elavon

Terms of Service



The English version of “Terms of Service” is a translation of a document, that initially was written in Norwegian. In case of discrepancies between the Norwegian text “Terms of Service” and the translation to English, the Norwegian should prevail.

1. DEFINITIONS AND RULES OF INTERPRETATION

(a) Unless otherwise stated, the definitions set out in the glossary at the end of these TOS apply to the Agreement.

(b) Singular terms shall include the plural, and vice versa, unless the context otherwise requires.

(c) “Including” shall not be construed as exclusive or limiting, and shall generally mean “including but not limited to.”

(d) 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.

(e) References to a Person include a reference to that Person’s successors or assignees.

(f) 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 other Agreement you have entered into with Elavon for similar or related services; (iv) any agreement entered into pursuant to section 6(a)(ii); (v) the Operating Guide; and (vi) any other guides or manuals provided to Customer 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.

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

2. THE AGREEMENT, RULES AND LAWS

You shall comply with the following at all times:

(a) the provisions of the Agreement;

(b) the Card Scheme Rules;

(c) all Laws; and

(d) your obligations relating to the sale and/or supply of goods and/or services by you to your customers.

3. CARD ACCEPTANCE

Under this Agreement, unless otherwise agreed with Elavon, you shall:

(a) only accept valid and current Cards as payment for any of the full range of goods and/or services that you have sold and supplied.

(b) accept Transactions only in accordance with the terms and conditions of the Agreement;

(c) not impose any financial limit in respect of Transactions, or otherwise establish minimum or maximum Transaction amounts;

(d) not use your personal/business Cards to conduct a Transaction in circumstances where you are acting as both Customer and Cardholder;

(e) not accept Transactions in respect of which an employee, director or other member of your business is the Cardholder;

(f) only accept Transactions in the currency (or currencies) stated in the Application;

(g) subject to sections 3(h) and 3(i), when dealing with your customers, treat purchases by Card in the same way as cash purchases, including offering the goods and/or services you sell at the same price regardless of the form of payment;

(h) where permitted by the Card Schemes or by the Laws, be entitled to offer a reduction to a customer for using a Card, provided that you clearly inform the Cardholder at your business location, before accepting the Transaction of the amount or method of calculation of any such reduction; and

(i) where permitted by the Card Schemes or by the Laws, be entitled to surcharge a customer for using a Card, provided that (i) any such surcharge bears a reasonable relationship to your cost of accepting the Card and (ii) you clearly inform the Cardholder at your business location, before accepting the Transaction, of the amount or method of calculation of such surcharge. All requirements of Laws, any Competent Authority or the Card Schemes regarding disclosure of such a surcharge must be complied with by you.

4. YOUR BANK ACCOUNT

(a) **Establishment and authority.** You shall:

(i) open and throughout the Term of the Agreement maintain Your Bank Account(s); and

(ii) 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.

(b) **Changes to Your Bank Account.**

(i) You must:

(aa) subject to section 4(b)(i)(bb), 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);

(bb) 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.

(ii) Elavon will have no liability to you whatsoever for any loss caused by any delay in payments into Your Bank Account pursuant to section 4(d), due to and/or during any change set out in section 4(b)(i).

(c) **Direct Debit Mandate.**

(i) 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.

(ii) Subject to section 4(b)(i)(bb), 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 for such revocation.

(iii) 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.

(d) **Payments into Your Bank Account.**

(i) Subject always to the Laws, Card Scheme Rules, any direction of a Competent Authority or any deduction made 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.

(ii) Elavon will endeavour to make payments to your chosen Financial Institution, subject always to 4(d)(i), 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 banking 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 Nominated Bank Account is held.

(iii) you will be liable to pay any intermediary fees that may be imposed by intermediating banks or any other intermediary institutions based on your choice of funding currency, the choice of your bank or your Bank Account. Intermediary banks (and other intermediary institutions) deduct their charges directly from the amount being transferred. This means that you will receive an amount that is reduced by the fees applied by all such parties involved.

(e) **Provisional credit.** All payments into Your Bank Account pursuant to section 4(d) 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.

(f) **Acquiring limits.** Elavon may limit the volume of Transactions it will acquire from you. Such limit may be changed by Elavon from time to time, upon reasonable notice to you. If you exceed the established limit, Elavon may suspend the acquiring of Transactions, and either return all Transactions exceeding the agreed volume to you or retain the sums it would otherwise pay into Your Bank Account pursuant to section 4(d) in accordance with the provisions of section 14.

(g) **Card Scheme Fees.** 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 pursuant to section 26(g). Card Scheme Fees and rules applicable to MasterCard® Transactions, are available on MasterCard's public internet site at www.mastercard.com. In addition, information regarding Transaction-related card scheme fees are available via the Reporting Tool.

5. OUR FEES

(a) 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 ("Acquiring Costs"). You authorise Elavon to deduct the Acquiring Costs from the Settlement Monies before paying the balance into Your Bank Account.

(b) We may from time to time vary the fees and charges set out at section 5(a) above and/or introduce new additional charges in accordance with section 26(g).

(c) 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 Plus basis.

(d) If you are an Interchange Plus 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. We will endeavour to provide 2 (two) months' notice of any material change in Card Scheme Fees or Card Scheme Fines where reasonably practicable.

6. TERMINALS AND OTHER GOODS

(a) **Use.**

(i) Unless alternative forms of accepting Transactions are provided for by the Card Scheme Rules or the Laws, you shall use a Terminal for accepting Transactions regardless of the amount involved and notwithstanding any Authorised Floor Limit.

(ii) In the event that any Terminal is installed at your outlets, such installation will be agreed between the parties. Elavon reserves the right to withhold or withdraw its approval of the location of the Terminals, including Third Party Terminals, if the location is or becomes unsuitable for the purpose. For the avoidance of doubt, any Terminal provided to you by Elavon pursuant to a separate hire agreement (either Regulated Hire Terminal Terms or Unregulated Terminal Hire Terms) must be attended by the Merchant at all times during its operation.

(iii) You shall provide, maintain and pay for all power and telecommunications connections necessary to operate the Terminals including, payment for all related charges incurred by you in gaining access to and using the Merchant Services. You shall not use, or permit to be used, the SIM card from any GPRS Terminal for any purpose other than the transmission and receipt of data in connection with the Merchant Services. If you do so in breach of this section 6(a)(iii), then you shall be liable for all additional voicecall and/or data transmission charges incurred plus an administrative charge to cover all costs incurred by us in recovering those additional charges from you.

(iv) You shall from time to time, provide to Elavon upon request the following information in relation to each Third Party Terminal or other PED:

(aa) stock and serial numbers of each Third Party Terminal (and in addition, you shall keep a record of such information yourself);

(bb) location of Card Readers or other PEDs (and in addition, you shall keep a record of such information yourself); and

(cc) details of Third Party Terminal management systems (basic form of electronic identification and verification of PEDs).

(v) 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: (aa) 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 (bb) 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.

(vi) Pursuant to section 6(a)(vii), you may utilise at your own expense Third Party Terminals, provided such Third Party Terminals are in all respects compliant with the requirements of the Card Schemes including, for the protection of Cardholder information. You agree that the onus of showing such compliance shall rest with you.

(vii) If we have agreed that you may use a Third Party Terminal, you shall either effect the outright purchase of any such Third Party Terminal or shall ensure its continued and uninterrupted availability by way of leasing or hiring or similar such arrangement. If your Third Party Terminals are leased, you shall be obliged to honour the terms and conditions of your leasing contract. However, you may not use a Third Party Terminal until Elavon has tested and approved its location and relevant systems. In accordance with section 6 (a)(v) and section 21(h), where you employ a Third Party Terminal, you will assume full responsibility and liability for any failure of the Third Party Terminal to comply with the Laws, the Agreement and the Card Scheme Rules.

(viii) 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.

(b) **Chip and PIN Technology.**

(i) You are responsible for ensuring that your Terminals and your use of those Terminals are Chip and PIN Compliant.

