



## **UK Terms of Service (TOS)**

## 1. INTRODUCTION

- 1.1. This Agreement governs the supply of the Merchant Services by us to the merchants(s) approved by us under this Agreement.
- 1.2. This Agreement applies to all merchants of any size. However, you acknowledge and agree that, if at the time you enter into this Agreement, you are a “Large Corporate” or a “Large Charity” (as defined below), or you are otherwise capable of doing so, then you:
  - 1.2.1. confirm that you are not a consumer, micro-enterprise or a charity within the meaning of the Payment Services Regulations 2017 or any equivalents thereof which have been implemented locally where you are incorporated;
  - 1.2.2. agree that none of the provisions of Part 6 (Information requirements for payment services) of the Payment Services Regulations 2017 (or any equivalents thereof which have been implemented locally where you are incorporated) applies to this Agreement;
  - 1.2.3. agree that regulations 66(1), 67(3) and (4), 75, 77, 79, 80, 83, 91, 92 and 94 of the Payment Services Regulations 2017 (or any equivalents thereof which have been implemented locally where you are incorporated) do not apply to this Agreement; and
  - 1.2.4. agree that the time period for notifying us of any unauthorised or incorrectly executed payment transaction is any such period specified in this Agreement rather than the period specified in regulation 74(1) of the Payment Services Regulations 2017 (or any equivalents thereof which have been implemented locally where you are incorporated).
- 1.3. You acknowledge and agree
  - 1.3.1. that you are a “Large Corporate” if:
    - 1.3.1.1. your annual turnover and/or annual balance sheet total exceeds €2 million (or sterling equivalent); and
    - 1.3.1.2. you have ten (10) or more employees, or
  - 1.3.2. that you are a “Large Charity” if you are a charity with an annual income of £1 million or more.
- 1.4. To enable you to identify the Conditions that apply differently and to allow you to compare your terms with those that apply only to a Large Corporate or a Large Charity, the Conditions that apply to a Large Corporate or a Large Charity are shaded in grey, and the differences explained. The grey shading is for ease of reference only, and is not intended to form part of this Agreement.
- 1.5. If you are not a Large Corporate or a Large Charity or if we have not notified you that you are a Large Corporate or a Large Charity, the sections contained in the grey shaded areas do not apply to you and do not form part of your Agreement with Us.
- 1.6. If you are a Large Corporate or a Large Charity you will not be able to complain to the Financial Ombudsman Service. Further details are available in our leaflet ‘Putting things right for you’.

## 2. YOUR OBLIGATIONS

- 2.1. You shall comply with the following at all times:
- 2.1.1. the provisions of the Agreement;
  - 2.1.2. the Card Scheme Rules;
  - 2.1.3. all Laws; and
  - 2.1.4. your obligations relating to the sale and/or supply of goods and/or services by you to your Purchaser.
- 2.2. You shall, unless otherwise agreed in writing with Elavon:
- 2.2.1. only accept payment from your Purchaser for any of the goods and/or services that you have sold and supplied in accordance with the core business activity set out in the Application;
  - 2.2.2. notify us in writing before you make any change to the nature of the goods and/or services that you sell and supply in accordance with the core business activity set out in the Application;
  - 2.2.3. only accept payments and submit Transactions which a Purchaser has authorised in accordance with the Laws, this Agreement (including the Operating Guide), the Card Scheme Rules and other information or instructions provided by us to you from time to time;
  - 2.2.4. ensure that you prominently and unequivocally inform Purchasers of your identity at all points of interactions with a Purchaser (including but not limited to prominently displaying your company name and any trading name on any website through which you conduct Transactions), so that the Purchaser can readily identify you as the counterparty to the applicable Transaction;
  - 2.2.5. only submit Transactions to us directly from your own staff or systems, or via a Third Party Product which has been expressly approved by us in writing as one you are entitled to use to submit Transactions to us
  - 2.2.6. refrain from doing anything which we reasonably believe to be disreputable or capable of damaging the reputation or goodwill of us or the Card Schemes;
  - 2.2.7. comply promptly with all requests for information that we make for the purposes of meeting our operational and legal requirements to carry out any measures prescribed by Laws (including providing personal information about your directors and beneficial owners);
  - 2.2.8. be solely responsible for (i) any integration related costs incurred prior to, on or after the Commencement Date; and (ii) throughout the duration of this Agreement, at your own cost, for the provision of all equipment, software, systems and telecommunications facilities which are required to enable you to process the Transactions (including any amendments pursuant to section 26.7)

### 3. OUR OBLIGATIONS

- 3.1. In return for the Merchant Service Charges and all Fees, we shall supply you with the Merchant Services in accordance with the terms of this Agreement with reasonable care and skill and in compliance with Laws and Card Scheme Rules.
- 3.2. We will provide you with monthly statements showing the value of all Sales Transactions acquired by Elavon as well as any: Merchant Service Charges; Refunds; Chargebacks; charges in the Schedule of Fees; Interchange Fees; as well as Fees and Adjustments.
- 3.3. Subject to the terms of this Agreement, the Laws, Card Scheme Rules, any direction of a Competent Authority or any deduction made or required by a Card Scheme and sections 14 and 15, Elavon shall pay you for all Sales Transactions accepted by you in accordance with this Agreement by transferring the Settlement Funds to Your Bank Account.
- 3.4. Payments into Your Bank Account, Elavon will endeavour to make payments to your chosen financial institution, subject always to section 3.3, in accordance with the funding frequency details set out in the Application (subject always to Elavon's right to increase the funding frequency period by the number of delay days, also set out in the Application). Whilst Elavon will endeavour to make payment to your chosen financial institution in line with these timescales, there may be occasions where the processing of payment may take up to three (3) Business Days. Timing of the payment and availability of any such funds shall be dependent on the procedures of the financial institution at which Your Bank Account is held.
- 3.5. In case the choice of the funding currency, the choice of your bank or Your Bank Account result in any intermediary fees imposed by intermediating banks or any other intermediary institutions, Elavon shall pass those fees on to you. That means that such intermediary fees will be deducted from the amount transferred to Your Bank Account. Intermediary banks (and other intermediary institutions) and the Cardholder's bank deduct their charges directly from the amount being transferred. This means that you will receive an amount that is lessened by the fees applied by all such parties involved.

## 4. YOUR BANK ACCOUNT

### 4.1. **Establishment and authority.** You shall:

- 4.1.1. open and maintain Your Bank Account(s) throughout the Term of the Agreement in accordance with the Operating Guide;
- 4.1.2. maintain sufficient funds in Your Bank Account(s) on a monthly basis, to cover our Merchant Service Charges, any Chargebacks, all Fees and Adjustments and any other sums due and payable to us under or in connection with this Agreement; and
- 4.1.3. unless we agree otherwise, you shall maintain with your bank an instruction authorising us to directly debit from Your Bank Account all sums that become due and payable by you to us under or in connection with this Agreement at the time we specify (“**Direct Debit Mandate**”) and we may debit Your Bank Account in accordance with the Direct Debit Mandate.

### 4.2. **Changes to Your bank account.** You must:

- 4.2.1. provide thirty (30) days written notice to us before you change Your Bank Account, including the financial institution or the location of the branch at which Your Bank Account is maintained, and you shall not implement such changes without our prior written consent (such consent not to be unreasonably withheld or delayed); or
- 4.2.2. notify us in writing immediately if any changes to Your Bank Account details are imposed on you, giving us full details of such changes and the reasons behind them.

4.3. Elavon will have no liability to you whatsoever for any loss caused by any delay in payments into Your Bank Account pursuant to sections 3.4 and 3.5, due to and/or during any change set out in section 4.2.

4.4. Any Settlement Funds made, at your direction, by Elavon to Your Bank Account in the name of a Person other than you, will constitute good receipt by you of the sum due and owing by Elavon to you in relation to Elavon’s liability to you under this Agreement.

### **Direct Debit Mandate.**

- 4.5. Except in the circumstances, and subject to your compliance with the provisions, set out in section 4.2.2, you must always obtain our prior written consent to modify, limit or revoke any Direct Debit Mandate relating to Your Bank Account regardless of where it is held. In the event that you revoke any Direct Debit Mandate at any time during the Agreement, Elavon reserves the right to charge you any reasonable costs it incurs in relation to for such revocation.
- 4.6. The Direct Debit Mandate shall remain in effect throughout the term of the Agreement and after termination of the Agreement until the later of (i) three hundred and ninety (390) days following the effective date of termination of the Agreement, or (ii) until all your Obligations have been fulfilled.
- 4.7. This section 4 shall not prejudice your rights under the Laws or the UK Direct Debit Guarantee Scheme to recover payments made to us by direct debit.
- 4.8. In addition to, and without prejudice to the exercise of any other rights we may have, we may debit Your Bank Account, at our option, for all sums that become due and payable by you to us under or in connection with this Agreement, in accordance with the terms of the direct debit instruction maintained by you under section 4.5.
- 4.9. You will ensure that Your Bank Account shall at all times have a credit balance sufficient to meet any sums due and payable to us under or in connection with this Agreement.

- 4.10. We shall, if practicable, notify you in advance of any sums payable by you to us which we intend to debit by direct debit.
- 4.11. **Provisional credit.** All payments into Your Bank Account pursuant to sections 3.4, 3.5 and 4 are subject to (i) audit and adjustment by Elavon for inaccuracies or errors, (ii) Chargebacks, (iii) all other Fees and Adjustments; and (iv) any conditional credit Elavon may elect to grant for individual or groups of Transactions.

## 5. FEES

- 5.1. You shall pay Elavon the Merchant Service Charges, all other charges set out in Schedule of Fees and any other Fees and Adjustments (plus any VAT applicable) payable by you in accordance with the provisions of this Agreement.
- 5.2. We may from time to time vary the fees and charges set out at section 5.1 above and/or introduce new additional charges in accordance with section 26.7.
- 5.3. At any time throughout the lifetime of this Agreement, you can request that Elavon provides you with an offer of the Merchant Service Charge on an Interchange Plus basis.
- 5.4. If you are an Interchange Plus Customer any changes in Card Scheme Fees or any other costs charged by the Card Schemes to Elavon will be automatically passed on to you, however such changes do not constitute an amendment to the Agreement. In this situation we will endeavour to provide 2 (two) months' notice of any material change in Card Scheme Fees or Card Scheme Fines where reasonably practicable. If you are not an Interchange Plus Customer, changes in Card Scheme Fees and costs charged by the Card Schemes, mentioned in the first sentence of this section 5.4 will not be automatically passed on to you and any changes to the Agreement will be dealt with in accordance with section 26.7 below.
- 5.5. If Card Scheme Fees or any similar fees are adjusted and/or introduced by the Card Schemes or an Issuer for any reason, Elavon reserves the right to pass on any such adjustment or new fee to you and Elavon will provide you with written notice of such adjustment pursuant to section 26.7. Card Scheme Fees and rules applicable to Visa® Transactions, are available on Visa's public internet site at [www.visaeurope.com](http://www.visaeurope.com) and for MasterCard® Transactions, are available on MasterCard's public internet site at [www.mastercard.com](http://www.mastercard.com). In addition, information regarding Transaction-related card scheme fees are available via the Reporting Tool.
- 5.6. The Customer agrees that the proposed Merchant Service Charges are based on the Customer's Average Transaction Value equaling the expected amount forecast in the Application Form ("**Expected ATV**"). The Customer accepts that should the Average Transaction Value exceed the Expected ATV by 20% or more for three (3) consecutive months at any time during the Term, Elavon has the right to increase the Merchant Service Charges, in proportion to the increase of Average Transaction Value evidenced. If Elavon decides to increase the Merchant Service Charges, Elavon shall provide two (2) months' notice to the Customer before the change takes effect and the provisions of section 26.7 shall apply.



## 6. TERMINALS AND OTHER GOODS

- 6.1. Where you wish to hire one or more Terminals from us and you are (i) an individual; or (ii) a partnership consisting of 2 or 3 persons not all of whom are bodies corporate; or (iii) an unincorporated body or persons which does not consist entirely of bodies corporate and is not a partnership, then the hire shall be governed by the Regulated Terminal Hire Terms which are separate from, and independent of, this Agreement and are contained in the Operating Guide.
- 6.2. Where you do not fall within one of the categories defined in sections 6.1 above, then the Terminal hire shall be subject to the Unregulated Terminal Hire terms which are separate from, and independent of, this Agreement and are contained in the Operating Guide.
- 6.3. The Minimum Hire Period is specified in each of the Regulated Terminal Hire Terms and the Unregulated Terminal Hire Terms. In accordance with both Terminal Hire Agreements if the rental arrangement terminates for any reason before the end of the relevant Minimum Hire Period, certain monies will be payable and the terminal shall be returned to us.
- 6.4. You shall from time to time, provide to Elavon upon request the following information in relation to each Third Party Terminal or other PED:
  - 6.4.1. stock and serial numbers of each Third Party Terminal (and in addition, you shall keep a record of such information yourself);
  - 6.4.2. location of Card Readers or other PEDs (and in addition, you shall keep a record of such information yourself); and
  - 6.4.3. details of Third Party Terminal management systems (basic form of electronic identification and verification of PEDs).
- 6.5. If you use Value Added Services for the purposes of data capture and/or authorisation or otherwise with respect to Third Party Terminals, you agree:
  - 6.5.1. that the Third Party Vendor providing such Value Added Services will be your agent in the delivery of Transactions to Elavon via a data processing system or network similar to Elavon's; and
  - 6.5.2. to assume full responsibility and liability for any failure of that Third Party Vendor to comply with the Laws, the Card Scheme Rules and the Agreement. Elavon shall not be responsible for any losses or expenses incurred by you as a result of any error by a Third Party Vendor or by a malfunction in a Third Party Terminal.
- 6.6. Where you employ a Third Party Terminal, you will assume full responsibility and liability for any failure of the Third Party Terminal including any failure of such Terminal to comply with the Laws, the Agreement and the Card Scheme Rules. You agree that the onus of showing such compliance to Elavon shall rest with you.
- 6.7. You will operate and keep the Third Party Terminals in good working order and repair, replace or upgrade them as Elavon or the Card Schemes may require from time to time and ensure they are attended by the Merchant at all times during their operation.
- 6.8. In consideration of the Fees Elavon shall provide the Goods set out in the Application to the Customer on the terms set out in the Operating Guide.

