



Avvance

Avvance Only Terms of Service

February 2026

These Terms of Service include a binding arbitration provision located in [Section 22.5](#) that allows any dispute arising out of or related to the Terms of Service to be submitted to arbitration. The arbitration provision impacts your legal rights and should be reviewed carefully.

Table of Contents

Summary of Terms of Service Changes	iii
1. Definitions.....	1
2. Scope of Agreement.	1
3. Delivery of Advance Services.	1
4. Limitations on Advance Services.....	2
5. Advance Services with Pre-Approval Functionality.....	2
6. Advance Services with Split Funding Functionality	3
7. Resolution of Customer/Company Disputes on Transactions Funded with an Advance Loan	3
8. Limited Processing Services.....	4
9. Settlement on Transactions Funded with an Advance Loan.	4
10. Termination; and Suspension.....	4
11. Authorized Users; Access; Security of Passwords and User IDs.	5
12. Fees and Taxes.	6
13. Compliance with Laws and Payment Network Regulations.....	8
14. Confidentiality; Data Security and Use; Data Privacy.	8
15. Audit and Information.....	12
16. Proprietary Rights.	12
17. Company Obligations with Respect to Advance Services.	13
18. Representations and Disclaimers.....	14
19. Indemnification.....	15
20. Limitation of Liability.....	15
21. Third-Party Vendors.....	16
22. General Provisions.	16
Appendix 1- Definitions	21

Summary of Terms of Service Changes

General Provisions

1. **Definitions.** Capitalized terms used in these Terms of Service (“**TOS**”) will have the meanings stated in Appendix 1.
2. **Scope of Agreement.** The TOS governs Company’s receipt and use of the Avvance Services and Processing Services. The TOS is part of the Agreement and the signature by an authorized representative of the Company on the Company Application, will be the Company’s acceptance of the terms and conditions contained in the Agreement. No strikeover of the preprinted text of the TOS will be effective. In addition to the terms of the Agreement, Company will comply with any Documentation Elavon provides to Company in writing from time to time that is applicable to the Services.
3. **Delivery of Avvance Services.** Elavon will provide Company access to technology solutions that allow a Company’s Customer to explore obtaining a loan from a Financing Partner as a means to pay for Customer’s purchase if the proposed purchase transaction meets the qualification criteria established by Elavon or its Financing Partners (which may be modified from time to time without notice). Access to the technology solution may be provided through a third-party site (a “**Third-Party Portal**”). In providing the Avvance Services, Elavon commits to the following:
 - 3.1. The invitation to explore loan options may appear alongside other payment methods such as the use of a Credit Card to complete the transaction.
 - 3.2. If a Customer is not approved for an Avvance Loan or elects not to accept an offered Avvance Loan, the Customer will be prompted to complete the purchase transaction with another payment method.
 - 3.3. A Financing Partner may elect to provide a counteroffer to a Customer, i.e., an offer to make an Avvance Loan in an amount less than the invoice amount. Information regarding this counteroffer will be reported to Company and Company may elect to work with the Customer to generate an invoice in an amount that is at or below the counteroffer made by the Financing Partner.
 - 3.4. Elavon will provide Company access to an online portal (the “**Avvance Merchant Portal**”) where information regarding the status of Avvance Loan applications may be viewed and various functions performed, such as the issuing of invoices to be paid via an Avvance Loan. The functionality and features of the Avvance Merchant Portal may change from time to time without notice to Company, and Elavon has no liability to Company for any such changes.
 - 3.5. Elavon will provide Company with marketing material and related support to assist in Company’s promotion of the Avvance Services, including loan offers through the Avvance solution. Company will only use written advertising, marketing, promotional and other related materials regarding the Avvance Services that are supplied or approved by Elavon.
 - 3.6. Elavon will provide Company with materials to train Company employees regarding the Avvance solution.
 - 3.7. If an Avvance Loan is accepted by a Customer and booked by a Financing Partner, a virtual card will be generated and presented to Elavon for processing on Company’s behalf to complete the Customer’s transaction. The processing of the virtual card will be in accordance with the terms of the Agreement, including the portion of fees related to Card Brand assessments, but excluding the other interchange fees, which are replaced by the Avvance Fees as described in Section 12: Fees and Taxes.
 - 3.8. An Avvance Loan is a transaction solely between Customer and the Financing Partner. The Financing Partner is responsible for the administration and servicing of each Avvance Loan.

Company has no right to receive information regarding the status or performance of an Avvance Loan.

4. Limitations on Avvance Services

- 4.1. Elavon may limit the scope of the Avvance Services offered to Company. Specifically, not all technology solutions may be available to Company, and certain features associated with Avvance Services, such as Split Funding (described below), may not be made available to Company.
- 4.2. The Avvance Services are only available for transactions made with the Merchant Identification Numbers (“MIDs”) that are (i) designated by Company in the enrollment processes or otherwise later registered, and (ii) specifically accepted by Elavon. Elavon may decline to offer Avvance Services on certain MIDs.
- 4.3. Elavon may limit Company’s ability to present the opportunity to Customers to apply for an Avvance Loan by establishing qualification criteria, including attributes such as transaction size and type of goods or services purchased. These qualification criteria may be changed by Elavon at any time without notice to Company and will be automatically implemented into the technology solutions.
- 4.4. An invitation to explore loan options is not a guarantee that the Customer will be approved for any particular loan.
- 4.5. Elavon does not control the Customer personal information gathered by its Financing Partners or how such information is used to make loan decisions. It is expected that the Financing Partners will request a Customer’s credit score as part of the underwriting process.

5. Avvance Services with Pre-Approval Functionality

- 5.1. Elavon may allow Company to offer its Customers the opportunity to explore their qualification for an Avvance Loan prior to the initiation of a purchase transaction. Elavon may, at any time and without notice to Company, terminate Company’s right to offer its Customers the opportunity to obtain a Pre-Approval for an Avvance Loan.
- 5.2. Company will comply with the directions of Elavon when displaying any marketing of the opportunity to seek Pre-Approval. Elavon reserves the right to control how any link to access the application is displayed by Company.
- 5.3. Financing Partners may determine the amount of any Pre-Approval, the length of any Pre-Approval, and any conditions that must be satisfied to close a purchase transaction with such Pre-Approval. The terms and conditions on which a Pre-Approval may be issued can be changed at any time by a Financing Partner without notice to Company.
- 5.4. Company acknowledges that conditions attached to a Pre-Approval (such as subsequent identity verifications) may result in the Customer being unable to close a purchase transaction with an Avvance Loan even if they had been issued a Pre-Approval.
- 5.5. In issuing a Pre-Approval, Financing Partners may display Optional Loan Offers then enrolled by Company. Company agrees that such Optional Loan Offers will be honored by the Company in a subsequent purchase transaction for the length of such Pre-Approval, even if the Company has changed the Optional Loan Offers available prior to the date the Pre-Approval Customer completes the purchase transaction.

- 5.6. Elavon will ensure that its Financing Partners obtain all necessary consents from a Customer issued a Pre-Approval to allow Elavon and the Financing Partner to share the contact information of such Customer with Company. Company will comply with all applicable Law when contacting any Pre-Approved Customer using the information supplied by Elavon or its Financing Partner and indemnifies Elavon and its Financing Partner against any damages arising from Company's failure to so comply with applicable Law.