(ii) You shall have sole and exclusive liability for fraudulent Transactions that occur but which, could have been prevented had you been Chip and PIN Compliant. Without limiting the foregoing, subject to the terms of the Agreement, liability for all failed or fraudulent Transactions carried out using C&P Cards will still rest with you, in any case, where you accept a C&P Card Transaction:

(aa) using a Terminal or Third Party Terminal that does not incorporate Chip and PIN Technology;

(bb) using a Terminal, Card Reader or Third Party Terminal which incorporates Chip and PIN Technology but does not use the Chip and PIN functionality to accept the C&P Card Transaction;

(cc) without using a PIN Pad.

(c) **Use and availability of PIN Pads.**

(i) A Cardholder's Card information and PIN are confidential. You may not request or require a Cardholder to disclose his/her PIN at any point during payment. During the Transaction process, you must provide a reasonably secure area for Cardholders to enter their PIN into the PIN Pad. You shall cause a Terminal and PIN Pad device to be readily available at your locations for use by all Cardholders whenever C&P Cards are accepted. You shall take all reasonable steps to ensure that all Terminals and PIN Pads function with a minimum of error, in a reliable manner and in accordance with the standards established from time to time by Elavon and the Card Schemes.

(ii) Except where otherwise allowed by the Card Scheme Rules or the Laws, you shall use a Terminal to initiate every C&P Card Transaction and you shall require that either the Cardholder or you insert and/or swipe the C&P Card through the Terminal. No C&P Card Transaction may be initiated unless the C&P Card is physically present.

(iii) You shall require that each Cardholder enter his/her PIN using a PIN Pad at the Terminal. Unless otherwise allowed by the Card Scheme Rules or the Laws, you cannot request a C&P Card Cardholder to sign a Transaction Receipt or other receipt, or require any other means of identification.

(iv) Subject to the Laws and the Card Scheme Rules, in the event of Chip Failure during a C&P Card Transaction, the Transaction may be completed as a magnetic-stripe-read Transaction but must be submitted for Authorisation, in accordance with the procedures detailed in the Operating Guide.

(v) If you accept C&P Cards, no data referencing the Cardholder's PIN shall be printed on any Transaction Receipt.

(d) **Refunds.**

(i) If permitted by the applicable Card Scheme, you may electronically process a Refund for a C&P Card Transaction only at the same Customer named on the Transaction Receipt where the original C&P Card Sales Transaction was initiated. A Refund requires the following procedures:

(a) the Card must be inserted and/or swiped through the Terminal;

(b) the Cardholder must re-enter the PIN on the PIN Pad;

(c) Customer must transmit the Authorisation Code and the exact amount (in the relevant currency) of the Transaction (or part) to be credited or refunded.

(e) **Manual Processing (or Back-Up Procedures).**

If for any reason your Terminal ceases to function correctly or at all (e.g. it is unable to read the magnetic stripe on a Card), you will, with respect to Cards, follow the manual or other back-up processing procedures in the Operating Guide or other Terminal user guide, and shall otherwise follow any procedures specified by Elavon. Any manual Transaction Receipts must comply with the data requirements from time to time of the relevant Card Scheme.

(f) **Wireless Terminals.**

(i) **Limitations of Wireless Technology.** If you use a Card Reader or other Wireless Terminal, you acknowledge and agree that due to the nature of wireless technology, certain limitations exist that may affect the performance, Coverage Area and reliability of wireless technology and wireless processing in relation to a Card Reader or other Wireless Terminal. In the event that your ability to process wireless Transactions is limited or prevented for any reason, you agree not to use the Wireless Terminal and instead, to process the Transaction using alternative means as set out in the Agreement.

(ii) **Completing Unauthorised Transactions.** If you choose to complete a Card Reader or other Wireless Terminal Transaction without an Authorisation Code as required by section 7(b) or without SCA as required by section 7(h), because wireless coverage is not available or otherwise (e.g. you store Transaction data in a Card Reader or other Wireless Terminal, provide the Cardholder with goods and/or services and subsequently request Authorisation of the Transaction), you do so entirely at your own risk.

7. AUTHORISATION AND SCA

(a) **Authorised Floor Limit.** Unless otherwise agreed by Elavon in writing, the Authorised Floor Limit for Sales Transactions shall be zero. You must not split the value of sales made to a Cardholder at any one time over more than one Transaction to avoid obtaining Authorisation.

(b) **Authorisation Code Required.** You must obtain an Authorisation Code before completing any Sales Transaction whether electronically through use of a Terminal or verbally by telephoning for an Authorisation Code in accordance with the Operating Guide.

(c) **Effect of Authorisation Code.** An Authorisation Code does not:

(i) guarantee Customer payment for a Sales Transaction;

(ii) guarantee that a Sales Transaction will not be disputed later by the Cardholder or Issuer as any Sales Transaction is subject to Chargeback;

(iii) protect Customer in the event of a Chargeback regarding unauthorised Sales Transactions or disputes involving the quality of goods and/or services;

(iv) prevent us from recovering a Chargeback or other amount with respect to a Sales Transaction where permitted under the terms of this Agreement.

(d) **Cancellation of Authorisation.** If you or the Cardholder decide not to proceed immediately with a Sales Transaction, you must cancel the corresponding Authorisation Request.

(e) **No Authorisation.** If you do not make an Authorisation Request where required under this section, or if Authorisation is refused, you must not complete the Sales Transaction. Where the original Authorisation is refused, you must not resubmit a Sales Transaction for Authorisation. Should you do so, and you rely on any subsequent Authorisation, you will be liable (and will indemnify us) in respect of any Chargeback, Fees and Adjustments or other losses in relation to such Sales Transaction.

(f) **Zero value Authorisations.** Authorisation Requests in order to validate a Card (usually for an amount between £0.01 and £1.00) are not permitted. You must process such requests as an Account Status Inquiry should you wish to validate a Card with no subsequent settlement, in accordance with the Card Scheme Rules.

(g) **Cardholder authority.** You must obtain authority for each Transaction to be debited to the Cardholder's account. Such authority shall be deemed given (unless the Card is reported lost, stolen or compromised):

(i) for a Transaction that is Card Present only when: (aa) with respect to PIN Transactions, the Cardholder enters the PIN correctly into the Terminal, and promptly effects a successful PIN verification, or (bb) you procure the Cardholder signature on the Transaction Receipt produced by the Terminal. The signed Transaction Receipt or printed Transaction record (following successful PIN verification) produced by the Terminal which shall constitute the Transaction Receipt, will in each case be evidence of the Cardholder's authorisation to debit the amount of the Transaction from the Cardholder's account.

(ii) for MO Transactions, by obtaining the signed written authority of the Cardholder and for TO Transactions, by retaining documentary evidence of the Cardholder's authority to debit his/her account for the Transaction amount.

(iii) for Internet Transactions, by obtaining the CVV2/CVC2 number from the Card.

(h) **Application of SCA.** SCA applies to all Sales Transactions, subject to section 7(k) and section 7(l) below. Unless otherwise agreed by Elavon in writing, you must:

(i) electronically request the application of SCA before completing any Sales Transaction, through the use of a Terminal or through the Service and Software (in the case of Internet Transactions);

(ii) enable and cooperate in the application of SCA to all Sales Transactions;

(iii) follow any instructions with regard to SCA received from an Issuer or Elavon, including instructions provided electronically through a Terminal or through the Service and Software (in the case of Internet Transactions). If an Issuer and Elavon give you incompatible instructions regarding the application of SCA to a Sales Transaction, you must give priority to the instructions of the Issuer.

(i) **SCA Decisions.** You must not:

(i) apply SCA on your own initiative if an Issuer or Elavon have not instructed you to do so;

(ii) split the value of sales made to a Cardholder at any one time over more than one Transaction or otherwise misrepresent the circumstances of a particular Transaction to avoid applying SCA.