## 7. ACQUIRING LIMITS

- 7.1. In respect of the Merchant Services, we may from time to time notify you of an Authorised Trading Limit and/or an Authorised Floor Limit.
- 7.2. You shall not exceed the Authorised Trading Limit or complete a Transaction in excess of the Authorised Floor Limit without our prior written approval (to be given in our sole and absolute discretion). For the purposes of this section 7.2 we may give such written approval in accordance with the Operating Guide. Such Authorised Trading Limit or Authorised Floor Limit shall continue to apply unless we notify you otherwise in writing.
- 7.3. Unless otherwise agreed by us or notified by us in accordance with section 7.1 or 7.2, the monetary value of the Authorised Floor Limit shall be zero.

## 8. TRANSACTIONS

- 8.1. **Warranties for Transactions.** When presenting any Transaction to Elavon, you warrant and represent that:
  - 8.1.1. the Transaction is represented by a Transaction Receipt conforming with the requirements of the Agreement and the Card Scheme Rules;
  - 8.1.2. the Transaction was entered into in accordance with the Laws and the Card Scheme Rules;
  - 8.1.3. all statements of fact contained in the Transaction Receipt are true, accurate and complete;
  - 8.1.4. the use of the Card by the Cardholder has been authorised and authenticated by the Cardholder, including where applicable by means of SCA, in a manner appropriate to that Card, as prescribed from time to time;
  - 8.1.5. except as set out in the Operating Guide, no other Transaction Receipt has been or will be issued in respect of the same goods and/or services
  - 8.1.6. the Transaction is bona fide;
  - 8.1.7. you have provided (or will provide, in accordance with the Operating Guide) the goods and/or services to the Cardholder pursuant to the Sales Transaction;
  - 8.1.8. you have not broken any obligations you may have to the Cardholder. If you have broken any of your obligations to the Cardholder, you will have also breached this Agreement; and
  - 8.1.9. except where permitted in writing by Elavon and subject to the Card Scheme Rules and the Laws, no Transaction involves the use of a Card for any purpose other than the purchase, Refund or return of goods and/or services from you. No Transaction involves a Cardholder obtaining cash from you unless allowed by the Agreement and the Card Scheme Rules.



- 8.2. **Retention of Transaction Receipts.** Elavon may ask you at any time to prove any Transaction was authorised by the Cardholder. You will retain the original or scanned copy of the Transaction Receipt for at least thirteen (13) months following the date of completion of the Transaction or following the delivery of the goods or services (whichever the longer), or such longer period as the Card Scheme Rules or the Laws may require. Without prejudice to section 18.1.2, all such receipts (regardless of electronic or paper format) must at all times be kept in a secure manner in accordance with the PCI DSS . You shall promptly provide to Elavon the original or scanned copy of any Transaction Receipt upon request from Elavon.

## 9. REFUNDS

- 9.1. You must maintain and properly disclose to the Cardholder, at the time of the Sales Transaction and in accordance with the Card Scheme Rules and the Laws, a fair policy for the return of goods or cancellation of services, including any limitation you have on accepting returned goods or the cancellation of services. Although the giving of a Refund remains at your discretion subject to the Laws, you must offer Refunds in each location where you accept Sales Transactions.

## 10. REPORTING TOOL

- 10.1. As part of your relationship with Elavon, Elavon will provide you access to and make you a registered user (“**Authorised User**”) of the Reporting Tool. Via the Reporting Tool Elavon will make available to you the value of all Transactions acquired for you by Elavon (including reference numbers for each Transaction) as well as any: Merchant Service Charges; Refunds; Chargebacks; charges in the Schedule of Fees; Interchange Fees; as well as Fees and Adjustments. Your access to the Reporting Tool will provide you an unqualified access to the information you are entitled to receive under the Article 12 of the Interchange Fee Regulation. Elavon considers this the most efficient and fastest method of giving you this information and, by signing this Agreement, you consent to it being made available this way rather than specifically provided to you via a slower more formal mode. To access and use of the Reporting Tool you must register and comply with and procure your Authorised User(s) comply with the terms displayed via the Reporting Tool. These terms will not impact on your ability to access the Reporting Tool but are considered necessary to ensure all Authorised Users’ use will remain appropriate and lawful.

## 11. RETRIEVAL REQUESTS

- 11.1. You agree to provide all reasonable assistance requested by Elavon to resolve any disputes arising from your receipt of Merchant Services. You must respond to a Retrieval Request with a legible copy of the Sales Transaction Receipt within the time-frame specified on the Retrieval Request. Failure to do so means you will automatically be responsible for any Chargeback relating to the Sales Transaction, and such Chargebacks cannot be reversed. You acknowledge that response to a Retrieval Request does not guarantee that a Chargeback will always be reversed.

## 12. CHARGEBACKS

- 12.1. You shall be fully liable to Elavon for the amount of any and all Transactions returned to Elavon for whatever reason including Chargebacks (together with any Chargeback Costs) and/or other disputes regarding the validity of a Transaction, even where (a) all the requirements of Transactions set out in this Agreement have been complied with, and/or (b) you are under no legal liability in respect of the supply of the goods or services concerned.
- 12.2. Where a Chargeback is raised:
- 12.2.1. if we have not yet paid you for that Sales Transaction, we will not be required to do so; or
  - 12.2.2. if we have already paid you for that Sales Transaction, you must pay the value of that Sales Transaction back to us. This is also the case where you send details about a transaction to us which is not a Sales Transaction but which has been acquired by us as a Sales Transaction.
- 12.3. The amount of each Chargeback represents a debt immediately due and payable by you to us irrespective of whether we make a demand upon you for the value of any Chargebacks.
- 12.4. We shall notify you, to the extent permitted by the Laws, as soon as reasonably practicable of any Chargebacks which have occurred or been incurred.
- 12.5. Where section 12.2 applies, we will be under no obligation to deal with the Cardholder ourselves or to try to obtain payment from them or the Issuer.
- 12.6. In the event that you wish to dispute a Chargeback, it is your responsibility to (i) prove to our reasonable satisfaction (which shall, subject to clause 12.7 and with limitation, be conditional upon the relevant Issuer or Card Scheme, as the case may be, confirming it is satisfied) that the debit of the Cardholder's account was authorised by such Cardholder; and (ii) provide us with any additional evidence that we (or the relevant Issuer or Card Scheme) require in support of your claim.
- 12.7. Subject to the Card Scheme Rules, we shall not be obliged to investigate or challenge the validity of a Chargeback. We may charge you a Chargeback Costs for any such investigation or challenge. You acknowledge and agree that any decision or determination of the relevant Issuer or Card Scheme as to the validity and extent of any Chargeback shall be final and binding.
- 12.8. As Chargebacks may arise after a considerable period of time after the date of the relevant Sales Transaction, you acknowledge and agree that, notwithstanding the termination of this Agreement for whatever reason, we shall continue to be entitled to recover Chargebacks and Chargeback Costs from you (and where relevant from any Person who has provided us with a Guarantee or security relating to your obligations under this Agreement) in relation to all Chargebacks that occur in relation to Sales Transactions acquired during the term of this Agreement. You will not resubmit or reprocess any Sales Transaction that has been the subject of a Chargeback.
- 12.9. You shall not be liable for any Chargebacks or Chargeback Costs to the extent that they are caused by our breach of our obligations under this Agreement.
- 12.10. If you wish to dispute a Chargeback, you will do so in accordance with the applicable procedure set out in the Operating Guide and Card Scheme Rules. In the case of a disputed Chargeback, you must provide us within any specified timeframe with the evidence required by us, the Issuer or Card Scheme.

### **13. EXCESSIVE CHARGEBACK AND EXCESSIVE FRAUD MERCHANTS**

- 13.1. Without prejudice to section 25.3, in the event that you are an Excessive Chargeback Merchant or an Excessive Fraud Merchant, we shall take such action as we may deem necessary including:
- 13.1.1. making a request (with which you will comply) for further information from you in respect of the Chargebacks or incidents of fraud in question, including the reasons for them and the measures you are taking to reduce them;
  - 13.1.2. issuing you with instructions (with which you will comply) on how to reduce the level of your Chargebacks or fraud incidents;
  - 13.1.3. immediate suspension of your right to accept Cards or retention of funds in accordance with the provisions of section 14.
- 13.2. You accept liability for any Card Scheme Fines as a result of you being an Excessive Chargeback Merchant or an Excessive Fraud Merchant .

### **14. DELAYED PAYMENTS AND RESERVES**

- 14.1. In the circumstances set out below in section 14.2, and in addition to our rights under section 15, we may:
- 14.1.1. delay any payment that we would otherwise be obligated to pay you pursuant to the Agreement; and/or
  - 14.1.2. require you to pay funds to us, in an amount determined by us, to hold as a reserve against a liability you may incur; and/or
  - 14.1.3. debit Your Bank Account in any amount; and/or
  - 14.1.4. otherwise retain any amounts we owe to you.
- 14.2. The rights set out at section 14.1 above, may be exercised by us where:
- 14.2.1. we become aware or reasonably believe that you are in breach of or are likely to be in breach of your obligations under the Agreement;
  - 14.2.2. a Merchant Material Adverse Change occurs;
  - 14.2.3. you fail to maintain your Direct Debit Mandate;
  - 14.2.4. you fail to provide the information we request pursuant to section 20.1.7;
  - 14.2.5. you fail to provide any Security Document to Elavon following notification pursuant to section 16;
  - 14.2.6. one party terminates this Agreement;
  - 14.2.7. we become aware of, or reasonably suspect fraud, or other criminal activity, on your part or on the part of one of your employees, agents or sub-contractors;
  - 14.2.8. we become aware of, or reasonably suspect, that you are, or are likely to become, an Excessive Chargeback Merchant or an Excessive Fraud Merchant;
  - 14.2.9. you breach any Authorised Trading Limit or Authorised Floor Limit in respect of Transactions imposed by Elavon in accordance with section 7;
  - 14.2.10. the value of Refunds is more than the value of Sales Transactions.

- 14.3. Elavon may, without notice to you, apply any funds retained in accordance with section 14.1 against any Obligations. Also, Elavon may utilise any funds retained in accordance with section 14.1 in order to exercise its rights under the Agreement, including (i) withdrawing any amounts that it might otherwise withdraw from Your Bank Account; and/or (ii) exercising its rights of set-off to collect any Merchant Service Charges, Chargebacks, all other Fees and Adjustments, and/or other amounts due to Elavon under the Agreement.
- 14.4. Elavon's rights set out at section 14.1 above shall continue until:
- 14.4.1. we are satisfied that you will not or cannot have any Obligations or, if you do, you will pay us promptly (which may or may not be after termination of the Agreement), following which we will pay the relevant amount to you; or
  - 14.4.2. the Agreement has been terminated and you have fulfilled all your Obligations (such time being "Complete Performance", which in no event shall be deemed to have occurred earlier than three hundred and ninety (390) days following the effective date of termination of the Agreement or three hundred and ninety (390) days following the delivery date of goods or performance of services subject of a Transaction, whichever is the later). At the time of Complete Performance, any amounts then retained in accordance with section 14.1 will be transferred to you, subject to the Agreement, the Laws, and the Card Scheme Rules

## **15. SET-OFF**

- 15.1. You irrevocably authorise Elavon to set-off by whatever means any outstanding liabilities (including the Obligations) owed by you (in whole or in part) to Elavon from time to time, without notice and both before and after demand (whether such liabilities are present, future, actual, contingent or potential) from: (i) any payments due pursuant to section 3 and/or amounts we would otherwise be obliged to pay to you under this Agreement; or (ii) funds held by Elavon pursuant to any other agreement between you and Elavon. We shall inform you, as soon as reasonably practicable, upon exercising our rights under this section 15.1.
- 15.2. Elavon shall also be entitled to exercise its rights of set-off as described in sections 15.1 and 15.2 in relation to any of your Affiliates as if reference to you in section 15.1 and section 15.2 was a reference to such Affiliate of yours.
- 15.3. Any exercise by Elavon of its rights under this section 15 shall be without prejudice and in addition to any other rights and remedies available to it under the Agreement or otherwise.