6. **Advance Services with Split Funding Functionality**

- 6.1. Elavon may allow Company to offer its Customers the opportunity to explore Advance Loans with Split Funding (as defined below). Elavon may, at any time and without notice, terminate Company's right to offer its Customers the opportunity to explore Advance Loans with Split Funding.
- 6.2. Elavon will promptly communicate to Company all conditions established by the Financing Partners with respect to Split Funding, including the number of installments allowed in a Split Funding transaction, the time frames in which requests for payment of the installments may be made by Company and any limitations on the percentage of a purchase price that may be included in particular installments (the "**Split Funding Requirements**"). The Financing Partners may change any of the Split Funding Requirements upon three business days' notice.
- 6.3. The initial payment installment made to Company in a Split Funding transaction will occur within the same time frame as the booking of an Advance Loan without Split Funding. The remaining payment installments will be made to Company in accordance with the Split Funding Requirements, which may include an affirmative action on the part of Company to require delivery of an installment. The Advance Fees described in the Advance Fee section below will be applied to each payment installment. The Financing Partner will promptly notify the Customer each time a payment installment in a Split Funding transaction is distributed.
- 6.4. A Customer will not be required to commence repayment of an Advance Loan with Split Funding until all the payment installments have been distributed to Company in accordance with the Split Funding Requirements.

7. **Resolution of Customer/Company Disputes on Transactions Funded with an Advance Loan**

- 7.1. If a Customer raises to Elavon or a Financing Partner a dispute about the goods or services purchased from Company through an Advance Loan (or in the case of Split Funding, the payment of an installment), Elavon or its Financing Partner will first direct such Customer to Company to resolve the dispute. If Company reaches a resolution with a Customer regarding such dispute that results in a partial or full refund of the purchase price, Company will (i) process such refund as a credit transaction attached to the virtual card used to settle the original transaction with Company, (ii) use the product codes as directed by Elavon to ensure a refund of the proportionate Fees associated with the underlying transaction (exclusive of the Payment Network assessment fees which are non-refundable) and (iii) promptly inform Elavon that such partial or full refund has been processed, including providing the Customer name, the amount of the credit and the date the credit was submitted.
- 7.2. Company may not resolve a dispute with a Customer by providing store credit or a cash refund. Company need not inform Elavon of any dispute resolution that results solely in a merchandise exchange for a Customer.

- 7.3. If a Customer is not able to resolve the dispute with Company to the Customer's satisfaction, the Customer may dispute the transaction in accordance with the Payment Network Regulations associated with the virtual card used to settle the transaction. Company will be bound by the Payment Network Regulations in the case of such a dispute. Any resulting amount is due to the Customer will be a Chargeback, and no portion of the Fees charged with the originating transaction will be returned to Company. Company has the option to respond to the Chargeback through the rebuttal process as provided by the applicable Payment Network Regulations.
- 7.4. If a credit is submitted by Company or the Payment Network dispute process results in a Chargeback, Elavon will work with the applicable Financing Partner to deliver the necessary funds so that the Customer's loan account can be properly credited. Elavon will indemnify Company against any damages asserted by a Customer if Company has timely submitted a credit and such credit is not timely applied by Elavon or the Financing Partner.
8. **Limited Processing Services.** If a Company's Customer obtains an Advance Loan to make payment for the goods or services purchased by such Customer from Company, the Financing Partner will issue a single use virtual card to settle such transaction. Elavon agrees to provide Processing Services to process such Transactions under this Agreement. Company will not submit Transactions to Elavon that are not related to an Advance Loan without Elavon's prior written consent. Notwithstanding anything to the contrary contained in the Agreement, Company shall be free to contract with other parties for the processing of Transactions that are not associated with an Advance Loan.
9. **Settlement on Transactions Funded with an Advance Loan.** Subject to the other provisions of the Agreement and to Company's compliance with the terms of the Agreement, Elavon will process Transactions daily, deposit funds to the DDA based on Company's properly-submitted daily transactions, and provide Company provisional credit for such funds. Company acknowledges and agrees that Elavon may use either "direct" (ACH debit authority pursuant to which Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks and other amounts due to Elavon under the Agreement are debited from the DDA) or "net" (pursuant to which Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks and other amounts due to Elavon under the Agreement are deducted from Transaction proceeds prior to delivering the proceeds to Company's DDA) methods to recover amounts owed by Company. Company authorizes and appoints Elavon to act as Company's agent to collect Transaction amounts from the Customer, the Issuer or the Customer's financial institution, to the extent required.
10. **Termination; and Suspension.**
- 10.1. **Termination By Company.** Company may at any time upon 30 days' notice request that Elavon cease offering the Advance Services to Company and its Customers. The termination of the Advance Services will not impact any transaction already approved or booked by the Financing Partners.
- 10.2. **Termination By Elavon.**
- (i) Elavon may terminate the Agreement, in whole or in part, at any time with or without cause.
 - (ii) Elavon may suspend use of or terminate the Advance Services or any feature thereof at any time for any reason. Access to the Advance Services at any particular moment may not be available due to scheduled outages or other technical problems. Elavon will not be in breach of the Agreement if the Advance Services are not available at any particular time or to any particular Customer.

10.3. Notice of Termination. To be effective, Company's termination request must be completed on a form available from Elavon, and at a minimum, must include the name of the Company and Merchant Identification Number, and must be signed by the principal owners of Company. In those limited instances where Company's account is reinstated by Elavon following termination by either Company or Elavon, all of Company's obligations under the Agreement are likewise reinstated.

10.4. Actions Upon Termination.

(a) **Account Closing.**

- (i) Company acknowledges that closing Company's account with Elavon may take up to 30 days following Elavon's receipt of written notice of termination.
- (ii) All obligations of a party regarding Transactions serviced prior to termination will survive termination. Company is responsible for all fees incurred, including those that are debited or invoiced after the expiration or termination of the Agreement. Company will maintain enough funds in the DDA following termination to cover all Chargebacks and returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks and other amounts due under the Agreement for at least 180 days after termination.

- (b) **Return to Elavon.** All Confidential Information, promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to Company and not purchased by Company or consumed in use will remain the property of Elavon and must be returned to Elavon or destroyed within 10 business days after termination of the Agreement. Company will be fully liable for all loss, cost, and expense suffered or incurred by Elavon arising out of any failure to return or destroy such materials following termination.

11. Authorized Users; Access; Security of Passwords and User IDs.

11.1. Company will be responsible for the distribution of all passwords and user IDs issued to any Authorized User and for maintaining the confidentiality and security of Authorized User's passwords and user IDs. Company will ensure that the access granted to each Authorized User to the Services is limited to only the access and information necessary for the Authorized User to perform his or her job functions on behalf of Company. Company will ensure that all Authorized Users will be trained and qualified to access and use the Services in accordance with the terms of the Agreement and any Documentation. Company is responsible for its Authorized Users' compliance with the terms of the Agreement and the Documentation, for all acts or omissions of the Authorized Users, and for all use of any Authorized User's user ID and password other than by Elavon or Elavon's third-party contractors or use by third parties of the user IDs and passwords obtained by such third parties from Elavon or Elavon's third-party contractors.

11.2. Company will not, and will ensure that its Authorized Users do not:

- (a) access or use the Services for any purposes other than for its own internal business purposes (except as authorized by Elavon) as disclosed to Elavon in writing;
- (b) modify, reverse engineer, disassemble or decompile any part of the Services or Elavon Materials;
- (c) knowingly transmit any data that contains software viruses, time bombs, worms, Trojan horses, spyware, disabling devices, malicious code, or other harmful or deleterious computer

code, files or programs to or through the Services; provided, that Company will use commercially reasonable measures (at least industry standard) to screen for the foregoing.