(j) **No SCA.** If you do not request, enable or cooperate in the application of SCA where required under this section, or if SCA is unsuccessful, you must not complete the Sales Transaction. Should you do so, you will be liable (and will indemnify us) in respect of any Chargeback, Fees and Adjustments or other losses in relation to such Sales Transaction.

(k) **SCA Exemptions.** An Issuer or Elavon may decide not to apply SCA to certain Sales Transactions to the extent allowed by Laws or Card Scheme Rules, such as in the case of the following Sales Transactions:

(i) contactless Sales Transactions and Internet Transactions below thresholds specified in SCA RTS;

(ii) Sales Transactions at unattended Terminals for purposes specified in SCA RTS.

In such case you will be notified electronically through a Terminal or through the Service and Software (in the case of Internet Transactions).

(l) **SCA RTS Scope.** SCA does not apply to Sales Transactions that are outside the scope of SCA RTS, including:

(i) MO/TO Transactions;

(ii) Sales Transactions initiated by you.

(m) **Personalised Security Credentials.** A Cardholder's Personalised Security Credentials are confidential. You may not at any point during payment request or require a Cardholder to disclose his/her Personalised Security Credentials, capture or modify Personalised Security Credentials, capture or modify Authentication codes generated with the use of Personalised Security Credentials, or obscure or modify any information communicated through a Terminal or through the Service and Software by an Issuer or Elavon to a Cardholder in connection with the use of Personalised Security Credentials. During the Transaction process, if use of Personalised Security Credentials requires a Terminal, you must provide a reasonably secure area for Cardholders to use their Personalised Security Credentials through a Terminal.

(n) **Effect of SCA.** The application of SCA does not:

(i) guarantee Customer payment for a Sales Transaction;

(ii) guarantee that a Sales Transaction will not be disputed later by the Cardholder or Issuer as any Sales Transaction is subject to Chargeback;

(iii) protect Customer in the event of a Chargeback regarding unauthorised Sales Transactions or disputes involving the quality of goods and/or services;

(iv) prevent us from recovering a Chargeback or other amount with respect to a Sales Transaction where permitted under the terms of this Agreement;

(o) **Card Recovery.** You will use reasonable means to recover any Card in circumstances set out in the Operating Guide (i) if you are advised by Elavon or instructed to do so by a Terminal, a Compatible Device, the Issuer, or a voice authorisation centre to retain it; (ii) if you have reasonable grounds to believe the Card is lost, stolen, counterfeit, fraudulent, or otherwise invalid, or its use is not authorised by the Cardholder; (iii) with respect to Visa branded and MasterCard® branded Cards, if the four digits printed below the embossed account number do not match the first four digits of the embossed account number; or (iv) with respect to MasterCard® branded Cards only, the Card does not have the "Twin Globes" hologram on the lower right-hand corner of the Card face.

(p) **No agency.** You must not suggest that you are acting on our behalf at any time, unless you are holding back or recovering a Card at our request.

(q) **Disputes with Cardholders.** Any dispute between you and a Cardholder relating to a Transaction will be settled between you and the Cardholder. Elavon shall bear no responsibility for such disputes.

8. TRANSACTIONS

(a) **Transactions that are Card Present and Card Not Present.** You must use a Transaction Receipt to document each Transaction. A Transaction Receipt may be generated either electronically or manually and must include the details set out in the Operating Guide.

(b) **Warranties for Transactions.** When presenting any Transaction to Elavon, you warrant and represent that:

(i) the Transaction is represented by a Transaction Receipt conforming with the requirements of the Agreement and the Card Scheme Rules;

(ii) the Transaction was entered into in accordance with the Laws and the Card Scheme Rules;

(iii) all statements of fact contained in the Transaction Receipt are true, accurate and complete;

(iv) 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;

(v) except in relation to, sections 8(k), 8(l), or 8(m) below, no other Transaction Receipt has been or will be issued in respect of the same goods and/or services;

(vi) the Transaction is bona fide;

(vii) you have provided (or will provide, in accordance with section 8(f)(ii) or 8(n)) the goods and/or services to the Cardholder pursuant to the Sales Transaction;

(viii) 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

(ix) 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.

(c) **Invalid Transaction Receipts.** A Transaction Receipt shall be invalid if it is not issued in accordance with the Agreement, Laws and Card Scheme Rules, including:

(i) the related Transaction is for any reason illegal or incomplete, or, has the result of making a Refund or credit with respect to gaming or gambling winnings, unspent gaming or gambling chips, or any other value useable for gaming or gambling;

(ii) where required, the signature on it is incompatible with that on the Card;

(iii) the copy of it that is presented to Elavon is incompatible with the copy provided to the Cardholder;

(iv) the Card has expired or has not yet become valid at the time of the Transaction;

(v) another such receipt has been issued for the same goods and/or services which are the subject of the Transaction; (except in relation to sections 8(k), 8(l), or 8(m) below).

(d) **Delivery of Transaction Receipts.** For a Transaction that is Card Present, you will deliver a complete and legible copy of the Transaction Receipt (in either electronic (e.g. e-mail, text message (SMS) or fax) or paper (e.g., handwritten or Terminal-generated) format) to the Cardholder at the time of the Transaction. For a Transaction that is Card Not Present, this shall be done promptly but in any event, no later than seven (7) days following completion of the Transaction.

(e) **Retention of Transaction Receipts.** You will retain in an accessible place and produce on demand the "Customer 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(b), 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.

(f) **Presentment of Transactions to Elavon.** Unless otherwise agreed with Elavon in writing:

(i) you shall, subject to sections 8(f)(ii) and 25(d)(ii), present all Transactions to Elavon within three (3) Business Days of the date of such Transaction , and in all events, within thirty (30) Business Days from such date for a MasterCard® Transaction and twenty-one (21) Business Days from such date for a Visa Transaction;

(ii) MO/TO and Internet Transactions must not be presented until the relevant goods ordered by the Cardholder have been dispatched or arrangements made for services to be provided. Notwithstanding the foregoing: (aa) Visa MO/TO and Internet Transactions for goods may be presented before the dispatch of the goods or performance of the services, provided that within seven (7) days of presentment a written acknowledgement quoting the dispatch date is sent by you to the Cardholder, such dispatch date not to be later than twenty-eight (28) days from the date of receipt of the order, (bb) MasterCard® Card MO/TO and Internet Transactions, must not be presented until after the goods are dispatched or the services are performed unless, at the time of the Sales Transaction, the Cardholder agrees to a properly disclosed delayed delivery of the goods or services.

(g) **Mail Order and Telephone Order (MO/TO) Transactions.**

(i) You may not accept MO/TO Transactions without Elavon's prior written consent to do so. For the avoidance of doubt, consent will be deemed to have been given by Elavon where you have included your anticipated MO/TO Transactions within your Application and that Application has been accepted by Elavon.

(ii) If Elavon provides the consent set out in section 8(g)(i), for each MO/TO Transaction, you must retain in an accessible place and produce on demand documentary proof of dispatch of goods or supply of services rendered, for not less than two (2) years from the Transaction date.

(iii) If you do accept MO/TO Transactions without the consent set out in section 8(g)(i), then without prejudice to Elavon's other rights and remedies under the Agreement or at Law, you may have to pay a surcharge on each such MO/TO Transaction.

(h) **Internet Transactions.**

(i) You may not accept or present to Elavon Internet Transactions and/or Internet DCC Transactions without Elavon's prior written consent to do so. For the avoidance of doubt, consent will be deemed to have been given by Elavon where you have included your anticipated Internet Transactions within your Application and that Application has been accepted by Elavon.

(ii) If Elavon provides the consent set out in section 8(h)(i), you must comply with the provisions set out in Schedule 1 in respect of Internet Transactions.

(i) **DCC Transactions.** You may not accept DCC Transactions without Elavon's prior written consent to do so. For the avoidance of doubt, consent will be deemed to have been given by Elavon where your Schedule of Fees sets out our fees in relation to DCC Transactions. If Elavon provides the above consent, you must comply with the provisions set out in Schedule 2 in respect of DCC Transactions.