## **16. SECURITY**

- 16.1. We may, at any time, require that you provide us, or that you procure that a Person(s) reasonably satisfactory to us provides us, with security in such form and over such assets as we require to secure the performance of your Obligations under the Agreement (including, entering into and/or procuring the entering into of a Security Document in favour of Elavon).
- 16.2. No interest is payable in relation to any security arrangements entered into pursuant to this Agreement. All costs (including legal costs) and expenses incurred by you in complying with this section 16 shall be for your account only.

## **17. DATA PROTECTION**

- 17.1. Both Parties will comply with the data protections provisions set out at Schedule 1.

## **18. PROTECTION OF CARDHOLDER INFORMATION**

- 18.1. Without limiting Schedule 1:

- 18.1.1. You shall not, without the prior written consent of a Cardholder, sell, purchase, provide, disclose, remit, share or exchange Card information, including, details of a Cardholder, or information and/or data regarding them or their Transactions, or regarding the Card Schemes or the Card Scheme Rules, howsoever obtained and whatsoever the form (including CCTV footage), to any third party (other than to your Third Party Vendors for the sole purpose of assisting you in your business and/or performing your obligations under this Agreement, and only then upon the written agreement of such Third Party Vendors to hold such information confidentially and to otherwise comply with the Laws and the Card Scheme Rules 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 acquiring Transactions and complying with the Agreement, the Card Scheme Rules, and the Laws.
- 18.1.2. You shall store, handle and dispose 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, or use by anyone other than your authorised personnel and in compliance with the Data Protection Rules, the Laws or the Card Scheme Rules. You shall at all times comply with the Data Protection Rules, and ensure that any Third Party Vendors that you use similarly comply with the Data Protection Rules. You shall ensure that all Third Party Vendors comply with all your obligations under this Agreement and you shall remain liable for all actions and omissions of Third Party Vendors as if they were your own. Prior to disposing of any 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 the Agreement.
- 18.1.3. You may not at any time retain or store magnetic stripe or other Cardholder data, including CVV/CVV2/ CVC2/iCVV/ PVV data after Authorisation for any purposes including record keeping, and additional Authorisation processing. If you store Cardholder account numbers, expiration dates, or other personal Cardholder data in a database, you must follow the Laws, the Card Scheme Rules, and the provisions of the Agreement on securing such data including, in accordance with the Data Security Standards.

## 19. CONFIDENTIALITY

- 19.1. **Confidential Information.** Subject to section 19.5, each party (the “**Recipient**”) shall keep in strict confidence all Confidential Information of the other party (the “**Discloser**”).
- 19.2. The Recipient may disclose such Confidential Information:
- 19.2.1. to its employees, officers, representatives, advisers, agents or subcontractors (a Representative) who need to know such information for the purposes of carrying out its obligations and in order to exercise and enforce its rights under the Agreement; and
  - 19.2.2. as may be required by law, court order or any governmental or regulatory authority.
- 19.3. The Recipient shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses the Discloser’s Confidential Information comply with this section 19.
- 19.4. The Recipient shall not use the Discloser’s Confidential Information for any purpose other than to perform its obligations and in order to exercise and enforce its rights under the Agreement.
- 19.5. The provisions of sections 19.1 to 19.4 inclusive shall not apply to any Confidential Information to the extent that it:
- 19.5.1. is in the public domain or comes into the public domain in the same or substantially the same form as that in which it is disclosed pursuant to this Agreement other than as a result of disclosure by the Recipient (or a Representative) in breach of this Agreement or any other undertaking of confidentiality that the Recipient has entered into;
  - 19.5.2. is already lawfully in the possession of the Recipient free from any obligation of confidentiality before it was disclosed by the Disclosing Party;
  - 19.5.3. becomes lawfully available to the Recipient from a source independent of the Disclosing Party who is not bound by an obligation of confidence or otherwise prohibited from disclosing the Confidential Information;
  - 19.5.4. is independently developed by the Recipient without recourse to any Confidential Information of the Disclosing Party, provided that the Recipient can evidence to the reasonable satisfaction of the Disclosing Party that this is the case; or
  - 19.5.5. is required to be disclosed by the Recipient under Applicable Law or by a regulatory authority (including any relevant securities exchange), or by court order, but only to the extent that and for the purpose for which such disclosure is required and provided that the Recipient shall provide the Disclosing Party with as much notice of any such disclosure as is lawful and reasonable in the circumstances (if any), specifying details of the Confidential Information concerned and the circumstances of the required disclosure.
- 19.6. **Customer’s Confidential Information and Transaction Data.** Without prejudice to section 17 and 18 Elavon and its Affiliates may, as permitted by the Card Scheme Rules and the Laws, disclose to the Card Schemes (i) confidential information furnished by you; and (ii) any information furnished by you that would enable the Card Schemes to determine an individual’s identity, including a Card account number. Elavon may where relevant, also disclose your Transaction data 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 and for the purpose of facilitating their services to you. Elavon may also make such disclosures of data as set out in this Agreement, the Application, and (in the case of personal data) in any other data privacy notices which we may provide to you from time to time.



## 20. REPRESENTATIONS, WARRANTIES AND COVENANTS

20.1. You represent, warrant and covenant to Elavon throughout the Term of the Agreement, the following:

- 20.1.1. **Information.** All information provided to Elavon in the Application (and any other document submitted in connection with the same) or otherwise in, or in connection with, the Agreement is true, accurate and complete as of the date originally given, properly reflects the business, financial condition and principal partners, owners, or officers of the Customer and that all changes to such information have been properly notified to Elavon in accordance with section 20.1.9.
- 20.1.2. **Powers.** Customer 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 Customer to all provisions of the Agreement, and such Person is authorised to execute any document and to take any action for and on behalf of Customer. Further, the Customer's signing and/or performing of the Agreement will not violate any Law or Card Scheme Rule, or breach any other agreement to which the Customer is subject.
- 20.1.3. **No litigation.** There is no action, suit, proceeding or regulatory investigation pending or, to your knowledge, threatened which, if decided adversely would (i) impair your ability to carry on your business in all material respects as conducted at the time you submitted the Application, (ii) adversely affect your financial condition or operations or (iii) otherwise affect your ability to perform your obligations under the Agreement. You have never been placed on the VMSS™ or MATCH™ systems, or, if you have, you have already disclosed that fact to Elavon in writing.
- 20.1.4. **Business use.** The parties further agree that they have mutually relied upon the representations of the other that this Agreement is entered into for commercial, or business purposes and not for personal, family or household purposes, that neither party is a consumer, and that each party is engaged in their common trade. You are obtaining and using Merchant Services for legitimate business purposes only and to facilitate lawful business Transactions between yourself and your Purchasers. Your business and the manner in which you conduct it comply with all Laws. Further, Your Bank Account into which debits and credits are made is being used for lawful business purposes only.
- 20.1.5. **Data security.** As of the date on which the Agreement was entered into, no security breach (including a Data Breach) in respect of data of any nature processed by you or on your behalf has occurred before, and remains unresolved. In the event that you breach this representation and warranty, we may suspend the Merchant Services and/or take any steps as we (or any Card Scheme) deem necessary to remedy the breach.
- 20.1.6. **Nature of Transactions.** Without the prior written consent of Elavon, you will not submit Transactions for acquiring for any businesses, products, or methods of selling other than those set out in the Application.
- 20.1.7. **Provision of Information.** Prior to Merchant Services being made available and at any time throughout the Term, you shall supply such information as may be required, either for credit assessment purposes, including but not limited to (i) audited financial statements prepared by an independent chartered accountant and any other information regarding your financial condition as reasonably requested by Elavon from time to time; and (ii) a financial statement of profit and loss and a balance sheet for the fiscal year; or to allow Elavon to comply with any obligations placed on it by the Laws from time

to time, including information to identify you for anti-money laundering and terrorism purposes. 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.

- 20.1.8. **Insolvency Event.** You will immediately notify Elavon of any Insolvency Event.
- 20.1.9. **Accuracy of Information.** You will promptly notify Elavon in writing of any changes to information provided by or about you or your business set out in the Agreement (including any information that may make the representations contained in this section 20 untrue or incomplete in any respect), including a change to:
  - 20.1.9.1. your locations, including any additional locations or new business at which you desire to receive Merchant Services or otherwise accept or process Transactions;
  - 20.1.9.2. your name;
  - 20.1.9.3. the identity of your principals and/or owners;
  - 20.1.9.4. your asset structure (i.e. the sale of all or a material part of your business) or the form of your business organisation (e.g. sole proprietorship, partnership, limited company etc.);
  - 20.1.9.5. your usual trading, including if you stop, or plan to stop, trading; or
  - 20.1.9.6. the nature of your business, including the type of goods and/or services provided by you, your trading terms and/or how sales are completed (e.g. by telephone, mail, internet, or in person at your place of business);

such notice to 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, product information, copies of trading terms, supplier invoices) within a reasonable time.
- 20.1.10. **Audit.** In order to ascertain whether or not you are complying with the Agreement, you authorise Elavon at any time (including prior to providing Merchant Services) to perform an on-site audit of those facets of your business, which in our determination are relevant to Merchant Services, and with such reasonable prior notice as is permitted by the Card Scheme Rules. As part of such an audit, you shall:
  - 20.1.10.1. give us or our duly authorised agents access to all or any of your personnel, business locations or premises in order to examine your records, facilities, systems, equipment, data, stock and those of any other business which we consider is or may be connected to you; and
  - 20.1.10.2. permit us to obtain and retain copies of all or any such records;
  - 20.1.10.3. provide us with any reasonable assistance that we request in connection with such audit; and
  - 20.1.10.4. obtain and submit a copy of an audit report from a third party certified by the Card Schemes of the financial, physical, information security (and operational facets of your business) at your expense, when reasonably requested by Elavon.

- 20.1.11. You shall further procure authority from any Third Party Vendor for Elavon to perform a similar audit of such Third Party Vendor. Further, you acknowledge and agree that the Card Schemes have the right to audit your business to confirm compliance with the Card Scheme Rules.
- 20.1.12. **Insurance.** (i) You agree that it is your responsibility to effect public liability insurance on your own behalf, and you will verify the existence of such public liability insurance to Elavon on request by means of a certificate of insurance. (ii) You will have professional liability insurance in place, which shall 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 21(h) is given. You further 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 professional liability insurance to us on request by means of a certificate of insurance.
- 20.1.13. You shall comprehensively insure and keep insured all Terminals and PEDs against all injury to, loss, damage or destruction. Unless waived in writing by Elavon, you shall in relation to Terminals provided by Elavon, have the interest of Elavon noted on your insurance policy, to be in a manner as required by us. Elavon may at any time require you to produce a copy of the insurance policy and/or evidence of payment of the insurance premium, in which event you shall immediately make available the same. If you make a claim in respect of any Terminal under any insurance policy, any monies received shall be applied by you towards repairing or replacing the Terminals, (as appropriate) and compensating Elavon in respect of any loss or damage suffered by it, failing which, Elavon shall be entitled (but not obliged) to effect such policy in its own name and to compel payment by you.
- 20.1.14. **Compliance with laws and Card Scheme Rules.** You agree to comply with (and procure that your agents and subcontractors comply with) and assist Elavon in complying with: (i) the Card Scheme Rules and with any instructions, policies and procedures provided by Elavon in order to facilitate such compliance; (ii) all Laws; (iii) the EGC Rules (where applicable) governing the issuance, use and acceptance of EGCs. 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 section.
- 20.1.15. **Data Security Standards.** You shall:
- 20.1.15.1. comply with the Data Security Standards.
  - 20.1.15.2. produce to Elavon evidence of compliance with the Data Security Standards on Elavon's request, save where you are a PCI Level 3 or Level 4 Customers that subscribes to a Solution (as described further the Operating Guide).
  - 20.1.15.3. procure that all Third Party Vendors from whom you receive Value Added Services or Terminals and any agents, sub-contractors or third parties used by you, comply with the Data Security Standards, together with any additional data security standards of the PCI SSC.

- 20.1.15.4. in the event that you become aware of or suspect any security breach or compromise of Cardholder or Transaction data or information by you or any Third Party Vendors from whom you receive Value Added Services or Terminals and any agents, sub-contractors or third parties used by you (whether or not you have complied with the Data Security Standards):
  - 20.1.15.4.1. immediately (and in any event within 24 hours) notify Elavon of your awareness or suspicion, identify and resolve the cause of the security breach or compromise in question, co-operate, provide any assistance and act on the reasonable instructions of Elavon (which may include the procurement, at your cost and within the timescales we stipulate, of any forensic report from a third party recommended by us or the Card Schemes, and compliance with all recommendations suggested in such report to improve your data security);
  - 20.1.15.4.2. reasonably procure that where Cardholder or Transaction data or information is stored for you by a Third Party Vendor or your agent, sub-contractor or any third party used by you, that such Third Party Vendor or agent, sub-contractor or third party also co-operates with us and acts on our reasonable instructions as set out in section 20.1.15.4.1 above;
  - 20.1.15.4.3. ensure and procure that Elavon has the right to review and comment on any forensic investigation report prepared by a forensic investigator (as set out in section 20.1.15.4.1 above), before it is submitted to the Card Schemes; and
  - 20.1.15.4.4. 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 or agent or sub-contractor or third party with whom you contract to perform services for you in relation to compliance with this section.
- 20.1.15.5. in the event that we reasonably suspect (including where we are informed by a Card Scheme that they suspect) any security breach or compromise of Cardholder or Transaction data or information by you or any Third Party Vendors from whom you receive Value Added Services or Terminals and any agents, sub-contractors or third parties used by you (whether or not you have complied with the Data Security Standards):
  - 20.1.15.5.1. ((if required by us) instruct at your own cost and within the timescales we stipulate, a forensic report from a third party recommended by us or the Card Schemes, and comply with all recommendations suggested in such report to improve your data security); and
  - 20.1.15.5.2. comply with the provisions of sections 20.1.15.4.2 and 20.1.15.4.4 above as if they apply to this section 20.1.15.5.