- (d) interfere with or disrupt the servers or networks connected to or providing the Services;
- (e) remove, change or obliterate the copyright, trademark or other proprietary protection legends or notices that appear in connection with access to and use of the Services or any Elavon Materials; or
- (f) copy, re-sell, republish, download, frame or transmit the Services or Elavon Materials, including in order to act as a consultant for any third party or, unless otherwise permitted under the Agreement, as a service bureau, outsourcing or application service provider for any third parties, or otherwise allow any third party to use or access the Services.

11.3. Company is responsible for changing the user IDs and passwords of its Authorized Users if it believes that any of those user IDs or passwords have been stolen or might otherwise be misused and for disabling any Authorized User's IDs and passwords promptly upon the termination of employment of such Authorized User or the cessation of such Authorized User's need to access the Services. Company will promptly notify Elavon if Company believes the Services or Elavon's databases have been compromised by use of a user ID or password associated with the Services.

12. Fees and Taxes.

12.1. **Compensation.** Company will compensate Elavon for all fees and other amounts due for the Services in accordance with the Agreement and any additional application or setup forms (including Company Applications). Such amounts will be calculated and debited from the DDA once each day or month for the previous day's or month's activity, as applicable, or will be deducted from the funds due Company under the Agreement.

If a Customer accepts an Avvance Loan and the purchase transaction is consummated, Company will pay Elavon the corresponding fees for such transaction based upon the then applicable Avvance Fees. The "Avvance Fees" consist of (i) standard Payment Network assessments charged under the Agreement, (ii) the applicable fees for any Standard Loan Offer selected by the Customer, and (iii) the applicable fees for any Optional Loan Offers opted into by Company that is selected by Customer.

12.2. The fees associated with each Standard Loan Offer and each Optional Loan Offers are disclosed to Company at the time of initial enrollment in the Avvance Services. Notwithstanding anything in the Agreement to the contrary, Elavon may update the Avvance Fees for any of the Standard Loan Offers or the Optional Loan Offers from time to time upon 30 days' notice to Company.

12.3. Certain access rights assigned by Company in the Avvance Merchant Portal will allow the holder of such access right to may add or remove the particular Optional Loan Offers that may be presented to Company's Customers. Company is solely responsible to assign the appropriate access rights and monitor the actions of its employees in changing the Optional Loan Offers. Elavon reserves the right to limit the velocity at which Company may make changes to its Optional Loan Offers.

12.4. **Change of Fees.** Elavon may adjust the fees in accordance with [Section 22.11](#) below.

12.5. Other Amounts Owed.

- (a) In addition to the amounts described in [Section 12.1](#) above, Company will promptly pay Elavon for any Chargebacks, returns, adjustments and associated fees, and for any fines,

penalties, assessments, or charges (including all those imposed by the Payment Networks as a result of Company's violation of Payment Network Regulations), and any other payments due under the Agreement. Elavon may offset these amounts from funds otherwise owed by Elavon to Company or may debit these amounts from Company's DDA by ACH. If such offset or ACH debit does not fully reimburse Elavon for the amount owed, Company will promptly pay Elavon such amount upon demand.

- (b) Elavon will charge interest on all uncollected amounts owed to Elavon that are more than 30 days past due at a rate no greater than the maximum rate of interest permitted under Laws.

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

12.7. **Demand Deposit Account.** Company will establish and maintain one or more DDAs to facilitate payment of fees to Elavon. Company authorizes Elavon and its Affiliates that provide Services under the Agreement to initiate ACH credit and debit entries to the DDA in order to pay the fees and any other amounts that may be due by Company to Elavon under the Agreement. Company will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement. Company authorizes its depository institution to grant Elavon access to any information or records regarding the DDA reasonably requested by Elavon to debit or credit the DDA and to otherwise exercise Elavon's rights under the Agreement with respect to the DDA. The foregoing authorizations will remain in effect after termination of the Agreement until all of Company's payment obligations to Elavon have been paid in full. Company will obtain Elavon's prior consent to change the DDA. If Company does not get that consent, Elavon may immediately and without notice terminate the Agreement and may take any other action it deems necessary in its discretion. Elavon has the right to rely on written instructions submitted by Company requesting changes to the DDA. If Company changes the DDA, the ACH authorizations established under this Agreement will apply to the new account, and Company will provide Elavon such information regarding the new DDA as Elavon deems necessary to effect debits from or credits to the DDA as provided under the Agreement. It may take Elavon up to 10 business days after Elavon's receipt of a written notice from Company to reflect in Elavon's system any change to Company's DDA. Company may request from Elavon written confirmation of Elavon's consent to change the DDA.

12.8. **Asserted Errors.** Company is responsible for reconciling the statements or invoices received from Elavon relating to the Services, any Payment Network, and any third party vendors with the statements Company receives for Company's DDA.

- (a) Company must promptly examine all statements relating to the DDA and notify Elavon in writing of any errors in the statement Company received from Elavon. Company's written notice must include:
 - (i) Company name and account number;
 - (ii) The dollar amount of the asserted error;
 - (iii) A description of the asserted error; and

- (iv) An explanation of why Company believes an error exists and the cause of it, if known.
 - (b) If Company fails to provide written notice to Elavon of an asserted error within 45 days of the date of the Elavon statement or invoice containing the asserted error, Elavon will not be liable to Company for any errors related to that statement. Company may not make any claim against Elavon for any loss or expense relating to any asserted error for 45 days immediately following Elavon's receipt of Company's written notice. During that 45 day period, Elavon may investigate the asserted error (and Company will not incur any cost or expense in connection with the asserted error without notifying Elavon), and notify Company of its proposed resolution of the asserted error.
- 12.9. **Recoupment and Set-off.** Elavon has the right of recoupment and set-off, and may offset any outstanding or uncollected amounts owed to it hereunder from:
- (a) Any amounts it would otherwise be obligated to deposit into the DDA and;
 - (b) Any other amounts it may owe Company under the Agreement or any other agreement.
- 12.10. **Remedies Cumulative.** The rights conferred upon Elavon in this 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.

13. Compliance with Laws and Payment Network Regulations.

- 13.1. **General.** Elavon and Company will comply with all Laws and Payment Network Regulations applicable to the selected Services.
- 13.2. **Office of Foreign Assets Control Compliance.** Company acknowledges that Elavon and Member are entities governed by the Laws of the United States and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States, including the Laws promulgated by the Office of Foreign Asset Control ("OFAC") or the United States Department of the Treasury or any successor thereto.
- 13.3. **Export Laws Compliance.** Company will comply with all United States export Laws governing the export and re-export of hardware, software or technology applicable to the Services and Equipment, including United States Department of State International Traffic In Arms Regulations (ITAR), United States Foreign Corrupt Practices Act, United States Commerce Department's Export Administration Regulations, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto. Company will not, and will not request Elavon to, export, directly or indirectly, any technical data pursuant to the Agreement or any product using any such data to any country for which the United States Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
- 13.4. **Company Identification.** To help the United States Government fight the funding of terrorism and money laundering activities, federal law requires financial institutions and their affiliates to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Company will provide certain information and identifying documents requested by Elavon to allow Elavon to identify Company.

