreted to give as full effect as is possible to both the Rules and the Agreement. For the avoidance of doubt, all Merchant Services provided to you shall be provided pursuant to the Agreement and no other agreement.
- (c) **Governing Law.** The Agreement will be governed by and construed in accordance with the laws of England. For the benefit of Elavon, the parties agree that the English courts will have jurisdiction in the event of any disputes arising hereunder. Elavon shall, in its sole discretion, be entitled to bring any action in the courts of any other country which may have jurisdiction.
- (d) **Exclusivity.**
- (i) Unless otherwise agreed in writing by Elavon, or otherwise in compliance with Section 18, during the Initial Term of the Agreement you will not enter into an agreement with any other Person that provides processing services similar to those provided by Elavon as contemplated by the Agreement without Elavon's prior written consent. This period of exclusivity shall expire at the end of the Initial Term.
- (ii) Thereafter, if you elect to renew the Agreement for any Renewal Term (e.g. by not properly giving the notice contemplated by Section 19(b)(i)(aa) of the Agreement), and unless otherwise agreed in writing by Elavon or otherwise in compliance with Section 18, you agree that a new period of exclusivity shall commence, and during any such Renewal Term you will not enter into an agreement with any other Person that provides processing services similar to those provided by Elavon as contemplated by the Agreement without Elavon's prior written consent.
- (e) **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.
- (f) **Assignability.** The Agreement is not assignable by the Merchant, whether directly or by operation of law, other than upon 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. If you are an individual the Agreement shall be binding upon your personal representatives. For the avoidance of doubt, Elavon may assign, novate or otherwise transfer, either wholly or in part, any of its respective rights, benefits or obligations under the Agreement, without your prior consent, so long as such assignment, novation or transfer is allowed by and in compliance with the Rules. In the event of an assignment, novation or transfer, Elavon shall provide Merchant with notice of such assignment, novation or transfer and, if requested, Merchant agrees to enter into such documents as Elavon may stipulate in order to evidence such transfer, assignment or novation. Merchant by entering into the Agreement hereby consents to the assignment, novation or transfer of this Agreement to any third party provided that the person to whom the contract is assigned novated or transferred can and will, in respect of the Agreement, perform the functions currently performed by Elavon as the case may be, and no further steps shall be required to effect such assignment, novation or transfer unless requested by Elavon pursuant to this Clause 20(f). If you sell your business and the new owners incur Chargebacks, you and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners. The Agreement is enforceable by the original parties to it, their successors in title and permitted assignees and transferees. Notwithstanding the foregoing, Elavon is entitled to (i) assign any and all receivables arising out of this Agreement to a third party for financing or refinancing purposes or (ii) to transfer (eg. by sub-participation) the economic risk of the receivables arising out of this Agreement to a third party. In case of such assignment or transfer,

Elavon may, subject to Section 14, disclose and transmit to any such third party all information about you and this Agreement relevant for or required by the third party in connection with such assignment or transfer. For the avoidance of doubt, Elavon is entitled to outsource certain or all services to be provided under this Agreement to third parties (which may operate outside of the European Union, in particular in the United States of America) provided that Elavon shall remain responsible for the performance of these services vis-à-vis the Merchant. In case of such outsourcing Elavon may, in accordance with Section 14, disclose and transmit to such third parties all information about you and this Agreement necessary in connection with the proper provision of the outsourced services.

- (g) **Appointment of Agents.** Elavon may, subject to and at all times in compliance with the Rules, appoint one or more agents or representatives for any of the purposes of the Agreement. All statements, requests, decisions and other communications conveyed to Merchant by any such agent or representative in connection with the Agreement or otherwise in connection with Merchant Services shall be treated as if they had been made by Elavon, as applicable.
- (h) **Notices.** Any written notice to Merchant under the Agreement will be deemed received upon the earlier of:
 - (i) actual receipt; or
 - (ii) five (5) Business Days after being sent by post, 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 registered post or a nationally recognized overnight carrier to: Elavon Financial Services Limited, P.O. Box 56, IDA Business Park, Arklow, Co. Wicklow, Ireland, and shall be deemed received only upon actual receipt.
- (i) **Customer Contact.** You authorise Elavon to contact your customers or the relevant Issuer if Elavon determines that such contact is necessary to obtain information about any Transaction.
- (j) **Telephone Recording.** For purposes of performance and enforcement of the Agreement and monitoring the quality of Merchant Services, and subject to applicable law, you acknowledge and agree that Elavon may monitor and record telephone conversations with you.
- (k) **Amendments.** Elavon may propose amendments or additions to the Agreement. Elavon will give you not less than thirty days' notice of a proposed change in a periodic statement or other notice, including by press advertisement in a national daily newspaper, by information on our website or by any other appropriate means. You will be deemed to have agreed to the change if you present Transactions to Elavon at any time after thirty (30) days have elapsed following the issuance or publication of the notice; if you do not wish to agree to any such amendments you should not present any Transactions to Elavon after the thirty (30) day period has elapsed. Notwithstanding the previous sentence, changes to fees will be effective upon reasonable notice to you. Further, Elavon shall be 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. In certain exceptional circumstances (e.g., where we suspect financial crime, an Insolvency Event, or violation of Laws), we may make changes to the terms of the Agreement, including the processing limits, without letting you know beforehand.
- (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 was not contained in the Agreement. Neither the failure, the delay by Elavon 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. Any waiver requested by you shall have no legal force or effect unless specifically agreed to (which Elavon may or may not do in its sole discretion) in writing by Elavon.
- (m) **Independent Contractors.** The Parties will be deemed independent contractors and no one party will be considered an agent, joint venturer, or partner of any other party, unless and to the extent otherwise specifically provided herein.
- (n) **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. Save for new Applications for Merchant Services and applications for additional outlets which must be in original format, 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.
- (o) **Remedies Cumulative.** The rights conferred upon Elavon in the Agreement are not intended to be exclusive of each other or of any other rights and remedies of Elavon under the Agreement, at law or in equity. Rather, each and every right of Elavon under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right. This Section 20(o) shall survive termination of the Agreement.