- 20.1.16. **Card Scheme Marks.** You shall prominently display the most current versions of the Card Schemes' names, symbols, and/or service marks of the Cards accepted by you at or near the Terminals. The Customer's use of such marks must comply with the requirements of each mark's owner. Your use of Card Scheme marks or promotional materials provided by or on behalf of any Card Scheme will not (i) indicate, directly or indirectly, that any Card Schemes endorses any goods and/or services other than their own and you may not refer to any Card Schemes in stating eligibility for your goods/and or services, or (ii) give you any ownership or interest in any such marks or materials.
- 20.1.17. **Proprietary Interest.** You have no interest whatsoever in any IPRs and are only permitted to use the IPRs as expressly authorised by this Agreement. You may not copy, reproduce, distribute, or create derivative works from the IPRs without Elavon's prior written consent to do so. Nothing in the Agreement shall be construed as granting you any patent rights or patent license in any patent which Elavon may have or may obtain in respect to Elavon's services, software, or equipment. You 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 disassemble the whole or any part of any of Elavon's services, equipment, or software.

## 21. INDEMNIFICATION

- 21.1. Except to the extent as may be a direct result of negligence or breach by Elavon of the Agreement, (and, except to the extent you may not be liable or we must prove your liability pursuant to regulation 75 of the Payment Services Regulations as regards evidence on authentication and execution of payment transactions) you will be liable for, indemnify and keep indemnified, defend, and hold harmless the Protected Parties from and against Claims or Loss relating to, or in connection with, or resulting from, or arising out of, or in consequence of your negligence or breach of the Agreement in respect of:
- 21.1.1. any Transaction, Chargeback (including Chargeback Costs) and/or Representment acquired or processed under the Agreement; (ii) any breach by you of the Agreement including any infringement of the IPRs; (iii) the use of Your Bank Account and any funds retained in accordance with section 14.1, and (iv) the occurrence of any of the circumstances set out at section 25.3;
  - 21.1.2. any act or omission by you giving rise to a claim for contravening any of the Laws (whether or not such claim is proven);
  - 21.1.3. any change under section 20.1.9, whether or not reported to Elavon, and/or your failure to provide requested information under that section in a timely manner;
  - 21.1.4. our reporting under VMSS™ and/or MATCH™;
  - 21.1.5. any failure to return materials following termination under section 25;
  - 21.1.6. your (and any Authorised User's or unauthorised user's) use of any passwords provided by Elavon or any third party and access to the Reporting Tool including, any information obtained through this, any damage to your computer system or loss of data;
  - 21.1.7. the use, operation or malfunction of a Terminal, or in relation to any matter arising out of its presence on your locations or in connection with any work done or service to the Terminals provided by Elavon, its servants, agents and/or sub-contractors;

- 21.1.8. resulting from or relating to any security breach, compromise or theft of data collected, held or processed by you or breach of the PCI DSS by you and/or any Third Party Vendors from whom you procure Value Added Services or Terminals or by any agent or sub-contractor retained by you in relation to this Agreement;
  - 21.1.9. Claims or Loss suffered as a result of misuse by you of Merchant Services or any Terminal or other equipment;
  - 21.1.10. any breach of Data Security Standards by you, your officers, directors, employees and/or any Third Party Vendors or by any agent or sub-contractor retained by you in relation to this Agreement, including third party costs in relation to an investigation of the same requested by Elavon and/or a Card Scheme and Card Scheme Fines;
  - 21.1.11. the Card Scheme Rules, any Card Scheme Fine, or any other fees or penalties of any nature including due to you becoming an Excessive Chargeback Merchant or an Excessive Fraud Merchant;
  - 21.1.12. any reasonable steps taken in the protection of Elavon's interests in connection with any aspect of Elavon's relationship with you (including the cost of any third parties nominated by Elavon or instructed by Elavon for this purpose); or
  - 21.1.13. any Transactions that have been processed as Deferred Authorisation Transactions, whereby the offline Authorisation is not subsequently approved when the terminal is connected to Elavon's authorisation host.
- 21.2. Elavon shall be entitled at its discretion (acting reasonably) to accept, dispute, compromise or otherwise deal with any Claims or Loss and shall be under no liability in such respect to you, provided that Elavon shall ensure that it and its Affiliates take all reasonable measures to mitigate and minimize any Losses that Elavon may seek to recover under such indemnity.

## 22. EXCLUSION AND LIMITATION OF LIABILITY

- 22.1. **General limitation of liability.** Subject to the other provisions of this section 22, Elavon shall only have liability for any proven direct losses or damage which you suffer or incur as a direct result of Elavon's negligence or any breach by Elavon of Elavon's obligations under the Agreement, save if and to the extent that such negligence or breach is caused or contributed by you.
- 22.1.1. Except as provided by section 22.4, the liability of Elavon during each Contract Year, whether to you or any other party, howsoever arising (whether arising in contract, tort (including negligence), breach of statutory duty or otherwise howsoever arising and whether arising in respect of any one event or series of events arising from the same cause of action, and whether an act, omission or breach of statutory duty of Elavon or any of its employees, agents or subcontractors), shall not exceed in the aggregate an amount equal to the Merchant Service Charges (less Card Scheme Fees) due from you to Elavon during the twelve (12) months immediately prior to the first act or omission that formed the principal basis of the loss or claim being sought (or where that act or omission arises during the first twelve (12) months following the Commencement Date, an amount equivalent to the average monthly Merchant Service Charges (less Card Scheme Fees) due to Elavon in the period from the Commencement Date up until the first act or omission, or where no charges are yet due, an amount equivalent to Elavon's reasonable estimate of the amount of such charges, multiplied by twelve (12)).



22.1.2. Subject to section 22.4, in no event will any of the Protected Parties be liable (whether arising in contract, tort (including negligence), breach of statutory duty or otherwise howsoever arising) for: (aa) any loss of profits, loss of revenue, loss of sales, loss of business, loss of bargain, loss of opportunity, loss of goodwill, loss of reputation, loss of anticipated savings, loss of computer equipment, software or data (including, through the use or the inability to use the Reporting Tool, unauthorised use or alteration of Customer's transmissions 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 (in each instance, whether such loss is direct, indirect or consequential); or (bb) any indirect, incidental, special or consequential loss or damage howsoever arising.

22.2. **Limitation of Warranties.** Elavon will perform all services required to be performed by it under the Agreement using reasonable care and skill. Elavon hereby warrants that it shall provide you with all necessary title to use its Terminals, where supplied. 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 including:

22.2.1. in relation to the EGC services provided to you or the EGC's compliance with the Laws, the Card Scheme Rules or the EGC Rules.

22.2.2. in relation to use of the Reporting Tool in particular but without limitation, that it will meet your requirements, will remain uninterrupted, timely, secure or error free, will always provide accurate and reliable advice/information/results, that any defects in related software will be corrected nor in relation to any advice or information (whether written or oral) obtained by you from Elavon. For the avoidance of doubt, you expressly acknowledge and agree that (aa) the use of the Reporting Tool is at your sole and entire risk and, with the exception of the provision of statutorily required statements, it is provided on an "as is" and "as available" basis; and (bb) any information obtained by you through use of the Reporting Tool is used at your own discretion and risk.

All other conditions, terms, undertakings and warranties, express or implied, whether statutory or otherwise, in respect of the services (including quality, performance, suitability or fitness for a particular purpose or non- infringement) are hereby excluded to the fullest extent permitted by the Laws.

22.3. **Force majeure.** Elavon shall not be liable to you for any failure, delay, breach of performance, or loss you suffer due to circumstances beyond Elavon's control which leads to the services provided by us to you in connection with this Agreement being wholly or partially unavailable for such reasons including, a technical failure, a connectivity failure with any Card Scheme, systems upgrades, industrial dispute, communications or power failure, or any act of God. Further, Elavon shall not be liable for any contravention of the Agreement where the contravention is due to Elavon's obligations under any Laws (including the circumstances set out in section 26.2.2. Where you are a Large Corporate or Large Charities, the Initial Term shall be extended by an equivalent period to cover any period where the Merchant Services could not be provided or utilised as a result of a Force Majeure.

22.4. **No limitation on liability in certain instances.** Notwithstanding the foregoing provisions of this section 22, no provision of the Agreement (including any indemnity given by you) shall have the effect of limiting or excluding the liability of a party (i) for death or personal injury resulting from negligence or (ii) for fraud or fraudulent misrepresentation or (iii) losses suffered by us in relation to Chargebacks, Chargeback Costs, Card Scheme Fines or Refunds under this Agreement, or (iv) in respect of any liability which cannot lawfully be excluded or limited.

- 22.5. If two or more Persons are shown in the Application as the Customer, each of you shall be jointly and severally liable with the other(s) to perform your obligations under this Agreement.
- 22.6. Should you wish to make a claim against Elavon pursuant to the Agreement, you must inform Elavon (providing details of the claim and of the alleged loss) immediately upon identifying such claim, and in any event within:
- 22.6.1. for general claims pursuant to this Agreement, six (6) months after you become aware (or should have reasonably become aware) of the act or omission which forms the basis of your claim (subject to clause (subject to clause 22.6.2 below) and
  - 22.6.2. for claims in respect of the rectification of unauthorised or incorrectly executed payment transactions only, thirteen (13) months (or six (6) months if you are a Large Corporate or Large Charity) after you become aware (or should have reasonably become aware) of the act or omission which forms the basis of your claim.

## 23. THIRD PARTIES

- 23.1. **Products or Services.** You shall not utilise any Value Added Services of any Third Party Vendor without the prior written consent of Elavon. Where consent is provided, you shall:
- 23.1.1. procure that such Value Added Services and the Third Party Vendor are fully compliant with all the Laws and the Card Scheme Rules;
  - 23.1.2. ensure, where the Third Party Vendor provides Cardholder data processing, storing and/or transmitting services (directly or indirectly) (or any combination of these) to you, that any such Third Party Vendor is registered with each of the Card Schemes and listed on such Card Schemes' website (including the Visa Europe Merchant Agents List and any MasterCard equivalent); and
  - 23.1.3. be bound by and liable for the acts and omissions of the Third Party Vendor.
- 23.2. **Appointment of agents.** Elavon may, subject to compliance with the Card Scheme Rules, appoint one or more agents or representatives in relation to Merchant Services provided under the Agreement. All statements, requests, decisions and other communications conveyed to Customer by any such agent or representative shall be treated as if they had been made by Elavon, as applicable.

## 24. TERM

- 24.1. This Agreement shall come into force on the Commencement Date and remain in effect and will automatically continue unless otherwise terminated in accordance with section 24 (the "Term").

## 25. TERMINATION AND SUSPENSION

### 25.1. **Termination by You.** The Agreement may be terminated by you:

- 25.1.1. if you are not a Large Corporate or a Large Charity by providing Elavon with at least one (1) month's prior notice of termination at any time; or
- 25.1.2. if you are a Large Corporate or a Large Charity, by providing Elavon with at least three (3) month's prior notice of termination not to expire prior to the end of the Initial Term; or
- 25.1.3. in the event of a material breach of this Agreement by Elavon, provided you first give written notice to Elavon of any such alleged breach requiring it to be remedied, and such breach remains not remedied for a period of thirty (30) days following receipt of such written notice by Elavon.

### 25.2. **Termination by Elavon.** Without prejudice to any other rights and remedies set out in this Agreement, the Card Scheme Rules or Laws, the Agreement may be terminated by Elavon without cause at any time including during the Term and at Elavon's convenience by giving two (2) months' prior written notice to the Customer. In the event that any other agreement between you and Elavon is terminated by Elavon, including but not limited to an agreement for the hire of Terminals, Elavon may at its reasonable discretion terminate the Agreement.

### 25.3. **Immediate suspension and termination by Elavon.** Without prejudice to any other rights and remedies set out in this Agreement, the Card Scheme Rules or Laws, the Agreement or any part of the obligations of Elavon (including the provision of any aspect of the Merchant Services) may be suspended and / or terminated by Elavon with immediate effect where:

- 25.3.1. you fail by you to pay any amount due to Elavon under the Agreement;
- 25.3.2. a Merchant Material Adverse Change occurs;
- 25.3.3. an Insolvency Event occurs, or we reasonably believe it may occur, or you fail to notify us of an Insolvency Event;
- 25.3.4. you become an Excessive Chargeback Merchant or an Excessive Fraud Merchant and/or you fail to comply with our requests or instructions, as set out in section 13;
- 25.3.5. Elavon reasonably believes that the Sales Transaction may be fraudulent, suspicious, or may involve any criminal activity;
- 25.3.6. you fail to accept C&P Card Transactions using a Chip and PIN Terminal (and PIN Pad as appropriate) except where there is a Chip Failure, provided you have followed the procedures set out in the Operating Guide;
- 25.3.7. Elavon discovers that you have provided false or misleading information in documents submitted to Elavon, or otherwise in connection with Merchant Services;
- 25.3.8. you breach any acquiring limit in respect of Transactions imposed by Elavon in accordance with section 7;
- 25.3.9. you fail to obtain our prior written consent where required under the Agreement including.