14. Confidentiality; Data Security and Use; Data Privacy.

14.1. Confidentiality.

- (a) **Confidential Information Generally.** Each party will protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and will not use, reproduce, distribute, disclose, or otherwise disseminate the other party's Confidential Information except in connection with the performance of its obligations or rights under the Agreement. The Receiving Party acknowledges that any breach of this Section 14 by the Receiving Party may result in irreparable harm to the Disclosing Party for which monetary damages may not provide a sufficient remedy. Therefore, the Disclosing Party may seek both monetary damages and equitable relief with respect to any such breach without any obligation to post bond.
- (b) **Disclosure of Confidential Information.** If the Receiving Party or its agents become legally required or compelled (by any publicly filed and noticed deposition, interrogatory, request for documents, civil subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party if permitted will provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. If the Disclosing Party does not obtain a protective order or other remedy, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party is legally required to disclose and to use reasonable efforts to obtain assurances that confidential treatment will be accorded such Confidential Information. Neither party will be obligated to notify the other of the receipt of any non-public or confidential investigative demand, summons, or grand jury subpoena or other similar process that requires confidentiality on the part of the applicable party.
- (c) **Duration of Obligations.** The non-disclosure obligations in this Section 14.1 will continue (i) with respect to Confidential Information that does not constitute a trade secret, for three years following termination, and (ii) with respect to Confidential Information that is a trade secret under Laws, for the longer of three years after termination and such period as the information retains its status as a trade secret under Laws.
- (d) **Obligations on Termination.** At the request of the Disclosing Party upon the termination of the Agreement, the Receiving Party will promptly delete or return to the Disclosing Party all originals and copies containing or reflecting any Confidential Information of the Disclosing Party (other than those required to be retained by Law, or that would be unreasonably burdensome to destroy, such as archived computer records). If a dispute arises between the parties in relation to the Confidential Information or the Agreement, the Receiving Party may retain a copy of such Confidential Information as the Receiving Party reasonably determines is necessary for its defense of the dispute. In all cases, any retained Confidential Information will continue to be subject to the terms of the Agreement.

14.2. Data Security and Use.

- (a) **Security Programs Compliance.** Elavon and Company will each comply with the applicable requirements of the Security Programs.
- (b) **PCI-DSS.** Elavon will undergo an annual assessment of its compliance with the PCI-DSS. Company may review Elavon's current PCI-DSS compliance status on the Payment Network websites as available.

- (i) Notwithstanding anything in Section 14.1, to the extent permitted by Law, any Customer Data, Transaction Information, and information regarding Company, its principals, or Affiliates included on the Company Application or that Elavon otherwise obtains in connection with the Agreement may be:
- (1) Used by Elavon and its Affiliates, third-party contractors, agents, and referral partners (a) to provide the Services and related functions to Company and to respond to any further application for Services, (b) for administrative purposes and to maintain Company's account pursuant to the Agreement, and (c) for Elavon's internal fraud and compliance monitoring;
 - (2) Disclosed and shared by Elavon for reporting purposes to credit rating agencies and to the financial institution where the DDA is maintained;
 - (3) Used to enhance or improve Elavon's products or services generally;
 - (4) Used or disclosed by Elavon in the course of any sale, reorganization or other change to Elavon's business, subject to appropriate confidentiality agreements;
 - (5) Collected, used and disclosed by Elavon as required by Laws (e.g., for tax reporting or in response to a subpoena); and
 - (6) Retained for such periods of time as Elavon requires to perform its obligations and exercise its rights under the Agreement.

Elavon may prepare, use, and share with third parties, aggregated, non-personally identifiable information derived from Transaction Information (so long as such information cannot be identified to Company) that is combined with similar information from all or specific segments of Elavon's other Customers.

- (c) **Elavon Data Breach.** If Elavon suffers an Elavon Data Breach, then it will comply with all Laws and Payment Network Regulations with respect to such Elavon Data Breach, including providing the required reporting and forensic audits to the Payment Networks. Elavon will not pass-through or require Company to be liable to Elavon for any fees, fines, penalties, assessments, or charges levied against Elavon by the Payment Networks in connection with an Elavon Data Breach.
- (d) **Company Data Incident.**
- (i) **Notice and Investigation.** Company will notify Elavon within 24 hours (and if notice is given orally, it must be confirmed in writing within the same 24 hour period) if Company knows or suspects that Customer information, or Transaction Information has been lost, accessed or used without authorization from Company or systems within Company's control (a "**Data Incident**"). The notice must include:
- (1) A detailed written statement about the Data Incident including the contributing circumstances,
 - (2) Details about the ensuing investigation and Company's security personnel who may be contacted in connection with the Data Incident, and
 - (3) Any other information as required by applicable Laws.
- (ii) **Preservation of Records.** If there is a Data Incident, Company will take immediate steps to preserve all business records, logs and electronic evidence relating to the

Data Incident, in accordance with applicable Laws. Company will cooperate with Elavon to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon with (and obtaining any necessary waivers for) all relevant information to verify Company's ability to prevent future Data Incidents in a manner consistent with the Agreement.

- (iii) **Liability for Data Incident.** Without waiving any of Elavon's rights and remedies, Company is liable for all fraudulent transactions related to any Data Incident and all costs Elavon incurs as a result of such Data Incident, including all (i) fees, fines, penalties or assessments by the Payment Networks, (ii) claims from third parties, and (iii) costs related to the notification of Customers.
- (e) **Privacy.** Elavon also undertakes, when applicable, to process Transaction Information in accordance with its Privacy Statement, Section 14.2, and Section 14.3, as applicable.

14.3. Data Privacy

- (a) **Definitions.** The terms Business, Business Purposes, Collects, Consumers, Personal Information, Share, Sell, Sensitive Personal Information, and Service Provider, as used in this Section 14.3, have the meanings defined in the CCPA.
- (b) **Status of the Parties.** If Company is a Business under the CCPA, then with respect to applicable Personal Information, Elavon is a Service Provider to Company and is subject to the restrictions that apply to Service Providers under the CCPA. Elavon will not Sell or Share any Personal Information without providing an opt-out mechanism for online activities or without the Company's consent when providing any California Company Information to referral partners.
- (c) **Business Purposes and Restriction on Use.** Elavon may only process the Personal Information being disclosed by Company or otherwise Collected in connection with this Agreement for a Business Purposes (e.g., performing services on behalf of Company, including maintaining or servicing accounts, providing Customer service, processing or fulfilling orders and transactions, verifying Customer information, processing payments, providing financing, providing analytic services, or providing similar services on behalf of Company). In addition to Elavon's obligations in the Agreement with respect to the Services and Elavon's treatment of Confidential Information (including the California Company Information) and Transaction Information, Elavon will not: (A) retain, use, or disclose the Personal Information for any purpose other than for the Business Purposes in order to provide the products and services under the Agreement to Company, or as Company may otherwise instruct, or as may be permitted under the CCPA; (B) retain, use, or disclose the Personal Information outside of the direct business relationship between Company and Elavon, unless otherwise permitted by the CCPA; or (C) combine or update the Personal Information with Personal Information received from another source or Collected from Elavon's own interaction with a Consumer, except as specifically allowed under CCPA. Elavon will not Collect any Sensitive Personal Information for the purpose of inferring characteristics about any individual who is a resident of California.
- (d) **Consumer Requests.** If Elavon receives requests from Cardholders to exercise their rights under the CCPA, Elavon may inform the Cardholder that the request cannot be acted upon because the request has been sent to a Service Provider. Requests regarding Company Personal Information can be submitted by completing a Personal Information Request Form at https://www.elavon.com/privacy-policy.html#rights_choices or by calling Elavon at 1-800-725-1243.