PART B
ACCEPTANCE OF AMERICAN EXPRESS, DINERS, AND/OR JCB

You may not process American Express, Diners, and/or JCB Transactions unless Elavon has agreed in writing that you may do so. If Elavon has so agreed, the following provisions shall apply in addition to the General Provisions. In the event of any inconsistency, this Part B of the TOS shall prevail to the extent of such inconsistency.

In addition to the General Provisions and this Part B, you may be required to enter into additional terms and conditions with Elavon, an Affiliate or Member regarding American Express. In the event of any inconsistency, any terms and conditions entered into directly related to American Express prevail over this Part B and the General provisions to the extent of any such inconsistency.

- 21. ACCEPTANCE.** If Elavon provides authorisation and/or data capture services to Merchant for American Express, Diners, and/or JCB Transactions, Merchant agrees to the following provisions, in addition to the General Provisions.
- (a) **Access.** Upon request and fulfilment of the following conditions, Elavon will provide access to authorisation and/or data capture services for American Express, Diners, and/or JCB Transactions to Merchants who have been approved by American Express, Diners, and/or JCB, as the case may be, and who have entered into a separate agreement with such Card Schemes; provided, however that Elavon shall not be responsible for funding such Diners Transactions or JCB Transactions.
 - (b) **Forwarded Information.** Elavon will forward certain information pertaining to the Merchant, including, but not limited to, contact information and the Merchant Bank Account numbers, to one or more of such Card Schemes, unless Elavon receives from the Merchant written instructions to the contrary.

PART C
MAIL ORDER/TELEPHONE ORDER TRANSACTIONS

You may not process Mail Order or Telephone Order Transactions unless Elavon has agreed in writing that you may do so. If Elavon has so agreed, the following provisions shall apply in addition to the General Provisions. In the event of any inconsistency, this Part C of the TOS shall prevail to the extent of such inconsistency.

- 22. MAIL ORDER/TELEPHONE ORDER (MO/TO).** You may not solicit or accept MO/TO sales Transactions without Elavon's prior written consent to do so. If you complete a MO/TO sales Transaction without such prior written 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 the Rules. In addition, you may have to pay a surcharge on each such Transaction.
- (a) **Chargebacks.** You understand MO/TO Transactions are high risk and subject to a higher incidence of Chargebacks. Card Not Present Transactions are in all cases at your own risk. Any such Transaction which is disputed may be charged back to you even where you have adhered to the terms of the Agreement and where the Transaction has been authorised. You shall be liable for all Chargebacks and losses related to MO/TO 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 the Agreement or validate a fraudulent Transaction.
 - (b) **Authorisation.** When seeking authorisation for a MO/TO Transaction you shall quote (in addition to the standard authorisation information containing inter alia Merchant's own account number, the Card number, address and telephone number and CW2 CV2, and the price of the goods or services) the Cardholder's name, initials and address.
 - (c) **Cardholder Authority.**
 - (i) Nothing in the Agreement, including receipt of an Authorisation Code, exempts you from the requirement to obtain authority to debit the Cardholder's account for each Transaction.
 - (ii) For each mail order Transaction you must get the signed, written authority of the Cardholder for the Cardholder's account to be debited with the amount of the relevant Transaction. For each telephone

order Transaction, you must retain documentary evidence of the Cardholder's authority to debit the Cardholder's account for the amount of the relevant Transaction. In either instance you must keep documentary proof of dispatch of the goods or supply or the services ordered for not less than eighteen (18) months from the date of such Transaction. You shall produce such documentary evidence to Elavon on request.

- (iii) It shall be your sole responsibility to produce promptly upon request satisfactory evidence that authority was obtained for debiting the Cardholder's account in respect of any MO/TO Transaction.

(d) Transaction Receipts.

- (i) For each MO/TO Transaction, you will complete a Transaction Receipt including the Cardholder's name, address and Card number. You will obtain the expiration date of the Card for a MO/TO sales Transaction and submit the expiration date when requesting Authorisation of the sales Transaction. For each MO/TO Transaction, you must type or print legibly on the signature line of the Transaction Receipt (in place of the signature) the following applicable words or letters: telephone order "TO", or mail order or "MO", as appropriate. Elavon recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by the Cardholder for MO/TO Transactions. You will send the Cardholder a receipt for the sale of goods and/or the supply of services within seven days of the relevant Transaction to which the receipt relates.
- (ii) In the event that any Transaction is initiated as an MO/TO Transaction, but completed under circumstances where a Card Present Transaction is possible (e.g. a consumer places merchandise on "hold" with a phone call but comes to your place of business to pick up the product), you will complete the Transaction as a Card Present Transaction in accordance with the General Provisions.

(e) Presentment of Transactions.

- (i) Transactions must not be presented until the relevant goods ordered have been dispatched or arrangements made for the services to be provided, but following such dispatch or, as the case may be, the making of such arrangements, you agree to present to Elavon for payment the relevant Transaction within the time periods set forth in the General Provisions.
- (ii) Notwithstanding the foregoing, in respect of Transactions for goods, Transactions may be presented before the dispatch of the goods provided that within seven (7) days of presentment a written acknowledgement quoting the dispatch date is sent by you to the Cardholder, such dispatch date not to be later than twenty-eight (28) days from the date of receipt of the order.