- 25.3.10. anything happens to you; or comes to the attention of Elavon in relation to you; or arises from or is incidental to your business; or the conduct of your business (including the products/services offered by you, trading practices, methods of selling and individual activities); or you engage in any business trading practices or individual activity; and Elavon considers, in its reasonable discretion that such circumstances:
  - 25.3.10.1. may affect your ability or willingness to comply with all or any of your Obligations under the Agreement;
  - 25.3.10.2. may damage the reputation or be detrimental to the business of the Card Schemes or Elavon;
  - 25.3.10.3. may or do give rise to fraud or any other criminal activity or breach of Laws, or a suspicion of the same;
  - 25.3.10.4. may or do give rise to increased risk of liability or loss to Elavon;
  - 25.3.10.5. have not been consented to by Elavon as at the date of the acceptance of the Application;
- 25.3.11. Elavon is required or requested to do so by any Card Scheme or any Competent Authority or by reason of the Card Scheme Rules or any Laws applicable to either Elavon or you, or if a Card Scheme or other third party ceases to provide us with any service that we require in order to provide the Merchant Services to you;
- 25.3.12. you breach or fail to comply with the Data Security Standards;
- 25.3.13. a Force Majeure event occurs as defined in section 22.3.
- 25.3.14. you commit any material breach of this Agreement that: (1) cannot be remedied; or (2) can be remedied but you fail to remedy such breach within a period of thirty (30) days following receipt of written notice from Elavon.
- 25.4. Elavon shall, subject to the Laws, notify you at the earliest opportunity after the deemed receipt of a Transaction, of: (i) any refusal of a Transaction, (ii) if possible, the reasons for such refusal; and (iii) where it is possible to provide reasons for the refusal and those reasons relate to factual matters, any steps you must take for rectifying any factual errors that led to the refusal.
- 25.5. Elavon shall be entitled to charge you for the notifications set out at section 25.4 where the refusal is reasonably justified.
- 25.6. **Unblocking of transactions.** In the case of unblocking/stopping transactions you can apply to us to unblock a transaction and we will deal with your request within two days.

#### **Action upon and effect of termination.**

- 25.7. **Termination by You.** Without prejudice to anything contained in this section 25, where you terminate the Agreement pursuant to section 25.1.1 or section 25.1.3 within 6 months of the Commencement Date (or within 12 months of the Commencement Date, if you are a Large Corporate or Large Charity), a termination fee covering our reasonable costs instigated prior to termination (“**Termination Fee**”) shall become payable and will be added to the final invoice/statement. The structure of our termination fees may change from time to time. Termination of Agreement by you shall be free of charge for you, if the Agreement has been in force for more than 6 months (or for more than 12 months, if you are a Large Corporate or Large Charity).

- 25.8. **Survival.** Upon termination of the Agreement, the rights and obligations of both parties shall immediately cease to have effect, except:
- 25.8.1. termination shall not affect accrued rights or obligations under the Agreement as at the date of termination, including for the avoidance of doubt, your obligations in relation to Transactions acquired prior to termination; and
  - 25.8.2. those provisions contained in the Agreement that are expressly, or by their sense and context, intended to survive completion or performance, termination or cancellation of the Agreement, such provisions shall survive and continue in full force and effect.
- 25.9. **Transactions.** Upon termination of the Agreement, you must:
- 25.9.1. cease to accept Sales Transactions and cease to send to us Sales Transaction Receipts in respect of Sales Transactions that occurred after termination of the Agreement (if you do not cease to do so, we shall be under no obligation to acquire or pay you in respect of such transactions);
  - 25.9.2. in respect of Sales Transactions that occurred prior to the termination of the Agreement, present those Sales Transactions to us within three (3) Business Days of the date of such Sales Transaction; and
  - 25.9.3. in respect of Sales Transactions that occurred prior to the termination of the Agreement, continue to present Refunds and send to us Refund Receipts. The amount of such Refunds will remain due and owing from you to us pursuant to section 9 notwithstanding termination of the Agreement.
- 25.10. **Accounts.** Funds relating to Transactions acquired by us prior to the termination of the Agreement may be retained by Elavon in accordance with the provisions of section 14.1 until you fully satisfy all your Obligations. You must maintain enough funds in Your Bank Account following termination to cover any Merchant Service Charges, Chargebacks, all other Fees and Adjustments, and other amounts due under the Agreement until such time as Complete Performance has occurred. Merchant Service Charges and any other Fees and Adjustments payable shall be apportioned up until the time of effective termination of the Agreement and any charges paid in advance will be reimbursed proportionally.
- 25.11. **VMSS™ and MATCH™ Reporting.** In the event that the Agreement is terminated for cause pursuant to section 25.3, your name may be listed on VMSS™ and MATCH™.
- 25.12. **Card Scheme marks.** Upon termination of the Agreement: (i) your right to use or display any Card Scheme marks shall terminate automatically, (ii) any display of such marks on your website and/or your business locations, must be immediately removed, and (iii) you must immediately return any materials displaying any such marks.
- 25.13. **Promotional materials.** All promotional materials, advertising displays, emblems, Transaction Receipts, Refund Receipts, and other forms supplied to you and not used nor purchased, will remain the property of Elavon and must be returned to Elavon or at Elavon's instruction, destroyed within ten (10) Business Days after termination of the Agreement.

## 26. MISCELLANEOUS PROVISIONS

- 26.1. **Entire agreement.** The Agreement as amended from time to time, constitutes the entire agreement and understanding between the parties, and supersedes all prior representations, understandings and agreements (whether written or oral) provided, however, the Agreement shall not supersede any Security Document entered into in favour of Elavon, which shall be deemed to remain an agreement separate and distinct from the Agreement. On entering into the Agreement, neither party relies on any prior representation, statement or understanding, over and above those expressly provided for in the Agreement.
- 26.2. **Governing Law.**
- 26.2.1. The Agreement and the parties' non-contractual obligations arising thereunder will be governed by and construed in accordance with the Laws of England and Wales. The parties submit, subject as provided below, to the exclusive jurisdiction of the English courts to settle any claim, dispute or matter of difference which may arise out of or in connection with the Agreement or legal relationships established by the Agreement. Nothing in this section limits Elavon's right to bring proceedings arising out of or in connection with the Agreement (i) in any other court of competent jurisdiction, or (ii) concurrently in more than one court of competent jurisdiction. You waive any objection on the basis of venue or forum to any proceedings brought by Elavon pursuant to this section. (i) in any other court of competent jurisdiction, or (ii) concurrently in more than one court of competent jurisdiction. You waive any objection on the basis of venue or forum to any proceedings brought by Elavon pursuant to this section.
- 26.2.2. In the provision by Elavon of products and services pursuant to this Agreement, Elavon relies on entities governed by the laws of the United States. In that role, such entities are unable to provide any products or services to Elavon, or to its merchants, that contravene the laws of the United States of America including without limitation the laws promulgated by the United States Department of the Treasury's Office of Foreign Assets Control or any successor thereto.
- 26.3. **Assignment, Novation and Sub-Contracting.**
- 26.3.1. You cannot assign, transfer or novate the Agreement or any of your rights or obligations under it, whether directly or by operation of law.
- 26.3.2. You may, subject to our prior written consent, use a subcontractor or agent in respect of the performance of your obligations under the Agreement (such consent may reasonably be withdrawn by us at any time). You will be responsible for ensuring that any such subcontractor or agent complies with the relevant terms of the Agreement.
- 26.3.3. You are liable for the acts or omissions of any agent, subcontractor, Affiliate or employee of yours (whether or not we have provided consent in accordance with section 26.3.2 in connection with the performance of your obligations under the Agreement or in relation to any Transaction or Chargeback.
- 26.3.4. Elavon can on written notice assign, novate or otherwise transfer, either in whole or in part the Agreement. You agree to enter into any documents as Elavon may require in order to evidence such assignment, novation or other transfer. Notwithstanding the foregoing, Elavon is entitled to: (i) assign any and all receivables arising out of the Agreement to a third party for financing or refinancing purposes; or (ii) to transfer (e.g., by sub-participation) the economic risk of the receivables arising out of the Agreement to a third party. In case of such assignment or transfer, Elavon may, subject



to section 17, disclose and transmit to any such third party all information about you and the Agreement relevant for or required by the third party in connection with such assignment or transfer.

- 26.4. **Taxes.** All amounts stated in the Agreement are exclusive of VAT or other taxes. If VAT or any other tax is chargeable in respect of all or any amounts paid to Elavon under the Agreement, you shall pay to Elavon such VAT at the rate properly chargeable, in respect of the relevant supply of goods and/or services provided by Elavon. We shall, where required by the Laws, issue a VAT invoice and summary of Transactions.
- 26.5. **Interest.** You shall (without prejudice to any other rights and remedies of Elavon), pay immediately on demand, interest at the rate set up under the Late Payment of Commercial Debts (Interest) Act 1998 (or its replacement from time to time), compounded daily, from the due date until the date of actual payment (whether before or after any judgment) on any overdue sum pursuant to the Agreement.
- 26.6. **Notices.**
- 26.6.1. Any written notice to Customer under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) Business Days after being personally delivered, sent by first class post, or with a nationally recognised overnight carrier, and addressed to the last address shown on the records of Elavon.
- 26.6.2. Any written notice to Elavon shall be personally delivered, sent by registered post or a nationally recognised overnight carrier to: US Bank Europe DAC, UK Branch, IDA Business Park, Ballynattin, Arklow, Wicklow, Y14 D400 and shall be deemed received only upon actual receipt.
- 26.6.3. Any notice to terminate in accordance with section 25.1 of this Agreement may be served either in writing (including e-mail to queries@elavon.com) or upon telephoning Elavon Customer Services.
- 26.6.4. Any notices or other information to or from either party in relation to the Agreement shall be in English language and communicated from time to time in writing, via telephone, e-mail, fax and/or via internet including but not limited to through our Reporting Tool.
- 26.7. **Amendments.** Elavon may make any changes to:
- (i) the Agreement at any time on two (2) months' notice. You may terminate the Agreement prior to the date the changes come into effect without charge (other than any liabilities that you have or will have to Elavon under the terms of the Agreement). Upon expiry of the two (2) months' notice period you will be deemed to have agreed to the changes; and/or
- (ii) the Operating Guide at any time on not less than two (2) weeks' notice.
- 26.8. **Severability.** Any provision of the Agreement found to be illegal or otherwise unenforceable, shall not affect any of the enforceability of the remaining provisions of the Agreement, which will further be construed as if the illegal or unenforceable provision was not contained in the Agreement.
- 26.9. **Waiver.** Neither the failure, nor the delay by Elavon to exercise, in whole or in part, any right or remedy under the Agreement or under the Laws shall operate as a waiver, release or estoppel of such right or remedy, nor shall it amend the Agreement. The single or partial use of a right or remedy under the Agreement or under the Laws shall neither restrict nor prevent the further exercise of such right or remedy in the future. Any waiver requested by you shall have no legal force or effect unless specifically agreed to in writing by Elavon, in its sole discretion.

- 26.10. **Independent Contractors.** The parties will be deemed independent contractors and nothing in the Agreement shall be construed as constituting an agency, joint venture, or partnership between the parties, unless and to the extent otherwise specifically provided.
- 26.11. **Counterparts.** 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.
- 26.12. **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.
- 26.13. **Service.** Elavon will accept electronic service of documents including of this Agreement and any notices included herein only if sent to Elavon Customer Services at [queries@elavon.com](mailto:queries@elavon.com) and acknowledged as received by Elavon.
- 26.14. **Complaints.** Elavon is committed to providing an excellent customer experience; however, if you feel that we have not met your expectations, we would like to know. If you are not satisfied with any aspect of our service, please contact us by telephone at our Service Centre 0345 850 0195. Our lines are open 24 hours a day, 7 days a week. Alternatively, write to us at Elavon Merchant Services, Block F1, Cherrywood Business Park, Dublin 18, D18 W2X7, Ireland or send an email to [complaints@elavon.com](mailto:complaints@elavon.com). If we can't resolve the matter to your satisfaction informally we will send you a written acknowledgement within five (5) Business Days of having received your complaint. You will be provided with one point of contact to handle any questions you may have, and we will ensure that you receive a full written response. Our aim is to resolve your concerns and respond to you as soon as possible and no later than fifteen (15) Business Days of first receiving your complaint. If, for reasons beyond our control, we are unable to issue a final response to you within fifteen (15) Business Days we will write to you to keep you updated, clearly outlining the reason for our delay and we will set out the timeline by which you will receive a full response. This deadline will be no longer than thirty five (35) Business Days from the receipt of your initial complaint. If you are not satisfied with our final response, you may be eligible to refer the complaint to the Financial Ombudsman Services (FOS) and we will provide you with the contact details. Please note that the FOS will only become involved after we have had the opportunity to research and address the complaint. The FOS can be contacted at: **Financial Ombudsman Service, Exchange Tower, London E14 9SR Telephone: 0800 023 4567 Website: [www.financialombudsman.org.uk](http://www.financialombudsman.org.uk)**. In the event that you are not eligible to refer your complaint to the FOS, Elavon does not subscribe to an alternative dispute resolution service.
- 26.15. **Acknowledgement of Bail In.** Notwithstanding and to the exclusion of any other term of this Agreement or any other agreements, arrangements, or understanding between Elavon and you, you acknowledge and accept that a BRRD Liability arising under this Agreement may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledge, accept, and agree to be bound by:
- 26.15.1. the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of Elavon to you under this Agreement, that (without limitation) may include and result in any of the following, or some combination thereof:
- 26.15.1.1. the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon including any accrued but unpaid interest, if any if due;
- 26.15.1.2. the conversion of all, or a portion, of the BRRD Liability into shares, other securities or instruments of ownership of Elavon, and the issue to or conferral on you of such shares, securities or instruments of ownership;

- 26.15.1.3. the cancellation of the BRRD Liability;
- 26.15.1.4. the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;
- 26.15.2. the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

## GLOSSARY

### DEFINITIONS AND RULES OF INTERPRETATION

Unless otherwise stated, the definitions set out in this glossary shall apply to the Agreement.

