

SCHEDULE B**GOVERNMENT TERMS**

The terms in this Schedule B are applicable only to Services in the United States and in the event the Company (i) has selected the checkbox on the Enrollment Form indicating that these terms apply, and (ii) qualifies as a “government entity” or “government institution” under applicable local, state, or federal law. Except as expressly modified pursuant to this Schedule, all terms and conditions of the Agreement (as defined in the Enrollment Form) remain in full force and effect and will govern the relationship between Elavon and Company.

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

1. Section 3.2(b) (Termination by Company) is revised to add the following:

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

2. Section 5.3 Taxes is deleted and replaced with the following:

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

3. Section 9.1(b) Disclosure of Confidential Information is revised to add after the last sentence as follows:

“If Company is subject to an open or public records law, Elavon will comply with the applicable requirements and provide Company with reasonable assistance and information when necessary to enable Company to comply with its disclosure requirements; provided, that Elavon will not be required to disclose information that is not subject to disclosure under applicable Law.”

4. Section 11 (Indemnification). Section 11 of Schedule A is deleted and replaced with the following four sections:

“11(a). **Company Responsibilities.** As between Company and Elavon, Company will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of (i) any sale or provision of goods or services resulting in a Transaction processed under the Agreement; (ii) Company’s breach of the Agreement; (iii) all use of any user ID and password other than by Elavon or Elavon’s third-party contractors; (iv) Company’s or its Service Providers’ gross negligence or willful misconduct; (v) Company’s or its Service Providers’ violation of Laws or Payment Network Regulations; or (vi) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers. Company will not make any claims against Elavon for any liabilities, claims losses, costs, expenses, and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages.

11(b). **Elavon Responsibilities.** In addition to Elavon’s obligations in Section 11(c), Elavon will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising out of (i) Elavon’s breach of the Agreement; (ii) Elavon’s or its third party contractors’ gross negligence or willful misconduct; (iii) Elavon’s or its third party contractors’ violation of applicable Laws or Payment Network Regulations; (iv) Elavon’s alleged infringement or other violation of a U.S. or Canada patent, copyright or trademark of a third party by the Gateway Services in the form delivered or Company’s use thereof; or (v) any personal injury or real or tangible personal property damage to the extent caused by Elavon or its third party contractors.

11(c). **Infringement Claims.**

- (i) Elavon will defend Company and its employees, officers, and agents in connection with claims, actions, demands or proceedings (made or threatened) brought by a third party, and will pay the final award of damages assessed against Company, its employees, officers or agents in a final judgment by a court of competent jurisdiction, including awarded costs, or any amount in settlement or compromise authorized by Elavon in writing, arising out of Elavon’s alleged infringement or other violation of a U.S. or Canada patent, copyright or trademark of a third party by the Services (but not Equipment) in the form delivered or Company’s use thereof (an “Infringement Claim”).
- (ii) If any part of the Gateway Services or the use of the Gateway Services becomes, or in Elavon’s opinion is likely to become, the subject of an Infringement Claim, and as a result of such Infringement Claim Company’s use of the Gateway Services may be enjoined or interfered with, then Elavon will, at its option and expense, either, and in addition to defending Company and paying the final amount of damages as provided for in this section, (1) obtain a license for Company to continue using the alleged infringing component(s) of the Gateway Services; (2) modify the alleged infringing component(s) of the Gateway Services to avoid the infringement in a manner that still permits the Gateway Services to perform in all material respects in accordance with the Agreement; or (3) replace the alleged infringing component(s) of the Gateway Services with compatible, functionally equivalent, and non-infringing component(s). Elavon will use commercially reasonable efforts to accomplish the remedies identified in this section in a manner that minimizes the disruption to Company’s business operations. If Elavon is not able to accomplish the above remedies within a commercially reasonable time frame and on commercially reasonable terms, Elavon may terminate the Agreement upon written notice to Company. Upon such termination, Elavon will promptly refund any fees paid for Gateway Services not performed as of the date of termination.
- (iii) Elavon will have no liability for any Infringement Claim to the extent caused by (1) access to or use of the Gateway Services other than as specified under the Agreement and the related Documentation, (2) combination or use of the Gateway Services with non-Elavon products or services (whether or not provided to Company by Elavon), (3) any hardware, devices, software, services or other resources not provided by Elavon, (4) failure or refusal by Company to install, implement or use any Update or correction provided by Elavon, (5) modification or alteration of the Services by anyone other than Elavon without Elavon’s prior written consent, (6) Company’s goods or services, or (7) the negligence, gross negligence or willful misconduct of, or breach of the Agreement by, Company.
- (iv) THIS SECTION 11(c) SETS FORTH THE EXCLUSIVE REMEDY OF COMPANY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO ANY INFRINGEMENT CLAIMS.

11(d). Procedure.

- (i) If an Infringement Claim is subject to Elavon’s obligations in Section 11(c) of the Agreement, Company will:
 - (1) Provide Elavon prompt notice of the Infringement Claim (provided that any delay in notification will not relieve Elavon of its obligations under this Section 11(d) except to the extent that the delay materially impairs its ability to fully defend the Infringement Claim);
 - (2) Subject to Section 11(d)(ii), give Elavon the right to exercise exclusive control over the preparation and defense of the Infringement Claim; and
 - (3) Provide such assistance in connection with the defense and settlement of the Infringement Claim as Elavon may reasonably request, at Elavon’s expense. Elavon will not enter into any settlement that imposes any liability or obligation on Company, or contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without Company’s prior written consent.

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

5. **Section 15.2 (Jurisdiction and Venue; Governing Laws).** Section 15.2 of Schedule A is deleted and replaced with the following: “Intentionally Omitted”.

6. **Section 15.4 Assignability** is deleted and replaced with the following:

“**Assignability.** Company will not assign the Agreement, directly, by operation of law, or by change of control of Company, without Elavon’s prior written consent. If Company nevertheless assigns the Agreement without Elavon’s consent, the Agreement will be binding on both the assignee and Company. Elavon will not transfer or assign the Agreement without the prior written consent of Company, provided that such consent will not be required for (i) the assignment or delegation to an affiliate of Elavon, or (ii) the assignment or delegation to any Person into or with which Elavon will merge or consolidate, or who may acquire substantially all of Elavon’s stock or assets.”

7. **Section 15.5 Arbitration** is deleted and replaced with the following: “Intentionally Omitted”.

8. **Section 15.9 Amendments** is deleted and replaced with the following:

“**Amendments.** Except as otherwise provided in the Agreement, amendments to the Agreement will be in writing and signed by the parties. Notwithstanding the foregoing, Elavon may amend or modify the Agreement, to the extent such changes are required by or attributable to changes in the Payment Network Regulations or other Laws, upon written notice to Company. Elavon will inform Company of such a change in a periodic statement or other written notice, and such change will become effective at least 30 days after the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Company, unless a later effective date is provided.”