- (e) **Other States.** Elavon is exempt from state privacy laws that include an exemption for “financial institutions” that are subject to the Gramm-Leach-Bliley Act (e.g., Colorado Privacy Act, Connecticut Act Concerning Personal Data Privacy and Online Monitoring of 2022, Iowa’s Act Relating to Consumer Data Protection, Utah Consumer Privacy Act of 2022, and Virginia Consumer Data Protection Act).

15. Audit and Information.

15.1. **Audit.** Company authorizes Elavon and its agents to perform an audit or inspection of Company’s operations and records to confirm Company’s compliance with the Agreement upon reasonable advance notice, during normal business hours, and at Elavon’s expense (unless Elavon reasonably determines based on such audit that Company is not in compliance with the Agreement, in which case Company will bear the cost). Company will obtain and submit a copy of an audit from a third party acceptable to Elavon of the financial, physical security, information security, and operational facets of Company’s business at its expense when requested by Elavon. Further, Company acknowledges and agrees that the Payment Networks have the right to audit Company’s business to confirm compliance with the Payment Network Regulations. Company will maintain complete and accurate records of its performance under the Agreement. Company will execute and deliver to Elavon all documents Elavon reasonably deems necessary to verify Company’s compliance with [Section 13.1](#).

15.2. Company Information.

- (a) **Authorizations.** Company authorizes Elavon to make, from time to time, any business and personal credit or other inquiries it considers necessary to review the Company Application or continue to provide services under the Agreement. Company also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Elavon.
- (b) **Financial Information.** Upon Elavon’s request, Company will provide Elavon financial statements (audited, if available) prepared by an independent certified public accountant selected by Company. Company further agrees to provide to Elavon such other information regarding Company’s financial condition as Elavon may request from time to time. Within 120 days after the end of each fiscal year, Company will furnish Elavon, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year. Company also will provide Elavon such interim financial statements and other information as Elavon may request from time to time. Notwithstanding the requirements in this section, Company will not be obligated to provide financial statements or similar information required by this section other than those included in Company’s filings with the Securities and Exchange Commission so long as Company remains registered and obligated to file financial statements (including annual reports on Form 10-K and quarterly reports on Form 10-Q) pursuant to the Securities Exchange Act of 1934, as amended.
- (c) **Beneficial Ownership; Bearer Shares.** Company will promptly notify Elavon of any changes in Company’s beneficial ownership structure or if Company has the ability to issue bearer shares.

16. **Proprietary Rights.** As between Elavon and Company, Elavon retains all right, title and interest in and to the Services, Elavon Materials, Updates, and all Intellectual Property Rights in any of the foregoing. Company will not acquire any ownership interest or license rights (except such rights as are expressly stated in the Agreement) in or to the Services, Elavon Materials, Updates, or Intellectual Property Rights in any of the foregoing. The rights granted to Company under the Agreement are non-exclusive and nothing in the Agreement will limit the ability of Elavon to market, sell, offer for sale, license or

otherwise exploit the Services, Elavon Materials, Updates, or Intellectual Property Rights in any of the foregoing to any third parties or to appoint or authorize any other person or entity to do the same.

17. Company Obligations with Respect to Advance Services.

- 17.1. At all times while Company is using the Advance Services it will also enroll in any other Elavon services that are necessary to enable the Advance Services functionality (such enrollment to be for no additional charge).
- 17.2. Company will allow Financing Partners to use Company's name or trade name in billing statements for Customers who are approved and accept an Advance Loan to assist such Customers in identifying the loan; however, Company's name will not be used in any collection activities or other negative communications made to a Customer regarding their Advance Loan.
- 17.3. Company will not attempt to surcharge any transaction paid through an Advance Loan – the payment amount will not differ from the amount charged when a different payment mechanism is used.
- 17.4. Company will adhere, and direct all of its employees, agents and contractors to adhere, to any marketing plan mutually agreed upon by Company and Elavon or its Financing Partners and will not use marketing materials other than those provided or expressly approved by Elavon or its Financing Partners.
- 17.5. Company will provide training to its employees, agents and contractors regarding the Advance Services as required by Elavon using the training materials supplied or approved by Elavon.
- 17.6. Company will prohibit its employees, agents and contractors from making any representations or warranties to Customer regarding the Advance Loans or their ability to be approved for an Advance Loan with any Financing Partner.
- 17.7. Company will provide reporting to Elavon from time to time as separately agreed upon by the parties.
- 17.8. Company will ensure that all transactions referred for an Advance Loan will be between Company and a Customer, and Company will not serve as a gateway or conduit to conclude transactions between Customers and third parties.
- 17.9. Company will ensure that all transactions referred for an Advance Loan will involve a bona fide purchase of a good or service between Company and Customer.
- 17.10. Company will not accept any payments from a Customer on an Advance Loan, and will direct any Customer who attempts to make such payment with Company to send payments as directed by the applicable Financing Partner.
- 17.11. Company will not, without Elavon's prior written approval, establish any compensation or reward plan for its employees, agents or contractors tied in any way to the promotion or use of the Advance Services.
- 17.12. Company will provide all necessary assistance to Elavon in investigating Company's sales practices associated with the Advance Services.
- 17.13. Customers must complete their own Advance Loan application, and Company agrees not to complete an Advance Loan application on behalf of a Customer. Company may make a device (such as a tablet) available to a Customer to complete an Advance Loan application. Each Customer must be able to (i) review each screen that request information from the Customer, (ii)

confirm that all the data entered is correct, (iii) review all Avvance Loan offers, and (iv) make their own selection as to whether they elect to proceed with an Avvance Loan.

- 17.14. Company is responsible for assigning login credentials and determining the access rights given to its employees for the Avvance Merchant Portal. Elavon has no obligation to detect or prevent, and will not be liable for failing to detect or prevent, any unauthorized access to or use of the Avvance Merchant Portal using any login credentials assigned by Company. If the Company's access to the Avvance Services terminates, all permissions granted to Company and its employees to use the Avvance Merchant Portal will immediately cease, and Elavon may disable connectivity and all access by Company and its employees.

18. Representations and Disclaimers

18.1. **Elavon Representations.** Elavon represents to Company the following as of the effective date:

- (a) **Organization.** Elavon is a corporation validly existing and duly organized under the laws of the state of Georgia with all authority, qualifications, consents, licenses and registrations necessary to conduct its business, in all jurisdictions where Elavon conducts business, in compliance with all Laws and Payment Network Regulations.
- (b) **Authority and Power.** Elavon has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Elavon to all provisions of the Agreement and such person is authorized to execute any document and to take any action on Elavon's behalf which may be required to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Elavon is subject.
- (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Elavon's knowledge, threatened, which if decided adversely would impair Elavon's ability to carry on its business substantially as now conducted or which would materially and adversely affect Elavon's financial condition or operations.

18.2. **Company Representations.** Company represents to Elavon the following as of the effective date:

- (a) **Organization and Information.** Company is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Company conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Company Application, the bid process, and Company Applications, as applicable, and in the assumptions in any document submitted to Elavon is true and complete and properly reflects the business, financial condition and ownership of Company in all material respects.
- (b) **Authority and Power.** Company has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Company and such person is authorized to execute any document and to take any action on behalf of Company that Elavon requires to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Company is subject.
- (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Company's knowledge, threatened, which if decided adversely would impair Company's ability to carry on its business substantially as now conducted or which would materially and

adversely affect Company's financial condition or operations.

- (d) **Business Use.** Company is obtaining and using the Services from Elavon to facilitate lawful business Transactions between Company and its Customers, and using the DDA only for lawful business purposes.