(j) **Electronic Gift Cards.** You may not accept EGCs without Elavon's prior written consent to do so. For the avoidance of doubt, consent will be deemed to have been given by Elavon where your Schedule of Fees sets out our fees in relation to EGCs. If Elavon provides the above consent, you must comply with the provisions set out in Schedule 3 in respect of EGCs.

(k) **Recurring Sales Transactions.** You may not accept Recurring Sales Transactions without Elavon's prior written consent to do so. For the avoidance of doubt, consent will be deemed to have been given by Elavon where you have confirmed that you accept Recurring Sales Transactions within your Application and that Application has been accepted by Elavon. If Elavon provides written consent you must:

(i) obtain a Recurring Sales Transaction Authority from the Cardholder;

(ii) obtain Authorisation at the first debit;

(iii) notify the Cardholder (aa) that his Recurring Sales Transaction Authority is subject to cancellation by the Cardholder at any time and (bb) of any change to the Sales Transaction details set out in the Recurring Sales Transaction Authority at least fourteen (14) days prior to the subsequent debit;

(iv) not complete any Recurring Sales Transaction after receiving: (aa) a cancellation notice from the Cardholder; (bb) a notice from Elavon that authority to accept Recurring Sales Transactions has been revoked; or (cc) a response that the Card is not to be honoured;

(v) retain the Recurring Sales Transaction Authority for a period of 18 months after the final payment that is made pursuant to it, and produce the Recurring Sales Transaction Authority to us on demand;

(vi) comply with any applicable Card Scheme Rules requiring registration of Recurring Sales Transactions or other applicable Transaction security requirements; and

(vii) acknowledge and accept that a Cardholder has the right to revoke a Recurring Sales Transaction at any time up to the end of the Business Day preceding the day agreed for debiting funds.

(l) **Multiple Transaction Receipts.** You will accept payment for goods and/or services in a single Sales Transaction Receipt unless: (aa) partial payment is entered on the Sales Transaction Receipt and the balance of the Sales Transaction amount is paid in cash or by cheque at the time of the Sales Transaction; or (bb) a Sales Transaction Receipt represents an advance deposit for a Sales Transaction completed in accordance with the Agreement and the Card Scheme Rules.

(m) **Deposits.** You may not accept any Card payment representing a deposit or partial payment for goods and/or services to be delivered in the future without Elavon's prior written consent to do so. For the avoidance of doubt, consent will be deemed to have been given by Elavon where you have completed the 'deposits' section within your Application and that Application has been accepted by Elavon. If Elavon provides written consent, you must execute one Sales Transaction Receipt when accepting the deposit Sales Transaction and a second Sales Transaction Receipt upon accepting the balance of the Sales Transaction. You will note the words "deposit" or "balance" on the applicable Sales Transaction Receipt. You will not present the Sales Transactions labelled or otherwise attributable to the "balance" until the goods have been delivered to Cardholder or services fully performed.

(n) **Future Delivery.** You may not present any Sales Transactions to Elavon (whether by electronic means or otherwise) that relate to the sale of goods and/or services for future delivery unless you have obtained the prior written consent of Elavon to do so. For the avoidance of doubt, consent will be deemed to have been given by Elavon where you have completed the 'upfront payments' section within your Application and that Application has been accepted by Elavon. If Elavon provides written consent, you must maintain sufficient working capital to provide for the delivery of goods and/or services at the agreed future date; such working capital shall be independent of any credit or proceeds resulting from future delivery Sales Transactions.

(o) **Purchase with Cashback.** You may not provide Purchase with Cashback without the prior written consent of Elavon to do so. For the avoidance of doubt, consent will be deemed to have been given by Elavon where you have completed the 'cashback' section within your Application and that Application has been accepted by Elavon. If Elavon provides such consent, you must comply with the provisions set out in Schedule 4 in respect of Purchase with Cashback.

(p) **Other Transactions.** You must obtain Elavon's prior written consent for other Transaction types including, pre-Authorisations (assured reservations); foreign exchange (Bureau de Change) Transactions; and contactless Card Transactions.

(q) **Prohibited Transactions.** You will not present to Elavon, directly or indirectly, any Transaction not originating from a Transaction directly between you and a Cardholder, or any Transaction you know or should know to be illegal, fraudulent or not authorised by the Cardholder. You will not present any Transaction (i) representing the refinancing or transfer of an existing obligation of a Cardholder, or (ii) that arises from the dishonour of a Cardholder's personal cheque. In all events, you must give reasonable assistance to Elavon in the prevention and detection of financial crime at your locations.

(r) **Multi-Currency Conversion.**

(i) If you submit Transactions for which you have offered to the Cardholder the goods and/or services in a currency (Transaction Currency) that differs from your chosen settlement currency (Settlement Currency) (Multi-Currency Conversion), then, in addition to the other processing fees payable for a Transaction, Elavon shall apply a conversion rate calculated daily by Elavon for each Multi-Currency Conversion. For the purposes of PSD 2 and other equivalent regulations transposing PSD2 in each EU Member States, the conversion rate will be shown in the Reporting Tool.

(ii) For the avoidance of doubt, if the Transaction Currency and Settlement Currency are the same, no Multi-Currency Conversion shall be required and no conversion rate shall be applied to such Transaction.

(s) **Higher Risk Additional Loading Transactions.**

(i) The Higher Risk Additional Loading Fee will apply to Higher Risk Additional Loading Transactions.

(t) **OCT (Original Credit Transaction) and DRS (Recycling Deposit Return Scheme Payment) Preliminary Requirements.** In order to avail yourself of either OCT or DRS, you must:

(i) pay Elavon funds paid to the Client, via OCT or the DRS, within 3 Business Days of Elavon paying the OCT or DRS to your Client and

(ii) pay Elavon the Fees relevant to the OCT and/or DRS, as such are set out in the Schedule of Fees.

9. REFUNDS

(a) 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.

(b) In order to evidence a Refund, you will issue a Refund Receipt, giving a copy to the Cardholder.

(c) In no event will you present a Refund that exceeds the amount of the original Sales Transaction. You will only make a Refund to the same Card or the same Cardholder's account which was used for the original Sales Transaction. You must not make a Refund with cash where the original Sales Transaction was made using a Card, unless required by the Laws, nor accept cash or other compensation for making a Refund to a Card.

(d) The amount of each Refund represents a debt immediately due and payable by you to us irrespective of whether we make demand upon you for the value of any Refund. Elavon may debit Your Bank Account for the total amount of each Refund submitted to Elavon (less its Merchant Service Charges). If the value of Refunds is more than the value of Sales Transactions, the difference will be due from you to Elavon and we will debit the difference from Your Bank Account.

(e) Unless otherwise agreed, in no event will Elavon be obliged to process returns, refunds, or adjustments related to transactions not originally acquired by Elavon.

(f) Elavon may, in its sole discretion, refuse to accept any Refund. If we do refuse to accept a Refund, we will notify you (unless prohibited by the Laws) of the refusal and, if possible, the reasons for such a refusal.

10. REPORTING TOOL

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. In this agreement, "Interbank Fee Regulation" means European Parliament and Council Regulation (EU) 2015/751 of 29 April 2015 on card-based interchange fees payment transactions.

11. RETRIEVAL REQUESTS

You agree to provide all reasonable assistance 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

(a) 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) or other disputes regarding the validity of a Transaction, even where (aa) all the requirements of Transactions set out in these TOS have been complied with, and/or (bb) you are under no legal liability in respect of the supply of the goods or services concerned.

(b) Where a Chargeback is raised (aa) if we have not yet paid you for that Sales Transaction, we will not be required to do so; or (bb) 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 are not a Sales Transaction but which have been acquired by us as a Sales Transaction.

(c) The amount of each Chargeback represents a debt immediately due and payable by you to us irrespective of whether we make demand upon you for the value of any Chargebacks.

(d) 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.