(f) Withholding Payment. Without limiting any other provision of the Agreement or the Rules, Elavon may withhold payment on presentation of Transactions, or, if you have been paid for the Transaction, may charge back the amount of the Transaction to you and notwithstanding that the Transaction may have been Authorised, if:

- (i) You fail to produce evidence of the Cardholder's authority to debit the amount of the Transaction; or
- (ii) The Cardholder denies authorising, or we have reasonable grounds to suspect that the Cardholder did not authorise, the relevant MO/TO Transaction

PART D
CHIP AND PIN (“C&P”)

*Unless the Agreement provides otherwise, the following provisions apply in addition to the General Provisions.
In the event of any inconsistency, this Part D of the TOS shall prevail to the extent of such inconsistency.*

23. CHIP AND PIN TECHNOLOGY.

- (g) 1 January 2005. You hereby acknowledge and agree that you shall have sole and exclusive liability for fraudulent Transactions that occur from this date but which could have been prevented had you installed and properly used Chip and PIN Technology.
- (h) **Merchant Liability.** Without prejudice to the foregoing, if Elavon provides Merchant Services to you, liability for all failed or fraudulent Transactions carried out using C&P Cards will rest with you in any case where:
- (i) You accept a C&P Card Transaction using any Terminal or Third Party Terminal that does not incorporate Chip and PIN Technology; or
 - (ii) You accept a C&P Card Transaction using any Terminal or Third Party Terminal which incorporates Chip and PIN Technology but does not use the Chip and PIN functionality to accept the C&P Card Transaction; or
 - (iii) You accept a C&P Card Transaction without using a PIN Pad.
- (i) **Failure to Use Chip and PIN.** Without prejudice to the foregoing, in the event that you fail to accept C&P Card Transactions using a Chip and PIN Terminal (and PIN Pad as appropriate) after the date notified to you, the provision of Merchant Services to you may be suspended and/or your rights under the Agreement (and any associated agreement between Elavon and Merchant) may be terminated forthwith.
- (j) **Use and Availability of Terminals and PIN Pads.**
- (i) A Cardholder’s Card information and PIN are confidential. You may not request or require a Cardholder to disclose his or her PIN at any point during a Transaction. During the Transaction process, you must provide a reasonably secure area for Cardholders to enter their PIN into the PIN Pad. You shall cause a Terminal and PIN Pad device to be readily available for the use of all Cardholders at your business locations where C&P Cards are accepted. You shall take all reasonable steps to ensure that all Terminals and PIN Pads operated at Merchant’s business locations function with a minimum of error, in a reliable manner and in accordance with the standards established from time to time by Elavon and the Card Schemes.
 - (ii) Except where otherwise allowed by the Rules or applicable law, you shall use a Terminal to initiate every C&P Card Transaction and you shall require that either the Cardholder or you insert and/or “swipe” the C&P Card through the Terminal to initiate every C&P Card Transaction, except as set forth herein. No C&P Card Transaction may be initiated unless the C&P Card is physically present.
 - (iii) You shall require that each Cardholder enter his or her PIN using a PIN Pad at the Terminal when initiating a C&P Card Transaction. Unless otherwise allowed by the Rules or applicable law, you may not require a C&P Card Cardholder to sign a Transaction Receipt or other receipt, or require any other means of identification.
 - (iv) In the event of Chip Failure during a C&P Card Transaction, subject to applicable Rules, the transaction may be completed as a magnetic-stripe-read transaction but must be submitted for online Authorisation, all in accordance with the procedures detailed in the Merchant Operating Guide.
 - (v) **No PIN on Transaction Receipts.** If you accept C&P Cards, no data referencing the Cardholder’s PIN shall be printed on any Transaction Receipt.
- (k) **Merchandise Credits.** You may electronically perform a merchandise credit or return (if permitted by the applicable Card Scheme) for a C&P Card Transaction only at the same Merchant named on the Transaction Receipt where the original C&P Card Transaction was initiated. If permitted, a merchandise credit requires the following procedures:
- (i) The Card must be inserted and/or “swiped” through the Terminal; and;
 - (ii) The Cardholder must re-enter the PIN on the PIN Pad; and
 - (iii) Merchant must transmit the Authorisation Code and the exact amount (in the relevant currency) of the Transaction to be credited/refunded.

PART E
WIRELESS TERMINALS

If you use a Wireless Terminal, the following provisions apply in addition to the General Provisions. In the event of any inconsistency, this Part E of the TOS shall prevail to the extent of such inconsistency.

24. WIRELESS TERMINALS. If you use a Wireless Terminal, you agree to the following additional provisions:

- (a) **Limitations of Wireless Technology.** You acknowledge and agree that because of the emerging nature of wireless technology, certain limitations exist that may affect the performance, Coverage Area and reliability of wireless technology and wireless processing. Without limiting the generality of the foregoing, wireless processing and the use of a Wireless Terminal are limited to the Coverage Area and may further be limited by a variety of other factors, circumstances, and considerations including, but not limited to, the following: (i) use of a Wireless Terminal outside the Coverage Area will not be possible; (ii) within the Coverage Area, there may exist certain weak coverage areas or other fringe areas where wireless Transaction processing may be intermittent or otherwise interrupted; (iii) within the Coverage Area, certain geographic areas may exist in which wireless Transaction processing may be intermittent or not possible; (iv) at any time and without notice, any wireless network may become inoperative due to technical difficulties or for maintenance purposes thereby affecting Merchant's use of wireless Transaction processing. In the event that your ability to process wireless Transactions is limited or prevented for any reason, you agree that you shall not process any such Transaction through the use of wireless technology, and shall in all events obtain an Authorisation Code for any such Transaction through means other than wireless processing, as described in the General Provisions and the Merchant Operating Guide.
- (b) **Completing Unauthorised Transactions.** As provided by Section 6(b)(ii) of the TOS, you must obtain an Authorisation Code before completing any Transaction. Without prejudice to this obligation, if you choose to complete a Transaction without an Authorisation Code, because wireless coverage is not available or otherwise (i.e. you store Transaction data in a Wireless Terminal, provide the Cardholder with goods or services and subsequently request Authorisation of the Transaction), you do so at your own risk. You understand the risks associated with not obtaining an Authorisation Code prior to completing any Transaction (i.e., you subsequently may receive a "decline" or "error" message in response to the subsequent Authorisation request). You shall be fully liable for all Transactions whether or not an Authorisation Code is received.

PART F
INTERNET TRANSACTIONS

You may not process Internet Transactions unless Elavon has agreed in writing that you may do so. If Elavon has so agreed, the following provisions apply in addition to the General Provisions. In the event of any inconsistency, this Part F of the TOS shall prevail to the extent of such inconsistency.

