

Elavon, Inc.
Software Maintenance Agreement

This Software Maintenance Agreement ("Agreement") is entered into and made effective as of _____, 201____ ("Effective Date"), by and between Elavon, Inc. a Georgia corporation having its principal place of business at One Concourse Parkway, Suite 300, Atlanta, GA 30328 (referred to in this Agreement as "Elavon"), and the company identified below ("Company").

Company:
Address:

Telephone: Fax:
Contact Name and Title:
Email:

1. Definitions.

1.1 Software. "Software" means the Elavon software licensed through Elavon or an Elavon authorized Value Added Reseller ("VAR").

1.2 Software Maintenance. "Software Maintenance" means Software Support on a 24 hour by 7 day basis and Software Maintenance Updates as they are made generally available to Elavon's customers.

1.3 Software Support. "Software Support" means Elavon personnel support and services made available to Company including reasonable telephone support for supporting the functionality of the Software in accordance with the published Documentation and the published technical specifications of the Transaction Processors for which Company has licensed the Software.

1.4 Software Maintenance Updates. "Software Maintenance Updates" mean periodic Software releases and related documentation that may be provided through Elavon or the VAR to Company in order to comply with industry rules and regulations and the standards set by bankcard associations, Transaction Processors and/or other similar issues and entities that may affect the appropriate operation and/or application of Software by Company.

1.5 Maintenance Fee. "Maintenance Fee" means the annual, non-refundable fee paid by Company to Elavon or, when applicable, to VAR for Software Maintenance. The Maintenance Fee is subject to change for a renewal term, subject to with at least sixty (60) days prior written notice to Company of the new Maintenance Fee.

1.6 Transaction Processors. "Transaction Processors" mean service bureaus which provide authorization and/or settlement services to merchants. These services may support credit, debit, check or other types of transaction services.

2. Payment. Company shall pay invoiced amounts within the allotted number of days as presented on and from the date of invoice in U.S. Dollars, subject to the approval by Elavon of the amount and terms of credit. The amount of credit or terms of payment may be changed or credit may be withdrawn by Elavon at any time. If Company fails to pay an invoiced amount when due, then, in addition to all other rights and remedies at law or otherwise, Elavon or, when applicable, VAR shall have right to bill Company, and Company shall have the obligation to pay, late payment charges equal to 1.5% per month or the highest interest rate permitted by applicable law, whichever is lower, on the unpaid amount for the period starting with date payment was due and ending when the full payment is made.

3. Maintenance Agreement Renewals. Company shall be invoiced for the Maintenance Fee sixty (60) days prior to the renewal date. If payment is not received by Elavon within the payment terms specified on the invoice, Elavon will send a late notice to Company. If payment for the Maintenance Fee is not received within thirty (30) days of the date of the late notice, Elavon will send written notice to Company terminating this Agreement and the license for the Software.

4. Warranty Disclaimer and Limitation of Liability. ELAVON MAKES AND COMPANY RECEIVES NO WARRANTY, EXPRESS OR IMPLIED, FOR THE MAINTENANCE AND OTHER SERVICES PROVIDED HEREUNDER. ELAVON DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ELAVON SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES RESULTING FROM THE MAINTENANCE OR OTHER SERVICES PROVIDED HEREUNDER, WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, EVEN IF ELAVON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, ELAVON'S MAXIMUM LIABILITY, REGARDLESS OF THE FORM OF THE ACTION, SHALL NOT EXCEED THE FEES PAID BY COMPANY FOR THREE (3) MONTHS OF MAINTENANCE OR THE SPECIFIC SERVICES AT ISSUE. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THAT ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY.

5. Force Majeure. No party shall be responsible for, or be considered to be in breach hereunder because of, failure or delay in delivery of any Software Maintenance or other service hereunder, nor shall any Party be responsible for failure or delay in receiving such Software Maintenance or other service, if caused by an act of God or public enemy, war, government acts or regulations, fire, flood, embargo, quarantine, epidemic, labor stoppages beyond its reasonable control, accident, unusually severe weather, malicious acts of third parties (including, without limitation, the introduction of computer viruses), interruption of telecommunications service, or other cause similar or dissimilar to the foregoing beyond its reasonable control. If a force majeure interrupts Elavon's Software Maintenance or other services, Company shall continue to pay Elavon's fees and Elavon shall make all reasonable efforts to restore Software Maintenance and other services and pay the additional cost to do so. If Elavon is unable to substantially restore Software Maintenance and the other services within one week after the force majeure event, then Company may, upon notice to Elavon, abate payment to the extent Software Maintenance and other services are not performed.