(e) Where section 12(b) applies, we will be under no obligation to deal with the Cardholder ourselves or to try to obtain payment from them or the Issuer.

(f) If you wish to dispute a Chargeback, you must prove to our reasonable satisfaction (or that of the relevant Issuer or Card Scheme) that the Sales Transaction was authorised by the Cardholder (as set out in section 7(g)), including the application of SCA where relevant, and provide us with any additional evidence that we (or the relevant Issuer or Card Scheme) require. We shall not be obliged to investigate or challenge the validity of a Chargeback.

(g) A Chargeback can occur for any reason set out in the Card Scheme Rules.

(h) You acknowledge and agree that we shall continue to be entitled to recover Chargebacks 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, notwithstanding the termination of this Agreement for whatever reason.

(i) You will not resubmit or reprocess any Sales Transaction that has been the subject of a Chargeback.

13. EXCESSIVE CHARGEBACK AND EXCESSIVE FRAUD MERCHANTS

(a) Without prejudice to section 25(c), in the event that we are notified that you are an Excessive Chargeback Merchant or an Excessive Fraud Merchant, we shall take such action as we may deem necessary including:

(i) 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;

(ii) issuing you with instructions (with which you will comply) on how to reduce the level of your Chargebacks or fraud incidents;

(iii) immediate suspension of your right to accept Cards or retention of funds in accordance with the provisions of section 14.

(b) You accept liability for any Card Scheme Fines as a result of you being deemed an Excessive Chargeback Merchant or an Excessive Fraud Merchant as notified by Elavon to you.

14. DELAYED PAYMENTS AND RESERVES

(a) In the circumstances set out below in section 14(b), and in addition to our rights under section 12, we may:

(i) delay any payment that we would otherwise be obligated to pay you pursuant to the Agreement; and/or

(ii) 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

(iii) debit Your Bank Account in any amount; and/or

(iv) otherwise retain any amounts we owe to you.

(b) The rights set out at section 14(a) above, may be exercised by us where:

(i) 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;

(ii) anything happens to you, or anything comes to the attention of Elavon in relation to you, which could reasonably be expected to result in an adverse change or deterioration in Customer's financial position, in particular, including but not limited to (i) you becoming the subject on an Insolvency Event, or (ii) where we reasonably believe you may be the subject of an Insolvency Event, or (iii) you fail to notify us of an Insolvency Event;

(iii) the Customer's business model changes, exposing Elavon to a significantly higher financial risk (e.g. offering services that differ from the Customer's original business model) but excluding business models to which Elavon has consented to in writing;

(iv) you fail to maintain your Direct Debit Mandate

(v) you fail to provide the information we request pursuant to section 20(g);

(vi) you fail to provide any Security Document to Elavon following notification pursuant to section 16 and/or any Security Document is terminated or withdrawn (without our prior consent), or any term of such Security Document is breached by you or by the Person providing such security;

(vii) one party terminates this Agreement;

(viii) 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;

(ix) we become aware of, or reasonably suspect, that you are an Excessive Chargeback Merchant or an Excessive Fraud Merchant;

(x) you breach any acquiring limit in respect of Transactions imposed by Elavon in accordance with section 4(f);

(xi) any sanction is imposed upon and/or announced to Elavon by a Card Scheme in relation to the actions or omissions of the Customer; or

(xii) the value of Refunds is more than the value of Sales Transactions.

(c) Elavon may, without notice to you, apply any funds retained in accordance with section 14(a) against any Obligations. Also, Elavon may utilise any funds retained in accordance with section 14(a) in order to exercise its rights under the Agreement, including (i) withdrawing any amounts that it might otherwise withdraw from Your Bank Account or (ii) exercising its rights of set-off to collect any Merchant Service Charges, Chargebacks, all other Fees and Adjustments, or other amounts due to Elavon under the Agreement.

(d) Elavon's rights set out at section 14(a) above shall continue until:

(i) 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

(ii) 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). At the time of Complete Performance, any amounts then retained in accordance with section 14(a) will be transferred to you, subject to the Agreement, the Laws, and the Card Scheme Rules.

15. SET-OFF

(a) 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 4(d) 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(a).

(b) In an Insolvency Event, you must maintain Your Bank Account as required by Elavon and we shall have the right, subject to the Laws, to offset against amounts held in Your Bank Account, any and all Obligations you may have to Elavon whether or not relating to Transactions initiated or created before or after the commencement of the Insolvency Event.

(c) Elavon shall also be entitled to exercise its rights of set-off as described in sections 15(a) and 15(b) in relation to any of your Affiliates as if reference to you in section 15(a) and section 15(b) was a reference to such Affiliate of yours.

(d) 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

(a) 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).

(b) You will, in the event that we require you to provide us with security as set out at section 16(a), comply with that requirement and execute such documents as are necessary to grant such security, in both cases within the timescale that we specify.

(c) 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

The provision of Merchant Services

(a) 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" and "processor" shall have the meaning ascribed to them by the Data Protection Rules.

(b) 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.

(c) 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.

(d) Where Elavon is acting as a processor on your behalf Elavon shall:

(i) subject to your compliance with section 17(e), only act on instructions from you regarding the processing of personal data, including as 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;

(ii) 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 against unauthorised or unlawful processing of the personal data and against 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;

(iii) maintain all applicable PCI DSS requirements to the extent Elavon possesses or otherwise stores, processes or transmits cardholder data on your behalf;

(iv) 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;

(v) 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;

(vi) 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

(vii) 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.

(e) 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.

(f) 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 clause 17 are included in a written contract with all sub- processors.

(g) You acknowledge and agree that Elavon may transfer personal data to countries outside of the UK, 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.

(h) 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).

(i) 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.

(j) Sections 17 (b) to (i) 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.

(k) In handling (i.e. storing, processing or transmitting) sensitive payment data, you will implement security measures in your IT infrastructure as follows:

(i) 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.

(ii) 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.

(iii) You will have appropriate processes in place to monitor, track and restrict access to: i) sensitive payment data, and ii) logical and physical critical resources, such as networks, systems, databases, security modules, etc. You will create, store and analyse appropriate logs and audit trails.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(l) Elavon shall immediately inform you if, in its opinion, an instruction given or request made pursuant to this clause 17 infringes Data Protection Rules.

18. PROTECTION OF CARDHOLDER INFORMATION

Without limiting section 17:

(a) 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 Customer's Third Party Vendors for the sole purpose of assisting you in your business and/or performing your obligations under the Agreement, and only then upon the written agreement of such Third Party Vendors to hold such information confidentially and to otherwise comply with 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.

(b) 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 Customer's 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 these TOS 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.

(c) 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

(a) Elavon's Confidential Information. You shall keep in strict confidence all Confidential Information.

(b) You may disclose such Confidential Information:

(i) to your employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out your obligations under the Agreement; and

(ii) as may be required by law, court order or any governmental or regulatory authority.

(c) You shall ensure that your employees, officers, representatives, advisers, agents or subcontractors to whom you disclose Confidential Information comply with this section 19.

(d) You shall not use any Confidential Information for any purpose other than to perform your obligations under the Agreement.

(e) **Customer's Confidential Information and Transaction Data.** Without prejudice to sections 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 these TOS, 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

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

(a) **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(i).

(b) **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 Rule, or conflict with any other agreement to which the Customer is subject.

(c) **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 substantially 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 VMAS™ or MATCH™ systems, or, if you have, you have already disclosed that fact to Elavon in writing.

(d) **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 customers. 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.

(e) **Data security.** As of the date on which the Agreement was entered into, no security 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 the Card Schemes) deem necessary to remedy the breach.

(f) **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 at the time you apply for Merchant Services.

(g) **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.

(h) **Insolvency Event.** You will immediately notify Elavon of any Insolvency Event.

(i) **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:

(i) your locations, including any additional locations or new business at which you desire to receive Merchant Services or otherwise accept or process Transactions;

(ii) your name;

(iii) the identity of your principals and/or owners;

(iv) 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.);

(v) your usual trading, including if you stop, or plan to stop, trading; or

(vi) 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.