25. ACCEPTANCE OF INTERNET TRANSACTIONS. You may not offer or accept Internet Transactions without Elavon's prior written consent, and you may process Internet Transactions only if the Transaction has been encrypted by a Third Party Vendor acceptable to Elavon. Internet DCC Transactions are subject to additional prior written consent of Elavon. If you submit Internet Transactions and/or Internet DCC Transactions without Elavon's prior written 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, the Laws, and the Rules. Due to the nature of such activity, you understand that in all cases you accept Internet Transactions entirely at your own risk. You shall be liable for all Chargebacks and losses related to Internet 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 shall not waive any provision of the Agreement 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 Internet Transactions.

- (a) **Internet Security.** You acknowledge that in order to accept and process Internet Transactions you must utilise or implement an internet payments service approved by Elavon in advance which adheres to the minimum security measures identified by Elavon from time to time. To the extent to which Merchant's website is hosted by a Third Party Vendor, you must ensure that such Person meets such certain minimum

security measures and technology requirements. You will be responsible for maintaining the integrity of data received, held, maintained, or sent across the internet or other communication channel. All communication costs related to Internet Transactions will be your responsibility. You understand that Elavon will not manage the telecommunications link for Internet Transactions and that it is your responsibility to manage that link. You will ensure that all Transactions are transmitted (where applicable) using the protocol approved by Elavon from time to time to procure the secure transmission of the data provided by the Cardholder in ordering goods or services and effecting payment over the internet. You will provide capability for secure sockets layer encryption to the minimum standard (currently 128 bit), and may also be required by Elavon to support encryption requirements in respect of the transmission of information over the internet via a virtual private network (VPN) supporting 3DES (1028 bit) encryption.

- (b) **3D SECURE™ / MPI.** You hereby agree to participate in the 3D Secure™ System and to acquire the right to use or access the MPI in Section 25(c) below.
- (c) **Provision and use of MPI.** You shall either:
 - (i) Participate in the 3D Secure™ and acquire the right to use the MPI by agreement with an approved seller of MPI software;
 - (ii) Have Elavon host an MPI, or such other merchant plug-in software product designated by Elavon from time to time, on your behalf on the terms set forth by Elavon and communicated to you; or
 - (iii) Procure for your own use a merchant plug-in software product of equivalent functionality to the MPI with the prior written consent of Elavon.
- (d) **Unauthorised Access.** While Elavon will take reasonable precautions in relation to use and access to the Service and Software, you hereby accept all risk of information or instructions being given by an unauthorised person and the possibility of hacking, cracking, viruses and any and all manner of unauthorised access, use, activity or purpose which may occur on or in relation to the Service and Software.
- (e) **Your Website.** Your website must contain all of the following information: (i) a complete description of the goods or services offered; (ii) returned goods and refund policy; (iii) customer service contacts, including electronic mail address and/or telephone number; (iv) complete address of the permanent place of the business; (v) 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 check out process; (vi) Transaction currency; (vii) export or legal restrictions, if known; (viii) delivery policy; (ix) customer data privacy policy; and (x) 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 laws and Rules, and the provisions of the Agreement, on securing such data. You may not retain or store CVV2/CV2 data after Authorisation for record keeping, additional Authorisation processing, or any other purpose.
- (f) **Option to Cancel Payment.** Your website will clearly inform the Cardholder that the Cardholder is committing to payment before he/she selects the “Pay Now” or equivalent button or screen and will afford the Cardholder an unambiguous option to cancel the payment instruction at this juncture. Elavon may investigate any complaint received from a Cardholder about the content of your website and shall be entitled to require you to amend and/or clarify the terms and conditions of sale within a period of thirty days from the receipt by you of a notice to this effect. If you offer recurring Transaction payments on your website you shall offer an online cancellation facility to Cardholders. You must notify Cardholders at the outset that subsequent charges will be debited to their Card accounts, and must otherwise comply with the provisions of the Agreement, including Section 8(a) of the TOS.
- (g) **Required Transaction Receipt.** You will use a Transaction Receipt to document each Internet Transaction. Each such Transaction Receipt must include, in addition to the information specified in Section 7 of the TOS:
 - (i) Customer service contact, including telephone number;
 - (ii) Terms and conditions of the sale, if restricted; and
 - (iii) Frequency and duration of additional Transactions (in the case of recurring Internet Transactions only).
- (h) **Other Authorisation Requirements.** In addition to the Authorisation required by Section 6 of the TOS, the following restrictions apply:
 - (i) For goods to be shipped in connection with Internet Transactions, you may obtain Authorisation on any day up to seven (7) calendar days prior to the Transaction Date. The Transaction Date is the date the merchandise is shipped. This Authorisation is valid if the Transaction amount is within fifteen percent

- (15%) of the Authorisation amount, provided that the additional amount represents shipping costs or such other costs as are permitted by the Rules.
- (ii) For the avoidance of doubt, you may not enter into a Transaction at any time where you receive the Cardholder's details via the internet and then enter the Cardholder's details into a Terminal manually.
- (i) **Retention of Transaction Receipts.** You shall retain documentary evidence of dispatch of the goods or supply of the services ordered for not less than eighteen (18) months following such Transaction, such documentary evidence to be produced to Elavon if requested and shall send the Cardholder a receipt for the sale of goods and/or the supply of services within seven (7) days of the date of the relevant Transaction to which the receipt relates.
- (j) **Presentment of Transactions.**
- (i) Transactions must not be presented until the relevant goods ordered have been dispatched or arrangements made for the services to be provided, but following such dispatch or, as the case may be, the making of such arrangements, you agree to present to Elavon for payment the relevant Transaction within the time periods set forth in the General Provisions.
- (ii) Notwithstanding the foregoing, in respect of Transactions for goods, Transactions may be presented before the dispatch of the goods provided that within seven (7) days of presentation a written acknowledgement quoting the dispatch date is sent by you to the Cardholder, such dispatch date not to be later than twenty-eight (28) days from the date of receipt of the order.
- (k) **Withholding Funds.** Without limiting any other provision of the Agreement or the Rules, Elavon may withhold payment on presentation of Transaction details, or, if Merchant has been paid for the Transaction, may charge back the amount of the Transaction to you notwithstanding that the Transaction may have been authorised, if:
- (i) You fail to produce evidence of the Cardholder's authority to debit the amount of the Transaction; or
- (ii) The Cardholder denies having authorised an Internet Transaction.