Singular terms shall include the plural, and vice versa, unless the context otherwise requires. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be construed as illustrative and shall not limit the generality of the related general words.

Any reference to a section shall be to the relevant section of these TOS, and a part or paragraph shall be to the relevant part or paragraph of the relevant schedule unless otherwise stated. Section, schedule and paragraph headings shall not affect the interpretation of this Agreement.

Any reference to “**this agreement**” includes the schedules and the Operating Guide. A reference to “**this agreement**” or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective successors and permitted assigns. References to a Person or a party includes a reference to that Person’s successors or assignees.

In the event of a conflict between the documents comprising the Agreement (excluding any Security Document), the following order of priority will apply, only to the extent of such conflict: (i) these TOS; ii) the Application; (iii) any Additional Product and Service Terms (iv) any other Agreement you have entered into with Elavon for similar or related services; (v) any agreement entered into pursuant to section 6.1; (vi) the Operating Guide; and (vii) any other guides or manuals provided to you from time to time; provided, however, in the event of a conflict between the Agreement and the Card Scheme Rules, the Card Scheme Rules will prevail and the Agreement will be interpreted to give as full effect as is possible to both the Card Scheme Rules and the Agreement.

In this Agreement, references to any enactment shall be deemed to include references to such enactment as amended, superseded, consolidated, re-enacted or extended from time to time and any subordinate legislation made from time to time under it.

A reference to “**writing**” or “**written**” includes email (including all attachments) but not communication by SMS or similar text messaging facilities.

An obligation on a party not to do and/or omit to do something includes an obligation not to allow that thing to be done and/or omitted to be done.

A reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

**3D Secure™:** means means the three-domain secure protocol, including (for the purposes of the Agreement) Verified by Visa™ developed by Visa and MasterCard® SecureCode™ developed by MasterCard® and such other programs notified to Customer by Elavon from time to time (and in each case any amendments and/or versions from time to time).

**Account and Transaction Information:** means any information that is necessary to acquire and 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 acquiring of a Transaction that otherwise identifies individual consumers and their purchases but, excluding 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.

**Account Status Inquiry:** means an Authorisation to validate a Card with no subsequent settlement and includes MasterCard Status Inquiry Checks and Visa Account Verification.

**Additional Products and Services:** means any additional products and/or services which we agree to provide to you as set out in an Application Form.

**Additional Product and Services Terms:** means any terms and conditions we bring to your attention and which apply to the Additional Products and Services.

**Add Location Form:** means a form completed by Customer to notify Elavon of Customer's additional business locations where it shall accept Cards pursuant to the Agreement.

**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 Application, these TOS, the Additional Product and Service Terms, the Schedule of Fees, the Operating Guide, any Add Location form, any agreement for similar or related services to which Customer is a party, and any other guides or manuals that apply to Customer from time to time, and all amendments to each and any of those documents from time to time.

**Application:** means Elavon's application form that is completed by Customer and submitted to Elavon to apply for Merchant Services [and/or any Additional Products and Services] from time to time.

**Assessment Fee:** means the fee charged to Elavon by a Card Scheme and which is based on processed volumes and numbers of Transactions and any other fees charged to Elavon by a Card Scheme.

**ASV:** means an organization with a set of security services and tools tested and approved by PCI SSC to conduct external vulnerability scanning services to validate adherence with the external scanning requirements of PCI DSS.

**Audit Costs:** means any sums reasonably required to conduct a Security Audit.

**Authentication:** means a procedure which allows the Issuer to verify the identity of a Cardholder or the validity of the use of a specific Card, including the use of the Cardholder's Personalised Security Credentials;

**Authorisation:** the confirmation at the time of a Sales Transaction from the relevant Card Issuer that (i) the Card number is valid (ii) the Card used to pay for the Sales Transaction has not expired or for any reason been listed as lost or stolen, blocked or as having had its security compromised and (iii) there are sufficient funds available for the relevant Sales Transaction (and "Authorise" and "Authorised" shall be construed accordingly).

**Authorisation Code:** means the code or reference number sent by an Issuer following an Authorisation.

**Authorisation Request:** means a request by the Customer for Authorisation.

**Authorised Floor limit:** means the total monetary value of any Sales Transaction you may accept on any occasion without first obtaining an Authorisation Code.

**Authorised Trading Limit:** means the maximum aggregate value of one or more Transactions that you may complete in respect of any specified period as notified to you from time to time;

**Average Transaction Value:** means the average value of a Sales Transaction, measured on a monthly basis.

**B2B:** means business-to-business.

**Bail-in Legislation:** means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement.

**Bail-in Powers:** means any write-down and conversion powers in respect of an entity in resolution as defined in the relevant Bail-In Legislation including; write-down or convert relevant capital instruments into shares or other instruments of ownership; taking control; exercise of all the rights and powers conferred upon the shareholders, other owners and the management body; transfer of shares or other instruments of ownership; transfer to another entity, with the consent of that entity, rights, assets or liabilities; reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of BRRD Liability; convert BRRD Liabilities into ordinary shares or other instruments of ownership; cancel debt instruments issued; reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership and to cancel such shares or other instruments of ownership; require the issue of new shares or other instruments of ownership or other capital instruments, including preference shares and contingent convertible instruments; to amend or alter the maturity of debt instruments and other eligible liabilities issued or amend the amount of interest payable under such instruments and other BRRD Liability, or the date on which the interest becomes payable, including by suspending payment for a temporary period; close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 49 of BRRD.

**BRRD:** means Directive 2014/59/EU, as amended, establishing a framework for the recovery and resolution of credit institutions and investment firms.

**BRRD Liability:** means a liability in respect of which Bail-In Powers may be exercised.

**Business Day:** means a day (other than a Saturday, Sunday or public holiday) when Elavon is open for business in England.

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

**Card:** means any form of valid payment card or other valid payment token or device used for the purposes of obtaining credit or debiting of a designated account issued by a Card Issuer under a Card Scheme (including, a Credit Card, a Debit Card, an EGC or other stored value card, contactless Card), and acceptable to Elavon (as notified to you from time to time), which may be used by a Cardholder to carry out a Transaction of the types specified in the Application.

**Cardholder:** means (i) the Person in whose name a Card has been issued; and (ii) any Person 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 authorised user; and who is a Purchaser.

**Card Not Present:** means an environment where the Card is not physically presented to the Customer by the Cardholder as the form of payment, nor is the Cardholder physically present, at the time of sale (including, Mail Order/Telephone Order Transactions and Internet Transactions).

**Card Present:** means an environment where the Card is physically presented to the Customer by the Cardholder as the form of payment, and the Cardholder is physically present, at the time of sale.

**Card Reader:** means the card reader, including PIN Pad, purchased by the Customer from Elavon which the Customer will use to process any Transaction and that conforms with the requirements established from time to time by the applicable Card Scheme and by Elavon.



**Card Schemes:** means Visa, Mastercard®, American Express Payment Services Limited, Maestro, JCB International (Europe) Limited, Diners Club International Limited (including Discover-branded Cards), UnionPay International Co., Limited or any other Card sponsorship organisation or association or scheme and their Affiliates governing the issue and use of Cards acceptable to Elavon, and any successor organisation or association to any of the foregoing.

**Card Scheme Fee:** the charges that Elavon is required to pay to an Issuer or a Card Scheme, including in respect of the processing, clearing and settlement of Transactions including, any charges based on volumes and numbers of Transactions.

**Card Scheme Fines:** means any assessment, fine, liquidated damages, fee, cost, expense or charge of any nature which a Card Scheme or any other third party levies on you or us at any time, directly or indirectly, in relation to any aspect of our relationship with you (including the costs of any Issuer or member of a Card Scheme for the costs of replacing Cards).

**Card Scheme Rules:** means all applicable bylaws, rules, regulations, operating guidelines and procedures issued by any Card Scheme from time to time relating to Cards, Transactions, any other payment methods and any payments or processing of Transaction data relating thereto, as amended, extended, consolidated or supplemented from time to time, and any current waivers or exceptions agreed with the Card Schemes.

**Chargeback:** means any circumstances where an Issuer or Card Scheme refuses to settle a Sales Transaction to us or seeks reimbursement from us of a Sales Transaction which has already been settled to us, notwithstanding any Authorisation or the application of SCA.

**Chargeback Costs:** means Elavon's administrative charge for processing a Chargeback and any reasonable costs, expenses, liabilities or Card Scheme Fines that Elavon may incur as a result of or in connection with a Chargeback including any cost for any investigation or challenge.

**Chip and PIN Compliant:** means (a) the Terminal is fully approved, tested, installed, and operational in accordance with Elavon's minimum installation, testing and operating requirements made available to you from time to time (b) the Terminal complies and is maintained, upgraded and used in accordance with: i) our minimum Terminal requirements which are made available to you from time to time, ii) any Terminal manufacturer's manuals, recommendations, instructions, guidance and training as issued or provided to you from time to time; (iii) the requirements specified in the EMV Integrated Circuit Card Specifications for Payment Systems (as amended from time to time) and iv) the recommendations and guidelines issued by the Card Schemes from time to time under the chip and PIN programme; and (c) anyone you authorise to operate the Terminal is appropriately experienced, qualified, competent and properly trained to use it.

**Chip and PIN Technology:** means any technology in whatever form introduced by any Card Scheme 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 Chip and PIN 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 Sales Transaction.

**Claims or Loss:** includes all and any claims, actions, proceedings, loss, damages, liability, penalties and fines (whether or not imposed by a Card Scheme or Competent Authority), surcharges, costs (including investigation, administration and legal costs) and expenses made against, paid or incurred by any Protected Party.

**Commencement Date:** means the date (as referred to in your welcome letter) on which your Application has been accepted by Elavon.

**Commercial Card:** means any card-based payment instrument issued to undertakings or public sector entities or self-employed natural persons which is limited in use for business expenses where the payments made with such cards are charged directly to the account of the undertaking or public sector entity or self-employed natural person.

**Compatible Device:** means devices that are listed in our FAQ section on [www.tellmemore.elavon.com/vmmobile/](http://www.tellmemore.elavon.com/vmmobile/) and that are Bluetooth enabled and shall not include Jailbroken or Rooted Devices.

**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 or any Transaction acquired pursuant to the Agreement or in respect of any part of the Agreement in any jurisdiction.

**Complete Performance:** has the meaning set out in section 14.4.2.

**Confidential Information:** means all trade secrets, proprietary, or other confidential information or items of a party, of which the other party obtains knowledge of or access to as a result of its relationship with the other party pursuant to the Agreement and whether or not in written form, and including: 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 computerised 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.

**Consumer Card:** no reference/definition in new TOS other than definition of Higher Risk Additional Loading Transactions.

**Contract Year:** means each successive twelve month period commencing on the Commencement Date.

**Coverage Area:** means the geographic area in which Wireless Terminal Transaction processing is available to Customer.

**Credit Card:** means a card where the amount of the transactions is debited in full or in part at the pre-agreed specific calendar month date to the payer, in line with a prearranged credit facility, with or without interest.

**Customer (or you or your):** means the Person indicated on the Application and including (when relevant), any Affiliate.

**CVV/CVV2/CVC2/ICVV/PVV:** means the security features on the back 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, and as such terms, and similar terms may be defined by the Card Schemes.

**Data Breach:** means a failure of security at a MID at the Customer resulting in a compromise of its Purchasers' Card data.

**Data Protection Rules:** means collectively all data protection, data security and data privacy requirements imposed by law, including, the Data Protection Act 2018 or other national legislation implementing or replacing the EU Data Protection Directive 95/46/EC, 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) Regulations 2003, the General Data Protection Regulation and all legislation that implements or is enacted in connection with the General Data Protection Regulation and other data protection or privacy legislation in force from time to time in any relevant jurisdiction which is applicable to the provision of services under the Agreement, together with any similar provisions of the Card Scheme Rules, including the Data Security Standards and any regulation and regulatory guidance issued by a competent data protection authority.