(j) **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:

(i) give us or our duly authorised agents access to all or any of your 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

(ii) permit us to obtain and retain copies of all or any such records;

(iii) provide us with any reasonable assistance that we request in connection with such audit; and

(iv) 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.

(k) 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.

(l) **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.

(m) **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.

(n) **Data Security Standards.** You shall:

(i) comply with the Data Security Standards, together with any additional data security standards of the PCI SSC. Further information in relation to the current requirements of the PCI DSS is available at www.elavon.com/pci .

(ii) 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.

(iii) 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):

(aa) immediately notify, 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);

(bb) ensure and 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(o)(iii)(aa) above;

(cc) ensure and procure that Elavon has the right to review, comment on and make changes to any forensic investigation report prepared by a forensic investigator (as set out in section 20(o)(iii)(aa) above), before it is submitted to the Card Schemes; and

(dd) 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.

(iv) 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):

(aa) (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

(bb) comply with the provisions of sections 20(o)(iii)(bb) and 20(o)(iii)(dd) above as if they apply to this section 20(o)(iv).

(o) **Card Scheme Marks.** The Customer 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.

(p) **Proprietary Interest.** You have no interest whatsoever in any IPRs and are only permitted to use the IPRs as expressly authorised by these TOS. Customer 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. Customer will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer, reverse assemble, reverse compile, de-compile or dissemble the whole or any part of any of Elavon's services, equipment, or software.

21. INDEMNIFICATION

Except to the extent as may be a direct result of the gross negligence or breach by Elavon of the Agreement, you will be liable for, indemnify and keep indemnified, defend, and hold harmless the Protected Parties from and against Claims or Loss relating to, or in connection with, or resulting from, or arising out of, or in consequence of:

(a) the operation of the Agreement, including in relation to: (i) 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(a), and (iv) the occurrence of any of the circumstances set out at section 25(c);

(b) your utilisation of the Merchant Services, including any Claim or Loss incurred, made against or paid by or to any third parties, whether arising directly or indirectly from our provision of Merchant Services to you;

(c) any change under section 20(i), whether or not reported to Elavon, and/or your failure to provide requested information under that section in a timely manner;

(d) our reporting under VMAS™ and/or MATCH™ pursuant to section 17(k);

(e) any failure to return materials following termination under section 25(g);including any infringement of IPRs;

(f) 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;

(g) 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.

(h) resulting from or relating to any security breach, compromise or theft of data held 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.

(i) Claims or Loss suffered as a result of misuse by you of Merchant Services or any Terminal or other equipment.

(j) 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;

(k) the actions of, or failure to act by, your officers, directors, employees, agents, sub-contractor, Third Party Vendors and those of any other Person who, with or without your consent or co-operation, obtains access to information related to Transactions;

(l) 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; or

(m) any 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).

(n) Elavon shall be entitled at its discretion to accept, dispute, compromise or otherwise deal with any Claims or Loss and shall be under no liability in such respect to you.

22. EXCLUSION AND LIMITATION OF LIABILITY

(a) **General limitation of liability.** Subject to section 22(a)(ii), 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.

(i) Except as provided by section 22(d), the liability of Elavon during each Contract Year, whether to you or any other party, howsoever arising (whatever the basis of the liability, 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 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, multiplied by twelve (12)).

(ii) In no event will any of the Protected Parties be liable 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.

(b) **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:

(i) in relation to the EGC services provided to Customer or the EGC's compliance with the Laws, the Card Scheme Rules or the EGC Rules.

(ii) 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.

(c) **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(b)(ii)).

(d) **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.

(e) 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.

(f) 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 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.

23. THIRD PARTIES

(a) **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:

  (i) procure that such Value Added Services and the Third Party Vendor are fully compliant with all the Laws and the Card Scheme Rules;

  (ii) 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

  (iii) be bound by the acts and omissions of the Third Party Vendor.

(b) **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

The Agreement shall come into force on the Commencement Date and remain in effect for a period of twelve (12) months ("Initial Term") unless otherwise terminated in accordance with section 25. Thereafter, the Agreement will automatically continue until terminated by either party in accordance with section 25.

25. TERMINATION AND SUSPENSION

(a) **Termination by Customer.** The Agreement may be terminated by you:

(i) by providing Elavon with at least six (6) month's prior notice of termination after the initial Term.

(ii) in the event of a material breach of the terms of the 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 unremedied for a period of thirty (30) days following receipt of such written notice by Elavon.

(b) **Termination by Elavon.** Without prejudice to any other rights and remedies set out in these TOS, the Card Scheme Rules or Laws, the Agreement may be terminated by Elavon without cause at any time including during the Initial 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.

(c) **Immediate suspension and termination by Elavon.** Without prejudice to any other rights and remedies set out in these TOS, 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:

(i) you fail by you to pay any amount due to Elavon under the Agreement;

(ii) an Insolvency Event occurs, or we reasonably believe it may occur or you fail to notify us of an Insolvency Event;

(iii) 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;

(iv) Elavon reasonably believes that the Sales Transaction may be fraudulent, suspicious, or may involve any criminal activity;

(v) 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 section 6(d) (iv);

(vi) Elavon discovers that you have provided false or misleading information in documents submitted to Elavon, or otherwise in connection with Merchant Services;

(vii) you breach any acquiring limit in respect of Transactions imposed by Elavon in accordance with section 4(f);

(viii) you fail to obtain our prior written consent where required under the Agreement including, pursuant to sub-(i) sections 8(g) - 8(k) and 8(m) - 8(p);

(ix) 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:

(aa) may affect your ability or willingness to comply with all or any of your Obligations under the Agreement;

(bb) may damage the reputation or be detrimental to the business of the Card Schemes or Elavon;

(cc) may or do give rise to fraud or any other criminal activity or breach of Laws, or a suspicion of the same;

(dd) may or do give rise to increased risk of liability or loss to Elavon;

(ee) have not been consented to by Elavon as at the date of the acceptance of the Application;

(x) 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;

(xi) you breach or fail to comply with the Data Security Standards;

(xii) Force Majeure event occurs as defined in section 22(c).

(d) 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.

(e) Elavon shall be entitled to charge you for the notifications set out at section 25(d) where the refusal is reasonably justified.

(f) **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.

(g) **Action upon and effect of termination.**

(i) **Termination by Customer within the Initial Term.** Without prejudice to anything contained in this section 25, where you terminate the Agreement during the first 12 months of the Initial Term only, a 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 Customer shall be free of charge for the Customer, if the Agreement has been in force for more than 12 months, and termination period is followed (25) (a) (i);

(ii) **Survival.** Upon termination of the Agreement, the rights and obligations of both parties shall immediately cease to have effect, except:

(aa) 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

(bb) 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.

(iii) **Transactions.** Upon termination of the Agreement, you must:

(aa) cease to accept Sales Transactions and cease to send to us Sales Transaction Receipts in respect of Sales Transactions that occurred after the 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);

(bb) 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

(cc) 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(d) notwithstanding termination of the Agreement.

(iv) **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(a) 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.

(v) **VMAS™ and MATCH™ Reporting.** In the event that the Agreement is terminated for cause pursuant to section 25(c), your name may be listed on VMAS™ and MATCH™.

(vi) **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.

(h) **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

(a) **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.

(b) **Governing law.**

(i) The Agreement and the parties' non-contractual obligations arising thereunder will be governed by and construed in accordance with the Laws of Norway. The parties submit, subject as provided below, to the exclusive jurisdiction of the Norwegian 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.

(ii) The Customer is aware of and accepts that this Agreement derogates the Financial Agreement Act of 1999 to the extent permitted by the Financial Agreement Act, Section 2, second paragraph, including the rules on payment services in Chapter 2 of such Act.

(iii) 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 customers, 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.

(c) **Assignment, novation and sub-contracting.**

(i) You cannot assign, transfer or novate the Agreement or any of your rights or obligations under it, whether directly or by operation of law.