18.3. Disclaimer of Warranties. COMPANY UNDERSTANDS AND AGREES THAT ALL USE AND ACCESS TO ADVANCE SERVICES IS PROVIDED "AS IS" WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE AND NON-INFRINGEMENT. FURTHER, ELAVON EXPRESSLY DISCLAIMS ANY TYPE OF REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY OR RESPONSE TIME OF THE ADVANCE SERVICES OR THAT ACCESS TO THE ADVANCE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, INCLUDING ANY AVAILABILITY THROUGH A THIRD-PARTY PORTAL. NEITHER ELAVON NOR ANY OF ITS REPRESENTATIVES WILL BE LIABLE TO COMPANY OR ANY OTHER PARTY FOR ANY LOSS OR INJURY ARISING OUT OF, OR CAUSED IN WHOLE OR IN PART BY, THE ADVANCE SERVICES OR INABILITY TO USE THE ADVANCE SERVICES.

18.4. No Viruses, Etc. Elavon will not code or insert into any portion of the Services, and will use commercially reasonable efforts to ensure that no Service will otherwise contain, any computer virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, time bomb or any other malicious codes or instructions that may be used to access, modify, delete, damage or disable the Services or Company's or any third party's software, firmware, computer system or devices.

19. Indemnification. Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against losses, damages, liabilities, fines, judgements and expenses (including all reasonable attorneys' fees) (collectively, "**Losses**") in connection with claims, actions, demands or proceedings (made or threatened) brought by a third-party arising out of (a) any goods or services sold by Company resulting in a Transaction processed under the Agreement; (b) Company's breach of the Agreement; (c) all use of any user ID and password other than by Elavon or Elavon's third-party contractors; (d) Company's or its Service Providers' gross negligence or willful misconduct; (e) Company's or its Service Providers' violation of Laws or Payment Network Regulations; or (f) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers. Company will not enter into any settlement that imposes any liability or obligation on any of the Elavon indemnified parties, or that contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without Elavon's prior written consent. Elavon may join in the defense, with its own counsel, at its own expense.

20. Limitation of Liability. Company acknowledges that fees for the Services are very small in relation to the funds conditionally credited to Company for Transactions, and, consequently, Elavon's willingness to provide these Services is based on the liability limitations contained in the Agreement. Therefore, Elavon's aggregate liability for any Losses (other than those arising out of Elavon's gross negligence, willful misconduct, or fraud), regardless of the form of action, arising out of the Agreement or Elavon's performance or non-performance of Services under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise), will not exceed an amount equal to the fees paid by Company during the three months immediately preceding the event giving rise to the Losses, exclusive of fees and variable costs incurred by Elavon to process Transactions such as interchange costs, assessments, charges, and fees imposed by a third party. In no event will Elavon, Member, or their agents, officers, directors, or employees be liable to Company for indirect, exemplary, punitive, special, or consequential damages in connection with the Agreement under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise).

21. Third-Party Vendors.

21.1. Limitations Regarding Service Providers

- (a) Company may engage Service Providers to assist Company with the presentation of the Avvance Services to Company's Customers. Company is responsible for identifying all Service Providers to Elavon and its Financing Partners and may be required to execute further documentation that (i) directs Elavon and its Financing Partner to work with the identified Service Provider and (ii) holds Elavon and its Financing Partners harmless from any claims arising from Service Provider's actions or inactions.
- (b) Elavon and its Financing Partners are not obligated to work with Service Providers. Elavon and Financing Partner reserve the right to require any Service Provider to (i) complete due diligence materials requested by Elavon or its Financing Partner, (ii) enter into any agreements deemed necessary by Elavon or its Financing Partner, (iii) present the Avvance Services in a legally compliant manner as reasonably determined by Elavon or its Financing Partner, and (iv) provide update information and enter into modified agreements at any time.

21.2. Oversight of the Financing Partners

- (a) Elavon will conduct reasonable due diligence on the business practices of each Financing Partner prior to permitting such Financing Partner access to Company's Customers, and periodically thereafter. Elavon will review each Financing Partner's described process of originating an Avvance Loan to ensure it complies with applicable Law. Elavon is not responsible if a Financing Partner does not comply with the originating practices disclosed to Elavon.
- (b) Elavon will contractually require each Financing Partner to (i) clearly identify itself as the lender for an Avvance Loan, (ii) clearly notify each Customer that entry into an Avvance Loan is optional and is not a condition to completing the purchase transaction with Company, (iii) make its privacy policy available to a Customer prior to the Financing Partner gathering any Customer information, (iv) provide a clear explanation of the terms, including the payment amount, number of payments to be made, frequency of payments and the interest rate (if applicable) when making any loan offers to Customers, and (v) allow a Customer to review the entire terms of each loan offer prior to accepting a loan offer. Elavon will expressly prohibit such Financing Partners from representing that Company is the creditor in the Avvance Loan.

21.3. Elavon Third Party Contractors. Elavon may use third party contractors in connection with the performance of its obligations under the Agreement. Elavon will be responsible for the performance of its obligations hereunder notwithstanding any use of or delegation of any responsibility to any Elavon third-party contractor. Elavon is responsible for any violations of the Agreement that result from the acts or omissions of its third party contractors.

22. General Provisions.

22.1. Entire Agreement. The Agreement (including all appendices, schedules, attachments, exhibits, addenda and other documents incorporated by reference) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other agreements, written or oral, are superseded by the Agreement. If a conflict exists between the documents comprising the Agreement, the following order of priority will apply: (i) any schedule or amendment to the Agreement; (ii) the TOS; (iii) the Company Application; and (iv) any Documentation provided to Company in writing by Elavon.

- 22.2. Governing Law; Jurisdiction and Venue; Class Action Waiver.** Subject to Section 22.5, (i) the laws of the State of Georgia, without giving effect to its conflict of laws provisions, will govern any claim, controversy or dispute between the Company and Elavon, whether sounding in contract, tort or otherwise, regarding this Agreement or any aspect of any relationship between the parties (each, a “**Claim**”), and (ii) each party submits to the exclusive jurisdiction of the United States District Court for the Northern District of Georgia or the courts of the state of Georgia (Fulton County) (including the Georgia State-wide Business Court), agrees to bring any action, litigation, or proceeding against any other party only in those courts (except for collection actions by Elavon relating to amounts owed by Company under the Agreement), and waives any objection to venue with respect to the actions brought in those courts. All performances and Transactions under the Agreement will be deemed to have occurred in the State of Georgia, and Company’s entry into and performance of the Agreement will be deemed to be the transaction of business within the state of Georgia. Any Claim filed in court will be brought on an individual basis only. The parties agree not to participate in any class action, private attorney general action, or other representative action for any Claim filed in court by any party.
- 22.3. Construction.** The headings used in the Agreement are inserted for convenience only and will not affect the interpretation of any provision. Each provision is to be construed as if the parties drafted it jointly. The word “day” will mean “calendar day”, unless specifically stated otherwise.
- 22.4. Assignability.** The Agreement may be assigned by Member or Elavon. Company will not assign the Agreement, directly, by operation of law, or by change of control of Company, without Elavon’s prior written consent. If Company nevertheless assigns the Agreement without Elavon’s consent, the Agreement will be binding on both the assignee and Company. If Company sells its business and the new owners incur Chargebacks, the original owners and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.
- 22.5. Arbitration.**
- (a) Notwithstanding anything in Section 22.2 to the contrary, any party may elect in writing, and without consent of the others, to arbitrate any Claim. The Claim will be submitted to and decided by arbitration held in the city and state in which the Company maintains its principal place of business and in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (a copy of which can be reviewed at www.adr.org) except that the arbitration proceeding will be conducted before a single, neutral arbitrator who will be an active member of the bar of the state in which the arbitration is conducted and actively engaged in the practice of law for at least 10 years and who will issue a reasoned award. The arbitrator will decide the dispute in accordance with the terms of this Agreement and applicable substantive law, including the Federal Arbitration Act and applicable statutes of limitation. The arbitrator will have the authority to award any remedy or relief that a federal court in the state in which the arbitration is conducted could order or grant, including relief contemplated under Federal Rule of Civil Procedure 11.
 - (b) At the time of initiating arbitration, the party seeking to initiate arbitration must provide the parties against whom a Claim is filed with a demand for arbitration that includes a short and plain statement of the claims asserted and relief sought. Federal Rule of Civil Procedure 11 will apply to the arbitration proceeding, including that the Claims and relief sought are neither frivolous nor brought for an improper purpose.
 - (c) Any Claim filed in arbitration will be brought on an individual basis only, and no class action, private attorney general, or other representative claims may be pursued in arbitration, nor may such action be pursued in court if any party elects arbitration. The arbitrator will have