**Data Security Standards** means:

- (i) PCI DSS; with further information in relation to the current requirements of the PCI DSS available at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org);
- (ii) Payment Card Industry Payment Application Data Security Standards as published by the PCI SSC at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org);
- (iii) Payment Card Industry PIN Transaction Security Standards published by the PCI SSC at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org);
- (iv) Visa Payment System Risk programme (formerly the Account Information Security programme);
- (v) MasterCard® Site Data Protection Program;
- (vi) other security standards of PCI SSC;
- (vii) security standards of any other Card Schemes of Cards that you accept and/or process as amended or updated from time to time, including any successor standards to those standards.

**DCC:** means the dynamic currency conversion product of Elavon enabling a Cardholder to pay for goods and/or services provided by the Customer in a currency other than that in which the Card was issued, and offered in respect of the currencies that Elavon communicates to the Customer from time to time.

**DCC Transaction:** means a Sales Transaction using DCC.

**Debit Card:** means a card with a magnetic stripe or which is chip-enabled, and bearing the symbol(s) of one or more debit network which enables the Cardholder to pay for goods and/or services by authorising an electronic debit to a designated account, including where applicable, PIN-based, online debit Transactions.

**Deferred Authorisation Transactions:** means Transactions carried out by you where either:

- (1) you do not have connectivity to Elavon's authorisation host and you require the ability to process Transactions whilst your Terminals are offline due to practicality of location where the Transactions are being completed. For this purpose, Elavon will provide an "in flight mode" option on its Terminals enabling you to undertake Transactions whilst the Terminals are offline.
- (2) an outage to your connectivity to Elavon's authorisation host occurs.

**Direct Debit Mandate:** means the instruction with your bank authorizing Elavon to directly debit from Your Bank Account all sums that become due and payable by you to us under or in connection with this Agreement at the time we specify.

**EGC:** means an electronic gift card or a loyalty card purchased by a Purchaser that is redeemable for in-store goods and/or services from the Customer.

**EGC Rules:** means any and all rules and regulations applied to EGC processing by Elavon and other relevant bodies, and notified to Customer from time to time.

**Elavon (or us, ours, we):** means U.S. Bank Europe DAC, a licensed credit institution incorporated in Ireland and registered with the Companies Registration Office, Ireland (Registration No. 418442), having its registered office address at Block F1, Cherrywood Business Park, Dublin 18, D18 W2X7, Ireland; operating for the purposes of the Agreement through its United Kingdom branch having its principle place of business at Fifth Floor, 125 Old Broad Street, London, EC2N 1AR, United Kingdom and, as the context may dictate, any Affiliate or subsidiary of Elavon in relation to Merchant Services.

**Excessive Chargeback Merchant:** means where we are informed by a Card Scheme that you are, or are becoming an excessive chargeback merchant by exceeding or approaching certain chargeback limits in respect of Sales Transactions, as dictated by the Card Schemes.

**Excessive Fraud Merchant:** means where we reasonably conclude that you are, or are becoming an excessive fraud merchant by exceeding or approaching certain fraud limits in respect of Sales Transactions, s reasonably determined by Elavon.

**Fees and Adjustments:** means, excluding Merchant Service Charges, all other charges as set out in the Schedule of Fees and all Refunds, returns, Chargeback Costs, Card Scheme Fines, fines and/or, surcharges, as well as any other amounts due as a result of a Chargeback and any other charges set out in the 'Additional Products and Services' section of the Application (if applicable).

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

**General Data Protection Regulation:** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

**Goods:** means the goods specified in the Application (including Card Readers, (where applicable) but, for the avoidance of doubt, excluding hired terminals) by the Customer, in accordance with this Agreement.

**Guarantee:** means any written guarantee provided by a Person of Merchant's Obligations to Elavon that is given in connection with the Agreement.

**Guarantor:** means a Person that executes a Guarantee.

**Higher Risk Additional Loading Transactions:** means the following Transactions:

- (a) Card swipe or signature or PAN key entered or unknown data Transaction, occurring when the Customer swipes the magnetic stripe on the Card, or accepts Cardholder's signature or Customer keys the Card number into the Terminal as verification, or the mode of acceptance is not known;
- (b) a delayed file submission Transaction, occurring when the Customer submits clearing file to Elavon 2 days or more after the Card was accepted by the Customer;
- (c) a Card Not Present not using 3D Secure <sup>TM</sup> Transaction, occurring when the Customer accepts payment when Card Not Present and 3D Secure<sup>TM</sup> is not used;
- (d) a B2B Virtual Card Transaction occurring when the Customer accepts payment via a B2B Virtual Card;
- (e) a commercial cross border Transaction occurring when the Customer accepts a Commercial Card that is not issued in the same country as the Customer; and
- (f) Consumer Card Not Present Non-EEA Country Transaction occurring when the Customer accepts a Consumer Card that is Card Not Present and either the Cardholder or Issuer is based in a Non-EEA Country.

Elavon reserves the right to reference Visa/Mastercard assessment of the above conditions being present or not present if required in applying the Higher Risk Loading.

**Higher Risk Additional Loading Rate:** means the higher risk additional loading fee as set out in the Schedule of Fees.

**Initial Term:** means a period starting on the Commencement Date and, unless stated otherwise in your Application Form, continuing for thirty-six (36) months, as may be varied by section 22.3.

**Insolvency Event:** means the occurrence of any of the following:

- (a) you are unable (or deemed to be unable) to pay your debts as defined in sections 123, 222, 223 or 224 of the Insolvency Act 1986 (as applicable); or
- (b) you are the subject of a petition, resolution, order or any other step in relation to winding up or bankruptcy; or
- (c) you cease, or threaten to cease, to carry on all or part of your business (save for the purposes of a genuine amalgamation, reconstruction or reorganisation); or
- (d) you enter into either compulsory or voluntary liquidation, or a provisional liquidator is appointed in relation to you or any of your assets; or
- (e) you are the subject of a petition for an administration order or an application for such an order, or a notice of intention to appoint an administrator to you is given, or any other step is taken by any person with a view to the administration of you under the Insolvency Act 1986; or
- (f) a moratorium being agreed or declared in respect of all or part of your debts; or
- (g) you enter, or propose to enter, into any composition, assignment, compromise or arrangement of your debts, or with or for the benefit of some or all of your creditors generally, or in respect of a particular type of your debts; or
- (h) begin proceedings or negotiations, or propose or agree to reschedule, readjust or defer your debts; or
- (i) the appointment of a liquidator, receiver, administrative receiver, administrator, manager or other similar officer in respect of the whole or any part of your assets; or
- (j) enforcement of any security over, or an execution, distress, or other similar procedure levied against any of your assets; or
- (k) any legal proceedings, corporate action or other procedures or steps are taken in connection with the appointment of an administrator, administrative receiver, receiver, liquidator, manager, trustee in bankruptcy or other similar officer in relation to you or any of your assets; or
- (l) where you are an organisation, any principal or member of your business is subject to any of the events set out at (b), (g), (h), or (k) above; or
- (m) any analogous procedure or step to those set out at (a) to (l) above that you are subject to in any jurisdiction.

**Intellectual Property Rights or IPRs:** includes copyright and related rights (including rights in respect of software and the Reporting Tool), 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) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Interchange Fee Regulation:** means Regulation (EU) 2015/751 of 29 April 2015.

**Interchange Plus:** means a pricing mechanism whereby the charges expressed as a percentage fee or fee per Transaction in the Schedule of Fees represent the Elavon Processing Fee and in addition to the Elavon Processing Fee, the Customer will pay (i) the Interchange Fees, (ii) the Assessment Fees as well as (iii) any other fees as may be introduced by the Card Schemes from time to time.

**Internet DCC Transaction:** means a DCC Transaction where the Cardholder uses the internet to purchase goods and/or order services from Customer, or where Customer uses the internet to submit a DCC Transaction to Elavon for acquiring.

**Internet Transaction:** means a Sales Transaction where the Cardholder uses the internet to purchase goods and/or order services from Customer, or where Customer uses the internet to submit a Transaction to Elavon for acquiring.

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

**Jailbroken Device:** means an iOS device where the operating system's limitations have been removed through the use of software and hardware exploits, thus giving 'root access' to the operating system and allowing the download of additional applications, extension and themes that are unavailable through the official application store.

**Laws:** means all applicable laws, legislation, rules, regulations, directives, and recommendations applicable to a party to the Agreement or to any Transaction, for the time being in force in any jurisdiction, including anything issued by any Competent Authority, and any amendments, extensions or re-enactments to the same from time to time.

**MasterCard®:** means Mastercard Europe sprl.

**MATCH™:** means Member Alert to Control High Risk Customer, a file maintained by MasterCard® of merchants whose contracts with other banks have been terminated or where they have been given notice of termination, for cause.

**Merchant Material Adverse Change:** means any circumstance, event or series of events that we have reasonable grounds to believe materially adversely affects or may materially adversely affect your liabilities or potential liabilities; or your ability fully and promptly to perform and comply with any one or more of your obligations under this Agreement, including:

- (a) a material change in the nature of your business or the goods and/or services supplied by you;
- (b) a material positive or negative fluctuation month-on-month in your Transaction volumes or the average value of your Transactions or the occurrence of such other event as may give rise in our discretion to a significant increase in our risk profile;
- (c) a material increase in your Chargeback, Refunds and/or declined Transactions levels relative to expected volume;
- (d) the occurrence of a Card Scheme Fine;
- (e) a Change of Control in respect of you, or a sale or other disposal of any substantial division or part of your business;
- (f) the withdrawal, removal, termination or unenforceability of any Security in relation to you which we rely upon;
- (g) the withdrawal or termination of any licence, permission or authorisation required to operate your business;
- (h) instructions from a Competent Authority which you do not, or you are unable or unwilling to, comply with;
- (i) you grant to a third party any security or charge over all or a significant proportion of your assets; or
- (j) a material deterioration in your profits or your financial or trading position; or
- (k) your credit rating drops below one or more levels below its rating at the date of signature of this Agreement,
- (l) provided that, in respect of events set out at sub-paragraphs (b), (c) and (j) only, account shall be taken of historical figures and trends including seasonality of sales and yearly sales growth.

**Merchant Services:** means the acceptance of Sales Transaction Receipts in accordance with the Agreement.

**Merchant Service Charges:** means our charges (expressed as a percentage fee or fee per Transaction or both) for providing Merchant Services to you as set out in the Schedule of Fees and as amended from time to time.



**MID:** means the Customer's unique merchant identification number with Elavon.

**MO Transaction and TO Transaction:** means, for MO or Mail Order, a Sales Transaction that occurs when the Cardholder makes a purchase from a Customer by mail, and for TO, means a Sales Transaction that occurs when the Cardholder uses a telephone to make a purchase from a Customer and MO/TO or MO/TO Transaction shall have a cognate meaning.

**MPI:** means merchant plug-in; software developed by a certified third party in accordance with the Card Scheme Rules (currently MPI - Version 1.02) for handling e-payment transactions in a 3D Secure™ system in accordance with the specifications published by Visa and any amendments and/or versions from time to time.

**Obligations:** means all of Customer's current and/or future and/or actual and/or contingent payment and performance obligations under the Agreement, including payment for Merchant Service Charges and liability for any Chargebacks, and all other Fees and Adjustments.

**Online Authentication Solution:** means any technical solution, based on software, hardware or combination thereof, including 3D Secure™, that is developed or required by an Issuer or a Card Scheme in order to enable and conduct Authentication, including SCA, with regard to Internet Transactions.

**Online Authentication Solution Plugin:** means any software, hardware or combination thereof, including MPI, that must be installed on Customer's side in order to enable the Customer to participate in an Online Authentication Solution.

**Operating Guide:** means the operating manual provided by Elavon to Customer, and any amendments made to it by Elavon from time to time.

**PAN:** means the primary account number of a Card.

**Payment Services Regulations 2017:** means the Payment Services Regulations 2017, UK Statutory Instrument 2017 No. 752, as amended from time to time;

**PCI Service:** means that element of the Merchant Services which comprises the provision by Elavon and/or its contractor of any services designed to assist the Customer in being PCI DSS compliant (which may include a Solution).

**PCI DSS:** means the Payment Card Industry Data Security Standards as published by the PCI SSC at [www.pcisecuritystandards.org/](http://www.pcisecuritystandards.org/) and updated from time to time (including any successor standards to those standards).

**PCI Level 3 Or Level 4 Customer:** has the following meaning, which shall depend on the Customer's (anticipated) number of Transactions: (i) if the Customer is PCI Level 3, the Customer processes between 20,000 and 1 million Internet Transactions per annum; or (ii) if the Customer is PCI Level 4, the Customer processes less than 20,000 Internet Transactions or up to 1 million MO/TO and Card Present Transactions per annum.

**PCI SSC:** means the Payment Card Industry Security Standards Council, or any such replacement body as notified to you by us.

**PCI Waiver Plan:** means the plan forming part of the PCI Service as more particularly described in the Operating Guide.

**PED:** means a PIN entry device.

**Person:** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**Personalised Security Credentials:** means personalised features provided by an Issuer to a Cardholder for the purposes of Authentication.

**PIN:** means a personal identification number.



**PIN Pad:** means a secure device with an alphanumeric keyboard which conforms with the Laws and the Card Scheme Rules, and through which a Cardholder may enter a PIN.

**PIN Transaction:** means a Transaction that is verified by the Cardholder using a PIN.

**Protected Parties:** means Elavon, its Affiliates, employees, officers, directors, contractors and agents; each being a Protected Party.