PART G
DCC TRANSACTIONS

You may not process Dynamic Currency Conversion ("DCC") Transactions unless Elavon has agreed in writing that you may do so. If Elavon has so agreed, the following provisions apply in addition to the General Provisions. In the event of any inconsistency, this Part G of the TOS shall prevail to the extent of such inconsistency.

26. DCC TRANSACTIONS.

- (a) **Choice of Currency:** If Merchant elects to provide DCC Transaction services, then for each DCC Transaction Merchant shall give to Cardholders, in clear terms, the choice whether to proceed with the DCC Transaction in the Merchant's local currency or the currency in which the Card has been issued (the "Payment Currency"), provided that Elavon supports such currency for DCC Transactions (the "Currency Payment Choice").
- (b) **DCC Transaction Receipts:** In addition to the Transaction Receipt requirements set out at Section 7(a) herein, Transaction Receipts for DCC Transactions must be in the form, and include such additional detail as required by Elavon and/or the Card Schemes and notified to you from time to time. In every DCC Transaction where the Merchant uses a Terminal, Merchant shall ensure that such Terminal issues a document informing the Cardholder of the Currency Payment Choice and (except where Chip & PIN procedures are used) Merchant shall obtain the Cardholder's signature on this document.
- (c) For all transactions which are not POS Device DCC Transactions the Merchant shall obtain the Cardholder's prior consent to such Transactions. Such consent must be in a form that clearly evidences that the Cardholder's express and final consent has been given in relation to the Cardholder's Currency Payment Choice. For Internet Transactions this can be in the form of an email from the Cardholder or an "I agree" option on Merchant's site which can be recorded and provided in the event of a dispute or Chargeback. For MO/TO Transactions, the requirements of clause 22(c) on Cardholder authority apply in respect of DCC Transactions which are not effected with a POS Device.
- (d) Merchant may not use any customer service procedure or contractual language that enables Merchant to effect a DCC Transaction without the Cardholder's express prior consent.

- (e) Merchant may not convert any DCC Transaction from the currency selected by Cardholder, in accordance with the terms of the Agreement, into an amount in any other currency after the Transaction has been completed by the Cardholder but not yet entered by the Merchant into Interchange.
- (f) Merchant further agrees that failure to comply with any of the terms and conditions of the provisions of each of the sub-paragraphs of this clause shall amount to a material breach of the Agreement, and may, in Elavon's sole discretion, result in termination of the Agreement in accordance with the termination provisions herein.
- (g) Without prejudice to Section 15 herein, Merchant agrees that it will be liable for and will indemnify, defend and hold and keep the Protected Parties indemnified from and against all fines, surcharges, fees, other costs (including legal costs) and expenses levied or passed on to the Protected Parties by any party, whether a party to this Agreement or otherwise, resulting from the failure by Merchant to fulfil its obligations in regard to the provision of the Currency Payment Choice.

PART H
ELECTRONIC GIFT CARD TRANSACTIONS

You may not accept Electronic Gift Card Transactions unless Elavon has agreed in writing that you may do so. If Elavon has so agreed, the following provisions apply in addition to the General Provisions. In the event of any inconsistency, this Part H of the TOS shall prevail to the extent of such inconsistency.

In addition to the General Provisions and this Part H, you may be required to enter into additional terms and conditions with Elavon and/or Elavon's designated provider.

- 27) ACCEPTANCE OF ELECTRONIC GIFT CARDS.** This Part H governs Elavon's provision of processing services to Merchants authorised by Elavon to accept EGCs. For the purpose of this Part H, "EGC" means a special card purchased by a customer that is redeemable for in-store merchandise and services.
- (a) **Services Provided.** Elavon will provide electronic processing of EGC Transactions. Elavon will facilitate electronic confirmation that the Cardholder activating the EGC Transaction through the Merchant has an active account on the relevant processing system credited with sufficient funds to meet the cost of the Transaction. Elavon will facilitate the debiting of the Cardholder's account with the value of the purchase and the crediting of the Cardholder's account if value is added to the EGC.
 - (b) **Electronic Record.** Elavon will facilitate maintenance of an accessible electronic record of the Transactions described in (a) above and for the lifetime of an EGC with a balance and for a period of sixty (60) days after the balance of the card has fully depleted.
 - (c) **Merchant's Responsibilities.** Merchant acknowledges and agrees that it is the Merchant's sole responsibility to comply with any and all Laws and EGC Rules (where applicable) governing the issuance, use and acceptance of EGCs. Further, Merchant agrees to assist Elavon with its compliance with any such Laws, Rules or EGC Rules now or hereafter applicable to the acceptance of EGCs.
 - (i) Merchant will supply Elavon with all information and data required by Elavon to perform services related to Merchant's acceptance of EGCs, including the location of Terminals and Cardholder data and content.
 - (ii) Merchant will maintain all Transaction Receipts and any other receipts as required by applicable law and the EGC Rules.
 - (iii) Merchant will maintain sufficient "backup" information and data whether in paper or electronic form with respect to EGCs previously sold by such Merchant to reconstruct any information or data loss due to any Merchant system malfunction.
 - (iv) Merchant will accept EGCs only through Elavon or Elavon's designated provider, as notified in writing to Merchant. Merchant will not use any other third party provider to accept or process Card Transactions.
 - (v) Merchant will receive materials to enable the acceptance and processing of EGCs only from Elavon or Elavon's designated provider as notified to Merchant. Merchant shall obtain stationary and other marketing materials relating to EGC only from Elavon or Elavon's designated provider. Merchant will not use any other third party provider for the supply of such materials.
 - (vi) Merchant shall, in a timely manner when required by Elavon and/or Elavon's designated provider, execute all such agreements and do all such acts or things to enable Elavon to provide EGC

processing services to Merchant, including, but not limited to, entering into agreements with Elavon and/or Elavon's designated provider for the supply of EGCs, stationary and other related materials and promptly settling accounts with Elavon and/or Elavon's designated provider for the supply of such materials.

