

COMMONWEALTH OF VIRGINIA
Department of the Treasury
MERCHANT CARD FINANCIAL PROCESSING SERVICES
Contract Number CMI 10-001

This Contract is entered into as of this 1st day of February, 2010 by Elavon, Inc., hereinafter called the "Contractor", and the Commonwealth of Virginia Department of the Treasury, hereinafter called the "Issuing Agency".

WITNESSETH that the Contractor and the Issuing Agency, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Commonwealth as set forth in the Contract Documents.

PERIOD OF CONTRACT: From February 1, 2010 through January 31, 2015, with three (3) one-year options to renew in accordance with the terms noted in the Contract.

CONTRACT DOCUMENTS: The Contract Documents shall consist of the following, which are incorporated herein:

- (1) This signed Contract;
- (2) The following portions of the Request for Proposals dated July 27, 2009:
 - (a) The Statement of Needs
 - (b) The General Terms and Conditions
 - (c) The Special Terms and Conditions, together with any negotiated modifications of those Special Conditions
- (3) The Contractor's proposal dated August 19, 2009 and the Written Modifications to Elavon's Proposal dated January 29, 2010.
- (4) Elavon Payment Device Processing Agreement
- (5) Schedule D Electronic Gift Card Services
- (6) Schedule E Electronic Check Services
- (7) Schedule I Processing Services for Government Entities and Institutions
- (8) Joinder to Payment Device Processing Agreement (for Joinder Merchants)

IN WITNESS WHEREOF the parties have caused this Contract to be duly executed intending to be bound thereby, and certify they are authorized to sign this Contract for the Contractor or the Commonwealth.

ELAVON, INC.



(Signature)

Timothy I. Miller

(Printed Name)

Senior Vice President

(Title)

2/4/10

(Date)

COMMONWEALTH OF VIRGINIA

Department of the Treasury


(Signature)

Manju S. Ganeriwala

(Printed Name)

Treasurer of Virginia

(Title)

2/23/10

(Date)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF THE TREASURY

REQUEST FOR PROPOSALS #CMI 10-001

for

MERCHANT CARD
FINANCIAL PROCESSING SERVICES

Manju S. Ganeriwala
TREASURER of VIRGINIA

KELLEY S. DENTON, VCO
PROCUREMENT OFFICER

July 27, 2009

REQUEST FOR PROPOSALS
#CMI 10-001

Issue Date: July 27, 2009

Title: Merchant Card Financial Processing Services

ISSUING AGENCY: Attn: Kelley S. Denton, VCO
 Procurement Officer
 Commonwealth of Virginia
 Department of the Treasury
 P.O. Box 1879
 Richmond, Virginia 23218-1879

AUTHORIZED USERS: State Agencies, Institutions and Public Bodies of the Commonwealth of Virginia

Initial Period Of Contract: On or before February 1, 2010 Through January 31, 2015 With Three Additional One (1) Year Renewal Periods in Accordance with the Terms and Conditions herein.

Sealed Proposals Will Be Received Until 1:00 P.M. Eastern Standard Time (EST), August 21, 2009 For Furnishing Merchant Card Services Described Herein.

All Inquiries For Information Must Be Made by August 5, 2009 in Writing and Should be Directed To: Kelley Denton: by fax: (804) 225-3187, or e-mail: kelley.denton@trs.virginia.gov.

If Proposals Are Mailed, Mail Directly To Issuing Agency Shown Above, Adding One Line To The Top Of The Address As Follows: Proposal for Merchant Card Services, RFP #CMI 10-001.

If Proposals Are Hand Delivered, Deliver To: Proposal for Merchant Card Services, RFP #CMI 10-001, Commonwealth of Virginia, Department of the Treasury, James Monroe Building - 3rd Floor, 101 North 14th Street, Richmond, Virginia 23219, Attn: Kelley S. Denton, VCO.

In Compliance With This Request For Proposals And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish Merchant Card Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiations.