no authority to decide such claims. The arbitrator can only decide Elavon's or the Company's Claims and may not consolidate or join the claims of other persons who may have similar claims. No party to this Agreement may assert a Claim in arbitration on behalf of any third party or represent any class of claimants in an arbitration brought pursuant to the Agreement. If under applicable Law a claim, remedy or request for relief cannot be compelled to arbitration, then that claim, remedy or request for relief will be severed and may be brought in a court of competent jurisdiction under this Agreement after arbitration and all appeals are concluded. The remaining claims, remedies or requests for relief will be submitted to arbitration consistent with the terms of this provision. If this paragraph is determined by the arbitrator to be unenforceable, then this entire provision will be null and void.

- (d) While each party will bear its own attorney, expert and witness fees incurred in the arbitration proceeding (absent a contrary determination by the arbitrator as set forth in a reasoned award), Elavon will bear all administrative cost of the arbitration including the arbitrator's fees and will reimburse the Company's filing fee if the Company initiates the arbitration. The parties agree that the underlying agreement between the parties involves interstate commerce and that, notwithstanding the choice of law provision in Section 22.2, any arbitration will be governed by the Federal Arbitration Act.
- (e) Except as this provision otherwise provides, if any part of this provision is deemed to be invalid or otherwise unenforceable by the arbitrator, that part will be severed from the remainder of this provision and the remainder of this provision will be enforced.

22.6. **Notices.** Unless otherwise specified, except for routine operational communications (including account modification, chargeback, and hold notices), which may be delivered personally or transmitted by electronic mail, all notices to the other party will be deemed received upon the earlier of (a) actual receipt, (b) five business days after being deposited in the United States mail (or the Canada Post mail, as applicable), return receipt requested, or (c) two business days after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to Company's address on the Company Application or the last address shown on Elavon's records, or to Elavon at 7300 Chapman Highway, Knoxville, Tennessee 37920, or such other address as Elavon may designate in writing.

22.7. **Bankruptcy.** Company will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Company. Company will include Elavon on the appropriate schedule of creditors and any creditors' matrix filed with any Bankruptcy Proceeding.

22.8. **Attorneys' Fees and Expenses.** Except as set forth in Section 22.5(d), Company will be liable for and will indemnify and reimburse Member and Elavon for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member or Elavon: (i) in the enforcement of the Agreement; (ii) in collecting any amounts due from Company to Member or Elavon; or (iii) resulting from any breach by Company of the Agreement. Except as stated in the previous sentence, each party will pay its own costs and expenses in connection with the Agreement and the transactions contemplated hereby, including all attorneys' fees, accounting fees and other expenses.

22.9. **Telephone Recording.** For quality assurance and training purposes, Company authorizes Elavon to monitor and record Customer service telephone conversations at any time, subject to Laws and applicable disclosures if required.

22.10. **Communication with Company.**

- (a) Company agrees that Elavon and Member may provide Company with information about

their services, including information about new products and services, by telephone, electronic mail, and facsimile. By providing Elavon with a telephone number for a cellular phone or other wireless device, including a number that Company later converts to a cellular number, Company is expressly consenting to receiving communications — including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system—from Elavon and its affiliates and agents at that number. This express consent applies to each such telephone number that Company provides to Elavon now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from Company’s cellular provider.

- 22.11. **Amendments.** Member and Elavon may propose changes to any term of this Agreement or additions to the Agreement. Member or Elavon will notify Company of a proposed change or addition to the Agreement in writing, electronically, or by any other method permitted by Law. The parties agree that 30 days’ written or electronic notice prior to the effective date of any change or addition is reasonable. Company will be deemed to have agreed to the change if Company continues to present Transactions to Member and Elavon after 30 days following the issuance of the notice. Notwithstanding any limitations set forth in the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Company, unless a later effective date is provided. Further, Elavon is entitled to pass through to Company any fee increases imposed upon Elavon by Visa, Mastercard, Discover Network, any other Payment Network, and any other third party including telecommunications vendors.
- 22.12. **Severability and Waiver.** If any sentence, term, right, duty, or obligation within any clause or provision of this Agreement, or the application of any such sentence, term, right, duty, or obligation to any person or circumstance, is invalid or unenforceable, the remainder of any sentence, term, clause or provision within this Agreement, or the application of such sentence, term, right, duty, or obligation to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. None of the failure to exercise, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor will such amend the Agreement. All waivers requested by a party must be signed by the waiving party.
- 22.13. **Independent Contractors.** Elavon and Company will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically stated in the Agreement. The Agreement has been entered into solely for the benefit of the parties to the Agreement and is not intended to create an interest in any third party except where explicitly stated otherwise.
- 22.14. **Survival.** All of the obligations of each party that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including [Sections 9, 10.3, 10.4, 12, 14, 16, 19, 20, 21, 22.2, 22.5, and 22.14](#) of the TOS, will survive and remain binding upon and for the benefit of the parties.
- 22.15. **Counterparts; Electronic Delivery.** The Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which, taken together, will constitute one and the same agreement. Signed counterparts may be delivered by fax or electronic means (e.g., .pdf documents via e-mail, the use of an electronic representation of signatures), and will constitute signed originals. The parties agree that the Agreement signed with an electronic representation of a party’s signature is legally binding.
- 22.16. **Force Majeure.** Neither party will be considered in default in performance of its obligations to the extent such performance is delayed by Force Majeure affecting such party’s

ability to perform. A “**Force Majeure**” means an act of God, natural disaster, pandemic, war, act of terrorism, civil disturbance, action by governmental entity, strike, and other cause beyond such party’s reasonable control. If a Force Majeure interrupts Elavon’s provision of any Services, Company will continue to pay Elavon the fees for the Services owed under the Agreement and Elavon will make all reasonable efforts to restore such Services. If the delay caused by the Force Majeure continues for a more than 14 days, then Company may, upon notice to Elavon, as its sole and exclusive remedy, abate payment to Elavon (to the extent Services are not performed) and terminate the Agreement.

- 22.17. **Business Continuity.** Elavon will maintain and adhere to business continuity plans that are commercially reasonable within the industry for the Services.

Appendix 1 Definitions

“**ACH**” means Automated Clearing House, the funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.

“**ACH Rules**” means the NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.

“**Affiliates**” means entities affiliated under the majority ownership or control of, under common ownership or control with, or which own or control, a party.