- (d) **System Downtime.** Merchant shall not process EGC Transactions if the EGC processing system is down and is unable to verify the validity and available balance on an EGC. Merchant will be solely liable for any losses or damages incurred if Merchant processes an EGC Transaction without receipt of such verification.
- (e) **Warranties/ Liability:**
 - (i) Neither Elavon nor Elavon's designated provider shall be responsible for lost or stolen EGCs.
 - (ii) Neither Elavon nor Elavon's designated provider makes any warranty, express or implied, with respect to the services provided hereunder including, without limitation, any express or implied warranty regarding the EGC services provided to Merchant or EGC's compliance with any laws or Rules or EGC Rules (where applicable) governing the issuance, use and acceptance of EGCs.
- (f) **Post-Termination.** Following termination of the TOS including this Part H Merchant will pay Elavon and/or Elavon's designated provider a transfer fee based on the number of issued EGCs that must be converted to another processor.

APPENDIX I – GLOSSARY

Account and Transaction Information: means any information that is necessary to process Transactions correctly, including all information recorded electromechanically or otherwise on a Card, and more specifically includes any information used to authenticate a Transaction, and any information obtained during the processing of the Transaction that otherwise identifies individual consumers and their purchases. This definition of Account and Transaction Information does not include consumer name, purchase description, purchase amount and other similar details if such information is specifically and voluntarily provided to you by the Cardholder independently of the Transaction.

Affiliate: means, with respect to any Person, any other Person directly, or indirectly through one or more intermediaries, controlling, controlled by or under common control with such Person.

Agreement: means, collectively, the TOS, the Merchant Application, the Schedule of Fees, the Merchant Operating Guide, any Agreement for similar or related services to which Merchant is a party, 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.

AIS Standards: means the Visa Account Information Security Standards, as promulgated by Visa and as may be revised, altered, amended or supplemented from time to time.

American Express: means the American Express Company.

Authorisation: means the Merchant's request for approval of a sales Transaction by an Issuer. Authorisation is initiated by accessing the authorisation centre by Terminal or telephone.

Authorisation Code: means the code or reference number sent by an Issuer in response to an Authorisation request.

Authorised Floor Limit: means the total monetary value of any Transaction you may process on any occasion without first obtaining an Authorisation Code;

AVS: has the meaning set forth in Section 22(a) of Part C.

Business Day: means a day (other than a Saturday or Sunday or public holiday) on which Elavon is open for the transaction of business in England.

C&P Card: means a Card which incorporates Chip and PIN Technology.

Card: means any form of valid Credit Card, Debit Card or other Payment Device acceptable to Elavon, which may be used by a Cardholder to carry out a Transaction;

Cardholder: means (i) the individual in whose name a Card has been issued; and (ii) any individual who possesses and uses a Card and who purports to be the person in whose name the Card was issued or whose signature appears on the Card as an authorized user.

Card Not Present: means the processing environment where the Card 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 Transactions and Internet Transactions.

Card Present: means the processing environment where the Card is physically presented to the Merchant by the Cardholder as the form of payment at the time of sale.

Card Rules: means all applicable rules and operating regulations of the Card Schemes, and all rules, operating regulations, and guidelines for Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.

Card Schemes: means Visa, MasterCard, American Express, Maestro, JCB International Co. Limited (“JCB”), Diners or any other Card sponsorship organisation or association acceptable to Elavon, and any other successor organisation or association to any of the foregoing.

Cashback: means the provision of cash to a Cardholder at the point of sale where the Cardholder has made a purchase of goods or services with a Card.

Chargeback: means a sales Transaction disputed by a Cardholder or Issuer pursuant to the Rules, and that may result in the Transaction being charged back against the Merchant by the Issuer. A Chargeback will result in you being liable for the full amount of the Transaction that is the subject of the Chargeback.

Chip and PIN Technology: means any technology in whatever form introduced by any Payment Network which employs chip embedded Cards and/or the use of a PIN in conjunction with, or in replacement of, a manual signature of a Cardholder.

Chip and PIN Terminal: means Terminals which are EMV Compliant together with PIN Pads as appropriate.

Chip Failure: means a failure of the embedded chip in a C&P Card to function correctly with the result that a properly entered PIN will not effect an authorisation of the Transaction.

Claims or Loss: has the meaning set forth in Section 15(a).

Competent Authority: means any supranational, national, state, county, local or municipal government body, bureau, commission, board, board of arbitration, instrumentality, authority, agency, regulatory body, court, department, minister, ministry, official or public or statutory persons (whether autonomous or not) having jurisdiction over any party to the Agreement in respect of any aspect of the Agreement.

Complete Performance: has the meaning set forth in Section 10(d).

Confidential Information: means all trade secrets, proprietary, or other confidential information or items of Elavon, of which the Merchant obtains knowledge or access as a result of Merchant's relationship with Elavon pursuant to the Agreement, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, “know-how,” marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.

Coverage Area: means the geographic area in which wireless Transaction processing is available to Merchant.

Credit Card: means (i) a Visa credit card or other credit card bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc.; (ii) a MasterCard credit card or other credit card bearing the symbol(s) of MasterCard International Incorporated; or (iii) any credit card bearing the symbol of any other Card Scheme.

Credit Transaction: means a Transaction to effect a refund or credit to a Cardholder's account and linked directly to a prior sales Transaction.

Credit Transaction Receipt: means a document, in paper or electronic form in accordance with the Agreement and Elavon's specifications, evidencing a Merchant's refund or price adjustment to be credited to a Cardholder's account.

CVVCV2/CVC2/iCVV/PVV: means the Card security features on the face of Cards and contained in their magnetic strips and/or chips intended to inhibit the alteration or misuse of Card data and enhance the authentication of the Card, as such terms, and similar terms (and similar terms and features) may be defined by the Card Schemes.

Currency Payment Choice: has the meaning set forth in Section 26(a) of Part G.

Data Protection Rules: means any applicable data protection and/or privacy legislation including, to the extent applicable, the Data Protection Act 1998, Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, and the Privacy and Electronic Communications (EC Directive) 2003, together with any similar provisions of the Rules, including the AIS Standards.