**PSD 2:** means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

**Purchase with Cashback:** means the provision of cash by the Customer to a Cardholder at the point of sale in a Card Present environment only, and where the Cardholder has made a purchase of goods and/or services with a Card.

**Purchaser:** means a Person who or which has ordered goods and/or services from you and has initiated a Transaction in respect of that order.

**Recurring Sales Transaction:** means a repetitive periodic Sales Transaction agreed in writing and in advance between you and the Cardholder for which you debit the Cardholder's Card (such as subscriptions, payment of insurance premiums by instalments).

**Recurring Sales Transaction authority:** means a Cardholder's prior written authority (in a form approved by us) for you to debit the Cardholder's Card account in relation to a Recurring Sales Transaction. The written authority must set out the amount and frequency of the recurring charge and the duration of time during which such charges may be made.

**Refund:** means a payment made by the Customer to the Cardholder and/or Issuer for credit to the Cardholder's account to wholly or partially reverse a Sales Transaction.

**Refund Receipt:** means the paper or electronic record evidencing a Refund.

**Regulation 2019/518:** means Regulation of The European Parliament and of the Council of 19 March 2019 amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges.

**Relevant Resolution Authority:** means the resolution authority with the ability to exercise any Bail-in Powers in relation to Elavon.

**Reporting Tool:** means the online reporting system owned and operated by Elavon and provided to the Customer in accordance with section 10.

**Representment:** means a Sales Transaction to reverse a Chargeback by the re-execution of the original Sales Transaction, where you have successfully challenged the Chargeback.

**Retrieval Request:** means a request initiated by a Cardholder or Issuer that requires you to produce a legible copy of a Cardholder's signed Sales Transaction Receipt (except in the case of properly effected PIN Transactions or certain other Transactions that are Card Not Present) within a specified period of time, and/ or request for Representment by an Issuer requiring you to represent the Sales Transaction Receipt for a Sales Transaction.

**Rooted Device:** means a device where a user has performed a process to gain 'root access' within Android's subsystem.

**Sales Transaction:** means a payment using either a Card, Card number or Card account, for goods and/or services provided by the Customer and in relation to which Elavon has supplied the Merchant Services to the Customer (including Recurring Sales Transactions or a series of connected Sales Transactions).

**Sales Transaction Receipt:** means the paper or electronic record evidencing a Sales Transaction.

**SCA:** Strong Customer Authentication (within the meaning of PSD 2) means an Authentication based on the use of two or more elements categorised as knowledge (something only the Cardholder knows), possession (something only the Cardholder possesses) and inherence (something the Cardholder is) that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as to protect the confidentiality of the Authentication data.

**SCA RTS:** means Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication and, where relevant, the equivalent regulatory technical standards published by the Competent Authority.

**Schedule of Fees:** means our standard charges (as amended from time to time) that are payable in addition to the Merchant Service Charges, the fees current at the date of the Application being those listed in the section so entitled in the Application.

**Security Document(s):** means any form of fixed or floating mortgage, charge, debenture, indemnity or any Guarantee or any other form of security.

**Security Audit:** means an independent security audit of the Customer's computer systems to identify the source of the Data Breach.

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

**Settlement Funds:** means the sum equal to the value of all Transactions acquired by Elavon less Merchant Services Charges; Refunds; Chargebacks; all other charges set out in the Schedule of Fees; and any Fees and Adjustments.

**Solution:** means one of the following: (i) Secured PCI; (ii) Secured Pro; or (iii) Secured Encrypt (as applicable).

**Supervisor Password:** means a password issued to you to protect system information stored on your Terminals.

**Term:** means the period from the Commencement Date until the expiry or termination of this Agreement in accordance with its terms.

**Terminal:** means a point of sale terminal and all other point of sale devices, hardware, associated equipment, software and other electronic computer and telecommunications devices and equipment (including any PED) used by the Customer to process any Transaction that is Card Present and that conforms with the requirements established from time to time by the applicable Card Scheme and by Elavon, and includes Chip and PIN Terminals, Third Party Terminals, Card Readers and Wireless Terminals.

**Terminal Recovery Fee:** means the Terminal Recovery Fee as set out in the Schedule of Fees.

**Termination Fee:** (if applicable) means the reasonable and unavoidable costs incurred prior to termination of this Agreement, as more particularly calculated/defined in the Schedule of Fees.

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

**Third Party Vendor:** means any Person providing or facilitating Value Added Services to you that is not an Affiliate of Elavon and which, complies with the PCI DSS.

**TOS:** means these terms of service which relate to the provision of Merchant Services and the sale of any Card Reader or other Goods detailed in the Application by Elavon to the Customer and any amendments to the same from time to time.

**Transaction:** means a Sales Transaction and/or a Refund (as the context requires). For the purposes of the Schedule of Fees in relation to the "Elavon Payment Gateway" only, a "Transaction" also includes a referred Transaction and/or a declined Transaction.

**Transaction Receipt:** means a Sales Transaction Receipt and/or a Refund Receipt (as the context requires).

**Value Added Services:** means any product or service provided by a Third Party Vendor to assist Customer in accepting Transactions under the Agreement and in connection with the Merchant Services provided by Elavon, including, internet payment gateways, Terminals, 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.

**Virtual Card:** means a digital Commercial Card, including a B2B virtual card.

**Visa:** means Visa Inc.

**VMSS™:** means Visa Merchant Screening Service, a pan-European enquiry service providing merchant acquirers with a central database of merchants whose contracts have been terminated by other banks or where merchant is on notice of termination, because of fraudulent or questionable activity.

**Warranty Period:** has the meaning given in Schedule 6, paragraph 3.1.

**WEEE Regulations:** means the European Communities (Waste Electrical and Electronic Equipment) Regulations 2014 (as amended).

**Wireless Terminal:** means a Terminal that allows wireless processing and includes general packet radio service terminal ("GPRS Terminals").

**Your Bank Account:** means an account, in the name of Customer only, with an institution in the United Kingdom acceptable to Elavon, maintained by the Customer for the purposes of facilitating (i) payment from Elavon and (ii) for making payments to Elavon in respect of Merchant Service Charges, Chargebacks, all other Fees and Adjustments, and any other payments due to Elavon from time to time.

## SCHEDULE 1. DATA PROTECTION

### The provision of Merchant Services

1. You shall, in relation to the provision of Merchant Services, comply with all applicable Data Protection Rules as they apply to you in your role as data controller. The terms “**processing**”, “**controller**”, “**personal data**” and “**processor**” shall have the meaning ascribed to them by the Data Protection Rules.
2. You are the controller, and Elavon is the processor, in relation to processing of Transaction-related personal data in connection with the provision of Merchant Services. The data processing activities carried out by Elavon are as follows:

Subject matter and duration of processing:	Personal data is processed for the purpose of providing Merchant Services under this Agreement during the term of this Agreement.
Nature and purpose of the processing:	Obtaining, recording, storing and transmitting personal data for the purpose of enabling Transactions.
Types of personal data:	Cardholder data that is necessary to process transactions in the course of providing the Merchant Services.
Categories of data subject:	Customers who purchase goods or services.

3. When Elavon processes such personal data for any purpose other than in connection with the provision of Merchant Services (including, without limitation, carrying out fraud prevention checks, anti-money laundering checks and use of aggregated data for analysis purposes), Elavon shall be a controller in respect of such processing.
4. Where Elavon is acting as a processor on your behalf Elavon shall:
  - 4.1. subject to your compliance with paragraph 5 below, only act on instructions from you regarding the processing of personal data, in connection with the nature of processing permitted under this Agreement and for the purposes of providing the Merchant Services and to comply with legal requirements in connection with the provision of Merchant Services;
  - 4.2. comply with Elavon’s security policies and any other security procedures agreed between the parties from time to time which are intended to ensure that appropriate technical and organisational measures shall be taken to prevent (i) unauthorised or unlawful processing of the personal data and (ii) accidental loss or destruction of, or damage to, the personal data having regard to the state of the technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to the harm that may result from breach of such measures and the nature of the personal data to be protected;
  - 4.3. maintain all applicable PCI DSS requirements to the extent Elavon possesses or otherwise stores, processes or transmits a Cardholder’s data on your behalf;
  - 4.4. be responsible for the reliability of any of Elavon’s employees or sub-contractors who have access to the personal data provided by you and shall ensure that such employees

- and sub-contractors are subject to obligations of confidentiality in relation to the personal data processed in connection with the provision of the Merchant Services;
- 4.5. promptly notify you of any requests made by any data subjects under the Data Protection Rules or enforcement agencies in relation to the processing of personal data so that you may deal with any such request;
  - 4.6. taking into account the nature of the processing undertaken by Elavon, assist you, in so far as is reasonably and legally possible, in responding to requests from data subjects exercising their rights under the Data Protection Rules; and
  - 4.7. taking into account the nature of the processing undertaken by Elavon and the information available to Elavon, assist you, in so far as is reasonably and legally possible, with notification of data breaches to regulators and individuals, with the conduct of data protection impact assessments and with prior consultation with data protection regulators, in each case to the extent that such assistance is legally required under the Data Protection Rules.
5. You warrant and undertake that any instructions given by you to Elavon in respect of the personal data where Elavon is acting as a data processor shall at all times be in accordance with the Data Protection Rules and that compliance with such instructions and the processing of the personal data as permitted by this Agreement shall not result in a breach of the Data Protection Rules by you or Elavon.
  6. You agree that Elavon may appoint Elavon's Affiliates as sub-processors and that both Elavon and Elavon's Affiliates may appoint third party sub-processors in connection with the provision of the Merchant Services, provided in each case that equivalent obligations to those contained in this Schedule 1 are included in a written contract with all sub-processors.
  7. You acknowledge and agree that Elavon may transfer personal data to countries outside of Ireland, the European Union and/or the European Economic Area including the United States of America in connection with the provision of the Merchant Services provided that proper precautions to safeguard the security and confidentiality of such data are taken.
  8. Upon request and subject to section 19 (Confidentiality), Elavon shall make available to you information regarding Elavon's compliance with this section 17. Not more than once in any 12 month period you may request an audit to check Elavon's compliance with this section 17. You shall be responsible for paying the costs of the audit at Elavon's standard rates. The scope and timing of the audit shall be agreed in advance and any information accessed as a result of the audit shall be subject to the obligations set out in section 19 (Confidentiality).
  9. Upon termination of this agreement to the extent that Elavon holds any personal data on your behalf as a processor you agree that Elavon shall delete such personal data unless Elavon is required to retain the personal data to comply with applicable laws or is otherwise authorised by law to retain the personal data.
  10. Paragraphs 2 to 9 above only apply where Elavon is acting as processor on your behalf and do not apply where Elavon is acting as controller of personal data.

11. In handling (i.e. storing, processing or transmitting) sensitive payment data, you will implement security measures in your IT infrastructure as follows:
  - 11.1. In designing, developing and maintaining internet payment services, you will pay special attention to the adequate segregation of duties in information technology (IT) environments (e.g. the development, test and production environments) and the proper implementation of the “least privilege” principle as the basis for sound identity and access management.
  - 11.2. You will have appropriate security solutions in place to protect networks, websites, servers and communication links against abuse or attacks. You will strip servers of all superfluous functions in order to protect (harden) them and eliminate or reduce vulnerabilities of applications at risk. Access by the various applications to the data and resources required shall be kept to a strict minimum following the “least privilege” principle. In order to restrict the use of “fake” websites, transactional websites offering internet payment services shall be identified by extended validation certificates drawn up in your name or by other similar validation methods.
  - 11.3. You will have appropriate processes in place to monitor, track and restrict access to: (aa) sensitive payment data, and (bb) logical and physical critical resources, such as networks, systems, databases, security modules, etc. You will create, store and analyse appropriate logs and audit trails.
  - 11.4. In designing, developing and maintaining internet payment services you will ensure that data minimisation is an essential component of the core functionality: the gathering, routing, processing, storing and/or archiving, and visualisation of sensitive payment data is kept at the absolute minimum level.
  - 11.5. Security measures for internet payment services will be tested under the supervision of your risk management function to ensure their robustness and effectiveness. All changes are subject to a formal change management process ensuring that changes are properly planned, tested, documented and authorised. On the basis of the changes made and the security threats observed, tests are repeated regularly and include scenarios of relevant and known potential attacks.
  - 11.6. Your security measures for internet payment services will be periodically audited to ensure their robustness and effectiveness. The implementation and functioning of internet payment services will also be audited. The frequency and focus of such audits should take into consideration, and be in proportion to, the security risks involved. Trusted and independent (internal or external) experts carry out the audits. They are not involved in any way in the development, implementation or operational management of the internet payment services provided.
  - 11.7. Whenever you outsource functions related to the security of internet payment services, the provisions of SCA RTS relating to SCA and any relevant guidelines published by the European Banking Authority and other Competent Authorities shall be complied with.
12. Elavon shall immediately inform you if, in its opinion, an instruction given or request made pursuant to this Schedule 1 infringes Data Protection Rules.

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The liability of the member is limited. United Kingdom branch registered in England and Wales under the number BR022122.

U.S. Bank Europe DAC, trading as Elavon Merchant Services, is a credit institution authorised and regulated by the Central Bank of Ireland. Authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request.

ELAVON TOS – UK 05/2025