“**Agreement**” means the TOS, the Company Application, and any other guides or manuals provided to Company from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.

“**Authorized Users**” means Company’s employees or contractors designated by Company to access and use the Services.

“**Advance Loan**” means a booked loan from a Financing Partner by a Customer of Company.

“**Advance Services**” means technology solutions allowing certain of Company’s Customers to have the opportunity to apply for a loan from “Financing Partners” to pay for the goods and services purchased from Company.

“**Bankruptcy Proceeding**” means, with respect to an entity, (i) that the entity or any subsidiary of such entity will: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file or be subject to a petition seeking to take advantage of any other applicable state or federal laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such entity or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable state or federal laws; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding will be commenced against the entity or any subsidiary of such entity in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (x) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (y) the appointment of a trustee, receiver, custodian, liquidator or the like of such entity or of all or any substantial part of the assets, domestic or foreign, of such entity or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.

“**California Company Information**” means the Personal Information (as defined under the CCPA) that Elavon may collect that is about Company, its employees, its owners, its agents, and Guarantors, who are residents of California and considered Consumers (as defined under the CCPA) under the CCPA.

“Card Brands” means (i) Visa;; and (ii) any other organization or association that hereafter contracts with Elavon to authorize, capture, and settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

“CCPA” means the California Consumer Privacy Act of 2018 (CCPA), codified at California Civil Code section 1798.100 *et seq.*, as amended by the California Privacy Rights Act (CPRA), and all applicable regulations and successor laws thereto.

“Chargeback” means a Transaction disputed by a Customer pursuant to the Payment Network Regulations.

“Company” means the business entity indicated on the Company Application that provides goods or services to Customers, or that accepts payments from Customers.

“Company Application” means the Company Application and any additional document containing information regarding Company’s business that is submitted to Elavon and Member in connection with Company’s request for Services, including any additional location forms and any documents submitted by Company as a part of the bid process, if applicable.

“Confidential Information” means all data and information, regardless of the form or media, relating to the business of the Disclosing Party of which the Receiving Party becomes aware as a consequence of, or through, the performance of its obligations under the Agreement, which has value to the Disclosing Party and is not generally known by its competitors, which is reasonably identified as confidential at the time of disclosure or which, under the circumstances surrounding disclosure, ought to be reasonably considered as confidential, including technical information, drawings, engineering data, performance specifications, cost and price information (except as provided otherwise in the Agreement), and other information, data and reports, and the terms and conditions of the Agreement. Confidential Information does not include any data or information which (i) is already known to the Receiving Party prior to disclosure by the Disclosing Party; (ii) has become generally known to the public through no wrongful act of the Receiving Party; (iii) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, a breach of an obligation of confidentiality running directly or indirectly to the other party; or (iv) is independently developed by the Receiving Party without use, directly or indirectly, of the Confidential Information received from the Disclosing Party. Transaction Information is not Confidential Information under this definition, and is addressed in [Section 14.2](#)

“Credit Card” means a card or device bearing the symbol of any Card Brand and associated with a revolving line of credit that can be used to purchase goods and services from Company or to pay an amount due to Company or to obtain cash advances.

“Customer” means a client of Company, including those who elects to conduct a Transaction with Company, including through the use of Avvance Services.

“DDA (Demand Deposit Account)” means the commercial checking account at an ACH participating financial institution designated by Company to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, and other payments due under the Agreement.

“Disclosing Party” means the party providing the Confidential Information to the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).

“Documentation” means the Elavon standard written description for the Services, as applicable, that is delivered to Company under the Agreement, including user manuals and best practices guides, as may be amended by Elavon from time to time, but not including marketing materials, proposals, demonstrations or

other promotional information.

“Elavon” means, as applicable, Elavon, Inc., a Georgia corporation, or Elavon Canada Company, a company validly existing and organized in Nova Scotia. Elavon is a registered member service provider of each Member. Elavon may also be referred to as “Servicer” in the Agreement or other documents provided to Company in connection with the Services.

“Elavon Data Breach” means loss or unauthorized access to, use, disclosure or exfiltration of any Customer information or Transaction Information provided by Company and received by Elavon in connection with Company’s use of the Services under the Agreement that (i) originated within data operating systems controlled by Elavon or its third-party contractors, (ii) occurred due to a breach of the Agreement by Elavon, (iii) was not attributable to any act or omission of Company or its Service Providers, and (iv) does not relate to any Company provided data in user defined fields not required by Elavon or used to perform the Services.

“Elavon Materials” means the specifications, documentation (including Documentation), application programming interfaces (APIs) and other interfaces, nonpublic or proprietary data import routines, sample code and materials provided to Company to enable Company to perform its obligations or exercise its rights under the Agreement, including integration to the Services.

“Financing Partner” means the originator or servicer of a loan that pays for goods or services purchased from Company.

“Intellectual Property Rights” means worldwide patents, trade secrets, copyrights, trademarks, service marks, trade names, and all other intellectual property rights and proprietary rights, including all rights or causes of action for infringement or misappropriation of any of the foregoing.

“Issuer” means the financial institution or other entity that issued the Credit Card.

“Laws” means all applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.

“NACHA” means the National Automated Clearing House Association.

“Payment Network” means any Card Brand or automated clearing house association, governmental agency or authority, and any other entity or association that operates a payment processing network.

“Payment Network Regulations” means the rules, operating regulations, guidelines, specifications and related or similar requirements of any Payment Network.

“PCI-DSS” means the Payment Card Industry Data Security Standards.

“Person” means any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and will include any successor (by merger or otherwise) of such entity.

“Pre-Approval” means the conditional agreement of a Financing Partner to make an Avvance Loan in a maximum dollar amount to a potential Company Customer to pay for a purchase transaction with Company. Each Pre-Approval is valid for a fixed period of time.

“Processing Services” means those services necessary to accept and process a virtual card as a means of completing a purchase by using a loan obtained through the Avvance Services.

“Receiving Party” means the party receiving Confidential Information from the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).

“Security Programs” means the PCI-DSS, including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of Mastercard, the Data Security DISC Program and the PCI-DSS regulations of Discover Network, and the security programs of any other Payment Network, and any modifications to, or replacements of, such programs that may occur from time to time.

“Service Provider” means any entity that stores, processes, transmits or accesses Transaction Information on behalf of Company or that provides software to Company for transaction processing, storage, or transmission, except to the extent such services are performed by the entity in its capacity as a third-party contractor of Elavon performing Elavon’s obligations under the Agreement.

“Services” means the Advance Service, the Processing Services and other related products and services received by Company pursuant to the Agreement.

“Split Funding” mean a purchase transaction where the payment of the purchase price is broken into two or more installments.

“Transaction” means any action between Company and a Customer that results in transmission of Transaction Information (e.g. payment, purchase, refund, return, chargeback, authorization request, settlement submission, transaction inquiry, decryption, conversion to/from Tokens).

“Transaction Information” means any data or information resulting from a Transaction, including through the use of Advance Services. Transaction Information includes payment processing-related transactional information that may be collected or stored by Elavon, including the price paid for products or services, date, time, approval, unique transaction number, store identifier, and Customer bank information relating to a Transaction.

“Transaction Receipt” means the paper or electronic record evidencing the purchase of goods or services from, or payment to, a Company by a Cardholder using a Payment Device.

“Updates” means all updates, revisions, patches, fixes, new releases, and other improvements or changes to any Services provided to Company under the Agreement.

“United States” means the United States of America.

“Visa” means Visa U.S.A., Inc.