DCC: means the dynamic currency conversion product of Elavon enabling the payment by a Cardholder for goods and/or services in a currency other than that in which a Card was issued and offered for the time being with respect to the DCC Currencies.

DCC Currencies: means EUR (euro); STG (British Sterling); NOK (Norwegian Kroner); DKK (Danish Krone); SEK (Swedish Krona); CHF (Swiss Franc); JPY (Japanese Yen); USD (U.S. Dollar); CAD (Canadian Dollar); HKD (Hong Kong Dollar); AUD (Australian Dollar); NZD (New Zealand Dollar) and any other currency as may be notified in writing to the Merchant by Elavon;

DCC Transactions: means a Transaction involving “dynamic currency conversion,” which is the conversion of the purchase price of goods or services from one currency to another, as agreed to by the Cardholder and Merchant. The agreed currency becomes the Transaction currency, regardless of the Merchant’s local currency.

Debit Card: means a card with a magnetic stripe or which is Chip-enabled, and bearing the symbol(s) of one or more Debit Networks which enables the holder to pay for goods or services by authorizing an electronic debit to the Cardholder’s designated account, including PIN-based, online debit Transactions.

Debit Card Rules: means all applicable rules and operating regulations of the Debit Networks, and all rules, operating regulations, and guidelines for Debit Card Transactions issued by Elavon from time to time, including all amendments, changes, and revisions made thereto from time to time.

Debit Networks: means (i) Maestro, Visa Delta, and the other debit networks of Visa and MasterCard; and (ii) any other organization or association that hereafter authorizes Elavon to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

Diners: means Diners Club International Ltd.

Direct Debit Mandate: has the meaning set forth in Section 4(b).

Early Termination Fee: has the meaning set forth in Section 19[©](iii).

EGC: has the meaning set forth in Section 27 of Part H.

EGC Rules means any and all rules and regulations as applied to Electronic Gift Card (EGC) processing by Card Schemes and other relevant bodies and notified to the Merchant from time to time.

Elavon: means Elavon Financial Services Limited, a credit institution regulated by the Irish Financial Services Regulator , having its principle place of business Block E, Cherrywood Science and Technology Park, Loughlinstown, Co. Dublin, Ireland and, as the context may dictate, any Affiliate or subsidiary thereof or other Member designated by Elavon that provides processing services related to Transactions or otherwise in connection with Merchant Services.

EMV Compliant: means a Card or terminal application that complies with the requirements specified in the EMV Integrated Circuit Card Specifications for Payment Systems.

Event of Default: means (a) you are in breach of any of the terms of the Agreement, the Laws, or the Rules, (b) you or your business is subject to an Insolvency Proceeding, (c) you fail to provide any Guarantee and/or any Security Document to Elavon following notification to do so pursuant to the TOS, (d) the Transactions submitted by you include a percentage of fraudulent or unauthorised Transactions which, in the opinion of Elavon, exceeds the percentage appropriate for your business or is in violation of the Rules; (e) any other event or series of events whether related or not (including without limitation, any adverse change in your business, assets or financial condition) occurs which in the opinion of Elavon may affect your ability or willingness to comply with all or any of your Obligations or meet any or all of your possible liabilities under the Agreement; (f) your failure to comply with any request for information from Elavon from time to time including with respect to money laundering; or (g) Elavon discovers that you have submitted false or misleading information in respect of documents submitted to either Elavon in connection with Merchant Services.

Excessive Activity: has the meaning set forth in Section 9(d).

Fees and Adjustments: means all, returns, adjustments, fees, fines, penalties, surcharges, expenses, Interchange fees and similar fees and assessments, and other payments or amounts due by you or for which you are liable under the Agreement or otherwise with respect to Merchant Services or Transactions, and shall include, for the avoidance of doubt, any amounts due as a result of a Chargeback.

Financial Crime Screening Services: means a third party pattern recognition fraud management service provided under a contract with or on behalf of Elavon.

General Provisions: means the terms, conditions, provisions and procedures of Part A of the TOS.

Guarantee: means any written guarantee of Merchant’s duties and obligations to Elavon by a Person that is given in connection with the Agreement including, without limitation, as part of the TOS, the Merchant Application, any Merchant Agreement, or any other document signed by a Person in favour of Elavon.

Guarantor: means a Person that executes a Guarantee.

Initial Term: has the meaning set forth in Section 19(a) of the TOS.

Insolvency Proceeding: means, with respect to you or any Guarantor, any action, legal proceedings, other procedures or steps (including but not limited to passing a resolution to wind-up or making an application to appoint an administrator) which are taken in relation to: (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of such Person; (b) a composition, assignment or arrangement with any creditor of such Person; (c) the appointment of a liquidator, receiver, administrator or other similar officer in respect of such Person or any of its assets; or (d) enforcement of any security over any assets of such Person. Insolvency Proceeding includes any analogous procedure or step taken in any jurisdiction.

Interchange: means the clearing and settlement system maintained by Visa and MasterCard for the exchange of Transactions.

Internet DCC Transaction: means a DCC Transaction that occurs when the Cardholder uses the internet to make a purchase from a Merchant, or Merchant uses the internet to submit the DCC Transaction for processing to Elavon.

Internet Transaction: means a Transaction that occurs when the Cardholder uses the internet to make a purchase from Merchant or Merchant uses the internet to submit the Transaction for processing to Elavon.

IPRs: has the meaning set forth in Section 17(o).

Issuer: means the financial institution or other Person that issued the Card to the Cardholder.

JCB: means JCB International Co., Ltd.

Laws: means all applicable laws, legislation, rules, regulations, directives, and recommendations, as amended from time to time, issued by any Competent Authority.

Mail Order/Telephone Order (MO/TO) Transaction: means, for MO, a Transaction that occurs when the Cardholder uses the mail to make a purchase from a Merchant, and for TO, means a Transaction that occurs when the Cardholder uses a telephone to make a purchase from a Merchant.

MasterCard: means MasterCard International Incorporated.