6. Taxes. Company shall pay all taxes incurred in connection with the Maintenance Fee, excluding any tax based on Elavon's net income.

7. Term and Termination.

7.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue for one (1) year. This Agreement shall automatically be renewed and shall continue to be renewed for successive one-year periods so long as Company continues to make timely Maintenance Fee payments unless one of the parties terminates this Agreement by giving the other party written notice thereof at least forty-five (45) days prior to the beginning of the next one year period.

7.2 Monetary Default. Notwithstanding anything contained in this Agreement to the contrary, in the event that Company shall be in monetary default of this Agreement for a period of ten (10) days, Elavon shall be excused from the performance of all its obligations hereunder. Additionally, Elavon may terminate this Agreement at anytime following such monetary default by providing written notice to Company.

7.3 Termination. Company's failure to comply with any of its obligations, if not cured to the reasonable satisfaction of Elavon within thirty (30) days after Company's receipt of notice of such failure from

Elavon, will give Elavon the right to terminate this Agreement with Company without further notice.

8. Support and Maintenance Limitations.

8.1 Refusal of Software Support. Elavon reserves the right to refuse Software Support to Company if

- a. Company is in breach of this Agreement,
- b. Company fails to follow reasonable Elavon support recommendations, or
- c. Company uses or appears to use Software for unauthorized access to Transaction Processors.

8.2 Limitations of Software Support. Elavon has no obligation to provide Software Support under this Agreement if Software has been modified or changed without written authority from Elavon, or the computer or operating system used in connection with the Software malfunctions, or changes to the operating environment make it incompatible with the operation of the Software.

8.3 Maintenance Limitations.

- a. Company shall be responsible, with the assistance of Elavon, to engage with their Point of Sale (POS)/Property Management System (PMS) provider to ensure that the POS/PMS in use by Company is/are certified and compatible with the most recent version of Software in order to maintain compliance under applicable industry rules and regulations and the standards set by bankcard associations. Failure of the POS/PMS to be compatible and function in accordance with the Software as regulated and/or required shall excuse Elavon from all liability and all of its obligations under this Agreement or any other Services that Elavon may be providing to Company.
- b. Elavon will provide Software Maintenance Updates and Software Support only for the most recent version of Software and the preceding version for no more than twelve (12) months after the most recent version of Software becomes available to Company. If Company does not update its system within that time, Elavon will have no further obligation to provide Software Support for the preceding version. Notwithstanding the foregoing, in the event Elavon is required under applicable industry rules and regulations or any standards as set forth by bankcard associations, including those of the Payment Card Industry Data Security Standards (PCI DSS) and Payment Applications Best Practices (PABP), to discontinue Support, Elavon shall adhere to such without regard to the twelve (12) month notice.

9. General.

IN WITNESS WHEREOF, the parties, by their duly authorized officers, have executed and delivered this Agreement on the date first written above.

Company: _____

Signature

Printed Name

Title

9.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia. Venue and jurisdiction for all litigation shall be in the State of Georgia, and, where applicable, in the County of Fulton.

9.2 Severability. The parties agree that each provision of this Agreement shall be construed independently of any other provision of this Agreement. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof. This Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

9.3 Entire Agreement. This Agreement hereto constitutes the entire agreement between the parties as to the subject matter hereof. This Agreement supersedes all prior or contemporaneous oral, implied or written agreements and shall take precedence over any inconsistent provisions contained in any Purchase Order issued by the Company related thereto. No amendments or modification of this Agreement will be valid and binding upon either party unless they are set forth in writing referencing this Agreement and that writing is executed by authorized representatives of both parties.

9.4 Confidentiality. During this Agreement, each party may acquire information of a highly confidential and proprietary nature about the other party, its business activities and operations and its technical information and trade secrets. Each party shall hold such information in strict confidence and shall not reveal the same except for any information generally available to or known by the public, known prior to the negotiations leading to this Agreement, independently developed outside the scope of this Agreement or lawfully disclosed by or to a third party or tribunal. The confidential and proprietary information of each party shall be safeguarded by the other party to the same extent that it safeguards its own confidential and/or proprietary information and business methods.

9.5 Waiver. No waiver by any party of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether similar, nor will any waiver constitute continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

9.6 Assignment; Inurement. Company shall not have the right to transfer or assign their respective rights and obligations under this Agreement to any other individual or entity without the prior written consent of Elavon or its permitted assigns, which consent shall not be unreasonably withheld. Subject to the foregoing, the Agreement, and the obligations and benefits herein contained, shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

9.7 Captions. All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning and construction of any provision hereof.

Elavon, Inc.

Signature

Printed Name

Title

Date

Date