(ii) 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.

(iii) 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(c)(ii)) in connection with the performance of your obligations under the Agreement or in relation to any Transaction or Chargeback.

(iv) 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.

(d) **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.

(e) **Interest.**

(i) You shall (without prejudice to any other rights and remedies of Elavon), pay immediately on demand, interest at the rate of 4% over the EURIBOR, 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. The daily rate of EURIBOR is calculated by Thomson Reuters.

(ii) Elavon may vary the interest rate referred to at section 26(e)(i) without notice and with immediate effect, where such variation is due to a change in the daily rate of EURIBOR or is more favourable to you.

(f) **Notices.**

(i) 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.

(ii) Any written notice to Elavon shall be personally delivered, sent by registered post or a nationally recognised overnight carrier to: U.S. Bank Europe DAC, Norway Branch, Karenslyst allé 11, Postboks 354 Skøyen, 0213 Oslo and shall be deemed received only upon actual receipt.

(iii) Any notice to terminate in accordance with clause 25(a) of this Agreement may be served either in writing (including e-mail to brukersted@elavon.com) or upon telephoning Elavon Customer Services.

(iv) Any notices or other information to Customer in relation to the Agreement shall be 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.

(g) **Amendments.** Elavon may make any changes to 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.

(h) **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.

(i) **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.

(j) **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.

(k) **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.

(l) **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.

(m) **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 brukersted@elavon.com and acknowledged as received by Elavon.

(n) **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 +47 24 15 99 19**. Our lines are open 8 hours a day, 5 days a week. Alternatively, write to us at **Customer Service Centre, U.S. Bank Europe DAC Norway Branch, Business Registration Number 991 283 900. Karenslyst allé 11, Postboks 354 Skøyen, 0213 Oslo or send an email to klager@elavon.com.** If we can't resolve the matter to your satisfaction informally we will send you a written acknowledgement within 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 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 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 35 business days from the receipt of your initial complaint. If you are not satisfied with our final response, you may contact the Norwegian FSA (www.finanstilsynet.no or via e-mail to post@finanstilsynet.no) or the Central Bank of Ireland.

GLOSSARY

3D Secure™: 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.

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 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.

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

Audit Costs: means any sums reasonably required to conduct an independent security audit of the Customer's computer systems to identify the source of the Data Breach.

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.

Bank Account, your: 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.

B2B: means business-to-business.

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

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 individual in whose name a Card has been issued; and (ii) any individual who possesses and uses a Card and who purports to be the person in whose name the Card was issued or whose signature appears on the Card as an authorised user, and who is a customer purchasing goods or services from you.

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 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 but not limited to 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.

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.

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.

Claims or Loss: includes all and any claims, actions, proceedings, loss, damages, liability, penalties and fines (whether or not imposed by a Card Scheme), 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.

Competent Authority: means any supranational, national, state, local or municipal government body, bureau 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(d)(ii).

Confidential Information: means all trade secrets, proprietary, or other confidential information or items of Elavon, of which the Customer obtains knowledge of or access to as a result of Customer's relationship with Elavon 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: means a Card issued to a natural person in his/her personal capacity.

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 preagreed specific calendar month date to the payer, in line with a prearranged credit facility, with or without interest.

Currency Payment Choice: has the meaning set out in Schedule 2.

Customer (or you or your): means the business entity or other Person indicated on the Application and including (when relevant), any subsidiary or 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 customers' Card data.

Data Protection Rules: means the General Data Protection Regulation and all legislation that implements or is enacted in connection with the General Data Protection Regulation 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:

(a) PCI DSS;

(b) Payment Card Industry Payment Application Data Security Standards as published by the PCI SSC at www.pcisecuritystandards.org;

(c) Payment Card Industry PIN Transaction Security Standards published by the PCI SSC at www. pcisecuritystandards.org;

(d) Visa Payment System Risk programme (formerly the Account Information Security programme);

(e) MasterCard® Site Data Protection Program; 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.

Direct Debit Mandate: has the meaning set out in section 4(c).

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

General Data Protection Regulation (GDPR): 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.

Guarantor: means a Person that executes a Guarantee.

Initial Term: means the period set out at section 24 of these TOS.

Higher Risk Additional Loading Transactions: means the following Transactions:

(a) a Card Present not using Chip and PIN or Contactless e.g. swiping magnetic stripe, card holder signature;

(b) a Card Not Present not secured by 3D Secure™ Transaction, occurring when the Customer accepts payment when Card Not Present and 3D Secure™ is not used e.g. 3DS not effective, telephone order, mail order;

(c) keying Card number into any device or data unknown;

(d) a delayed file submission Transaction, occurring when the Customer submits clearing file to Elavon 2 days or more (based on a 7 day week including Sundays) after the Card was accepted by the Customer.

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 Transactions Fee: means the Higher Risk additional loading fee as set out in the Schedule of Fees.

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 interests 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), property rights, or other interest in any services, software, or hardware provided by Elavon.

Interchange Plus 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.

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.

Mail Order/Telephone Order Transaction or MO/TO Transaction: means, for MO, 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.

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 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.

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.

Non - EEA Country: means a country which is not a member of the European Economic Area. Note: For Mastercard/Maestro transactions Gibraltar is considered not UK.

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 from time to time.

Original Credit Transaction or OCT: means a secure, real-time payment method that allows businesses to send money directly to a customer's debit, credit, or prepaid Card without having previously completed a Transaction.

PAN: means the Primary Account Number of a Card.

Payment Currency: has the meaning set out in Schedule 2.

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

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.

PCI Service Fee: means that element of the fees which relates to the PCI Service element of the Merchant Services.

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

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.

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.

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

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.

Recycling Deposit Return Scheme: means a product connected with the Card Schemes that will enable the user to do a Refund or OCT and return value for deposits, received from the Cardholder, to the Cardholder's Card.

Recycling Deposit Return Scheme Payment or DRS: means a payment made by Elavon to a Client in accordance with the Recycling Deposit Return Scheme.

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.

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: (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 the section so entitled in the Application (as amended from time to time) listing our standard charges that are payable in addition to the Merchant Service Charges.

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

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; and all other charges set out in the Schedule of Fees as well as any Fees and Adjustments.

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.

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).

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.

VMAS™: means Visa Merchant Alert 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.

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

SCHEDULE 1.
INTERNET TRANSACTIONS

1. ENCRYPTION

You may process Internet Transactions only if they have been encrypted by a Third Party Vendor acceptable to Elavon. Encryption is not a guarantee of payment and shall not waive any provision of the Agreement or otherwise validate a fraudulent Transaction.

2. INTERNET SECURITY

You must (via a Third Party Vendor) utilise, or implement yourself, an internet payments service approved by Elavon in advance which adheres to minimum security measures and technology requirements identified by Elavon from time to time including, compliance with the PCI DSS. For Internet Transactions, you will be responsible for (i) maintaining the integrity of data received, held, maintained, or sent across the internet or other communication channel; (ii) managing the telecommunications link; and (iii) payment of all power and telecommunication costs. You will ensure that all Transactions are transmitted (where applicable) using the protocol approved by Elavon from time to time to procure the secure transmission of data provided by the Cardholder in ordering goods and/or services and effecting payment over the internet. You will provide capability for secure sockets layer encryption to the minimum standard from time to time (currently 128 bit), and may also be required by Elavon to support encryption requirements in respect of the transmission of information over the internet via a virtual private network ("VPN") supporting 3DES (1028 bit) encryption.

3. ONLINE AUTHENTICATION SOLUTIONS

You agree to implement and promptly update to the newest available versions, as designated by Issuers or Card Schemes (as applicable) from time to time, the Online Authentication Solutions, including by participating in the 3D Secure™ system, and to acquire the right to use or access Online Authentication Solution Plugins, including the MPI software, by:

(a) agreement with a seller of Online Authentication Solution Plugins, including MPI software, that is approved by the Card Schemes or Issuers (as appropriate); or

(b) having Elavon host the Online Authentication Solution Plugins, including MPI software, or such other merchant plug-in software or hardware product designated by Elavon from time to time, on your behalf, and on terms notified to you by Elavon; or

(c) procuring for your own use a customer plug-in software or hardware product of equivalent functionality to the Online Authentication Solution Plugin, including MPI software, subject to the prior written consent of Elavon.