Member: means Elavon Financial Services Limited or such financial institution(s) (or, to the extent allowed by the Card Schemes, a subsidiary or affiliate of a financial institution(s)) designated by Elavon that is (or are) principal, sponsoring, affiliate or other members of the Card Schemes. For the purposes of Services provided under the Visa, and MasterCard Schemes, the Member as at the effective date of this TOS is Elavon Financial Services Limited.

Merchant (or you): means the business entity or other Person indicated on the Merchant Application.

Merchant Bank Account: means an account maintained by Merchant at a financial institution acceptable to Elavon, to facilitate payment for Transactions from Elavon and making payments to Elavon in respect of Chargebacks, Fees and Adjustments, and other payments due to Elavon under the Agreement, as further provided by Section 4 of the TOS.

Merchant Agreement: means any agreement that Merchant has entered into for processing services, which agreement is either with Elavon or another Person that, directly or indirectly, transferred its rights under such agreement to Elavon.

Merchant Application: means any document containing information regarding the Merchant's business that was submitted to Elavon in connection with the Merchant's application for Merchant Services.

Merchant Operating Guide: means the operating manual provided by Elavon to the Merchant. The Merchant Operating Guide forms part of this Agreement may be amended from time to time by Elavon in its sole discretion.

Merchant Services: means Card processing services and other related products and services as contemplated and/or provided hereunder by Elavon to you. Elavon may provide other related services to Merchant independently of Elavon's Card Scheme sponsorship.

MPI – Merchant Plug In: means the software developed by a certified third party in accordance with the Rules (current to "MPI – Version 1.02") for handling e-payment transactions in the 3D Secure™ System in accordance with the specifications published by Visa, and shall include successive versions thereof as may be implemented by Elavon from time to time.

Obligations: means all of Merchant's payment and performance obligations under or relating to the Agreement, including liability for or relating to any Chargebacks, Fees and Adjustments, and all other amounts owed by Merchant under the Agreement, and all other liabilities of Merchant under the Agreement of any nature whatsoever.

Payment Device: means 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 a 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.

Payment Network: means any Card Scheme, Debit Network, or other Person that issues or sponsors a Payment Device that, upon the written agreement of Elavon, is accepted for Transactions by you.

Person: means a natural person or any legal, commercial or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any person acting in a representative capacity.

PIN: means a personal identification number.

PIN Pad: means a secure device with an alphanumeric keyboard which conforms with the Laws, Rules and requirements established from time to time by Elavon, and through which a Cardholder may enter a PIN.

PIN Transaction: means a Transaction that is effected through use by the Cardholder of a verified PIN.

POS Device: means a terminal 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.

Protected Parties: has the meaning set forth in Section 15(a) of this Agreement.

Renewal Term: has the meaning set forth in Section 19(a) of the TOS.

Reserve: means a monetary amount or account established and held in the name of and for the exclusive benefit of Elavon, as contemplated by Section 10 of the TOS.

Retrieval Request: means a request initiated by a Cardholder or Issuer that requires you to produce a legible copy of the Cardholder's signed (except in the case of properly effected PIN Transactions or certain other Card Not Present Transactions) Transaction Receipt within a specified period of time, and shall also be deemed to include any "representation" request (where the Issuer requests that you represent the Transaction Receipt for a Transaction).

Rules: means, individually and collectively, as the context may dictate, the Card Scheme (or "Association") Rules, the Debit Card Rules, and the bylaws, rules, regulations, operating regulations and procedures issued by any other Payment Network whose Payment Device is accepted by Merchant pursuant to the agreement of Elavon, as such Card Rules, Debit Card Rules, and such bylaws, rules, regulations and procedures of such other Payment Network(s) may be amended, extended, consolidated or supplemented from time to time.

Security Documents: means any form of fixed or floating mortgage, charge, debenture, or any guarantee or any other form of security which Elavon requires pursuant to Section 12.

Security Interest: means any charge, lien or other encumbrance created by or under any Security Document.

Service and Software: means any hardware, software, Terminals, or other devices or intellectual property provided by or on behalf of Elavon to you in connection with the processing of Internet Transactions.

Settlement Funds: means the funds by which Transactions are settled to you and which, as required by the Rules are controlled by Elavon.

SDP: means the MasterCard Site Data Protection Program as promulgated by MasterCard and as may be revised, altered, amended or supplemented by MasterCard from time to time.

Stg. and £: means pounds sterling, the lawful currency of the United Kingdom.

Term: means, collectively, the Initial Term and any Renewal Term(s).

Terminal: means a Terminal or other POS Device and/or associated equipment and/or software at a Merchant location that conforms with the requirements established from time to time by Elavon and the applicable Payment Network.

Terminal Recovery Fee: has the meaning set forth in Section 19(c)(ii).

Third Party Terminal: means a Terminal sold, hired, leased, or otherwise provided to or on behalf of Merchant by any Person other than Elavon or its authorized designee.

Third Party Vendor: means any Person providing or facilitating Value Added Services to you that is not an Affiliate of Elavon.

3D Secure™ means the Three-Domain Secure protocol developed by Visa and for the purposes of the Agreement includes Verified by Visa™ and MasterCard® SecureCode™ developed by MasterCard and such other programs notified to Merchant by Elavon from time to time (and in each case shall include successive versions thereof) and the expression "3D Secure™ System" shall be construed accordingly.

TOS: means these Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.

Transaction: means any action by Merchant and a Cardholder using a Card that results in activity on the Cardholder's account (e.g., purchase, refund, or return).

Transaction Receipt: means the paper or electronic record evidencing the purchase of goods or services from a Merchant by a Cardholder using a Card.

Value Added Services: means any product or service provided by a Third Party Vendor to assist Merchant in processing Transactions pursuant to the Agreement and in connection with the Merchant Services provided by Elavon, including without limitation, internet payment gateways, integrated POS Devices, inventory management and accounting tools, loyalty programs, financial crime (fraud) prevention programs, and any other product or service that participates, directly or indirectly, in the flow of Transaction data.

Visa: means Visa International, Inc.

Wireless Terminal: means a Terminal that allows wireless processing.

APPENDIX II - SCHEDULE OF FEES

APPENDIX III - MERCHANT OPERATING GUIDE