4. UNAUTHORISED ACCESS

Whilst Elavon will take reasonable precautions in relation to use and access to the Service and Software, you hereby accept all risk of information or instructions being given by an unauthorised person and the possibility of hacking, cracking, viruses and any and all manner of unauthorised access, use, activity or purpose which may occur on or in relation to the Service and Software.

5. WEBSITE

Your website must:

(a) contain all of the following information:

(i) a complete description of the goods and/or services offered;

(ii) returned goods and refund policy;

(iii) customer service contacts, including electronic mail address and/or telephone number;

(iv) the Customer name and/or any trading name (prominently displayed) and the complete address of the permanent establishment of your business on either the checkout screen (which displays the total purchase amount) or within the sequence of web pages presented to the Cardholder during the check-out process;

(v) Transaction currency;

(vi) export or legal restrictions, if known;

(vii) delivery policy;

(viii) customer data privacy policy;

(ix) your method of Transaction security and policy for transmission of Card details; and

(x) display of Card Schemes' marks;

(b) prominently identify the Customer name as being both the Customer and as being the name that will appear on the Cardholder statement; and

(c) display the Customer name information referred to in this paragraph 5 as prominently as any other information depicted on your website, other than images of the products or services being offered for sale.

6. OPTION TO CANCEL PAYMENT

Your website will clearly inform the Cardholder that he/she is committing to payment before he/she selects the "pay now" or equivalent button/screen and will provide the Cardholder an unambiguous option to cancel the payment instruction at this point.

7. CARDHOLDER COMPLAINTS

Elavon may investigate any complaint received from a Cardholder about the content of your website and shall be entitled to require you to amend and/or clarify the terms and conditions of sale within a period of thirty (30) days from the receipt of such complaint.

8. RECURRING TRANSACTION PAYMENTS

If you offer recurring Transaction payments on your website you must: (aa) offer an online cancellation facility to Cardholders; and (bb) notify Cardholders at the outset that subsequent charges will be debited from their Card accounts.

SCHEDULE 2.
DCC TRANSACTIONS

1. The default currency of a Transaction must be the local currency of the Cardholder. The Customer must give to Cardholders, in clear terms, the choice of whether to proceed with the DCC Transaction in the Customer's local currency or the currency in which the Card has been issued (the "Payment Currency"), subject always to the chosen currency being a currency approved by Elavon (as communicated by Elavon to the Customer from time to time) (the "Currency Payment Choice"). The Customer must inform the Cardholder that selecting a DCC Transaction is optional and must not use inaccurate or misleading statements that could lead the Cardholder to select a DCC Transaction.
2. The Customer must disclose and make available to the Cardholder the following information prior to the Cardholder choosing to proceed with a DCC Transaction:
   (a) the Transaction amount in the local currency of the Customer;
   (b) the Transaction amount in the Cardholder's billing currency;
   (c) the exchange rate to be used and the source of the exchange rate; and
   (d) details of all charges, mark-up or commission to be applied. The total currency conversion charges shall be presented according to the applicable law – especially to the Regulation 2019/518 (within the scope of its applicability to a particular Transaction).
3. For every DCC Transaction using a Terminal, Customer shall ensure that it issues a document informing the Cardholder of the Currency Payment Choice and (except where Chip & PIN procedures are used) shall obtain the Cardholder's signature on this document.
4. For all DCC Transactions which are not Terminal DCC Transactions, the Customer shall obtain the Cardholder's prior consent to such DCC Transactions which must be in a form that clearly evidences that the Cardholder's express and final consent has been given in relation to the Currency Payment Choice. For Internet Transactions, this can be in the form of an email from the Cardholder or an "I agree" option on Customer's website which can be recorded and provided in the event of a dispute or Chargeback. For MO/ TO Transactions, the requirements of section 7(g)(ii) on Cardholder authority apply in respect of DCC Transactions which are not effected with a Terminal.
5. Customer may not convert any DCC Transaction from the currency selected by Cardholder, into an amount in any other currency after the Transaction has been completed by the Cardholder.
6. As a further detailed in paragraph 2, if the Cardholder elects to proceed with the Transaction in the Payment Currency, you must disclose to the Cardholder all your charges as well as the exchange rate to be used for converting the Transaction from the Cardholder's local currency into the Payment Currency prior to the Transaction being completed.
7. If the Cardholder elects to proceed with a DCC Transaction, the Transaction Receipt or invoice generated must contain:
   (a) The Transaction amount in the local currency of the Customer;
   (b) the Transaction amount in the Cardholders' billing currency;
   (c) the exchange rate used;
   (d) details of all charges, mark-up or commission applied and with respect to this the total currency conversion charges The total currency conversion charges shall be presented according to the applicable law – especially to the Regulation 2019/518 (within the scope of its applicability to a particular Transaction).

(e) a statement that the Cardholder was given a choice and chose their billing currency. The statement must be in English, unless available in the Cardholder's local language.

8. Refunds (or credits) relating to DCC Transactions must be processed in the selected currency of the original DCC Transaction.

SCHEDULE 3.
ELECTRONIC GIFT CARDS

1. SERVICE

Elavon will provide electronic processing services of EGC Transactions (except where these are lost or stolen) and facilitate:

(a) electronic confirmation that the Cardholder activating the EGC Transaction through the Customer has an active account on the relevant processing system which is credited with sufficient funds to meet the cost of the Transaction; and

(b) debiting of the Cardholder's account with the value of the purchase and the crediting of the Cardholder's account if value is added to the EGC;

(c) maintenance of an accessible electronic record of an EGC Transaction for the lifetime of an EGC with a balance and for a period of sixty (60) days after the balance of the EGC Card has fully depleted.

2. CUSTOMER RESPONSIBILITIES

You shall:

(a) maintain all Transaction Receipts and any other receipts as required by the Laws, the EGC Rules and these TOS;

(b) maintain sufficient back-up information and data whether in paper or electronic form with respect to EGCs previously sold, to reconstruct any loss of information or data due to any malfunction of Customer's systems. ;

(c) in a timely manner when required by Elavon and/or Elavon's approved provider(s), execute all such agreements and do all such acts or things to enable Elavon to provide EGC processing services to Customer, including, entering into additional agreements for the supply of EGCs, for stationary and other related materials and for promptly settling accounts for such supply; and

(d) only use materials (including stationary and marketing materials) to enable the acceptance and processing of EGCs supplied by Elavon or Elavon's designated provider.

3. SYSTEM DOWNTIME

Customer shall not process EGC Transactions if the EGC processing system is down and is unable to verify the validity of an EGC and any available balance.

SCHEDULE 4.
PURCHASE WITH CASHBACK

When providing Purchase with Cashback, you shall:

(a) only provide such facility in relation to Debit Card Sales Transactions where the Cardholder receives goods and/or services in addition to cash and only on Terminals approved for such use by Elavon;

(b) transmit in the Purchase with Cashback Sales Transaction message, the amount of cash given to the Cardholder (if permitted by Elavon's systems and/or the relevant Card Scheme);

(c) where a request for Authorisation of a Purchase with Cashback is refused solely because the cash requested exceeds the Debit Card Issuer's limit for cash withdrawals, inform the Cardholder of the reason for the refusal and that a new Sales Transaction in the amount of the purchase alone might be approved;

(d) not, where the amount of cash available to a Cardholder in a Purchase with Cashback Sales Transaction is limited by the relevant Card Scheme or Issuer, carry out a Purchase with Cashback Sales Transaction in excess of such limit, as notified to you from time to time;

(e) not offer Purchase with Cashback in respect of Sales Transactions carried out under section 6 (f).

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