Offeror's Name:	By (Signature in Ink):
Complete Address:	Name (please print) and Title:
	Date:
City/State/Zip:	Federal Identification Number:
Telephone Number:	Facsimile Number:

Note: This public body does not discriminate against faith-based organizations in accordance with *Code of Virginia, § 2.2-4343.1* or against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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SECTION I: PURPOSE

The purpose of this Request for Proposals ("RFP") issued by the Department of the Treasury ("Treasury") is to solicit sealed proposals from qualified offerors to establish a contract through competitive negotiations for the purchase of merchant and financial processing services related to:

- Credit Cards – Face to Face, Internet, Card Not Present,
- Debit Cards – Both Pin based and Pinless serving the public for Face to Face, Internet, Card Not Present
- e-Check Transactions, both Face to Face and through the internet
- Gift Cards
- Card types to support: VISA, MasterCard, American Express, Discover, Voyager

The intent of Treasury's proposal is to provide enough information for competing offerors to provide a response to our request without limiting the content of offerors responses or excluding relevant or essential data. We encourage you to expand on service and product capabilities.

The contract resulting from this solicitation will provide for State Agencies, Institutions, and Public Bodies of the Commonwealth the opportunity to utilize the services of the State's merchant card processing contract. Public bodies are defined as: "Any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds."

SECTION II: BACKGROUND

The Commonwealth of Virginia first established a merchant card-processing contract in 1990 to enable interested State agencies to accept Visa and MasterCard credit cards as payment options. Appendix B provides a list of current agency participation and volume information. The current request for proposals (RFP) includes:

- Credit Cards – Face to Face, Internet, Card Not Present,
- Debit Cards – Both Pin based and Pinless serving the public for Face to Face, Internet, Card Not Present
- e-Check Transactions, both Face to Face and Internet
- Gift Cards
- Card types to support: VISA, MasterCard, American Express, Discover, Voyager

Participation under the statewide contract is voluntary; State Agencies, Institutions, and Public Bodies may elect to participate under the statewide contract or procure credit card services directly from another vendor. There is no guarantee that all of the agencies listed in Appendix B will participate in this contract, however it is expected that most, if not all would continue with this program. State agencies are structured to meet their specific missions and have varying processing needs. Acceptance methods vary according to the State Agencies, Institutions, or Public Bodies needs and include point of sale swipe terminals, telephone, mail, interactive voice response (IVR) systems, self-service terminals, electronic cash registers, electronic capture software systems, and the Internet capture systems.

The VipNet Authority, now DBA Virginia Interactive was established in 1998 to facilitate Internet activity involving residents, business, and agencies of the Commonwealth of Virginia. Some of this activity may involve payments made with credit/debit cards. For example, an application fee to a state university might be paid with a credit or debit card. Not all Internet activity takes place through Virginia Interactive.

Various State Agencies use heavily integrated processing solutions which are outlined in Section III.

SECTION III: STATEMENT OF NEEDS

The Contractor shall provide the following services:

A. Merchant Card Services

1. The Contractor shall establish the mechanism(s) and system(s) to enable State agencies to accept and process merchant transactions and then settle the transactions at the designated financial institution including the following:
 - a. Visa
 - b. MasterCard
 - c. Discover
 - d. American Express
 - e. Voyager Card - Fuel
 - f. Debit Cards – Pin and Pinless, Face to Face and Internet
 - g. Gift Cards
 - h. e-Checks, Face to Face and Internet
 - i. Ability to add cards in the future, if the need arises
2. The Contractor shall provide credit and debit card processing through various acceptance methods to meet the requirements of each participating State Agency, Institution, or Public Body. This includes; however, may not be limited to:
 - a. Paper/Card imprinted receipts
 - b. Point of Sale terminal swipes
 - c. Telephone Acceptance
 - d. Mail In Transaction
 - e. PC-based, batch processing
 - f. Interactive Voice Response (IVR) systems
 - g. Self Service Terminals (SST)
 - h. Internet
3. The contractor shall provide individual state agencies access to multiple dial-up ports for simultaneous settlements. The transmission speed for this access shall be consistent with modems available in the current business community but at a minimum, 28 kbs.
4. The Contractor shall provide a toll-free number for verbal credit card authorizations, as needed.
5. The Contractor shall have the flexibility to address varying requirements and management styles (centralized or decentralized) to meet State Agencies, Institutions, and Public Bodies processing and reporting needs.
6. Contractor PC based systems shall at a minimum provide the following:
 - a. Operate in a Windows environment
 - b. User friendly package with on-line help
 - c. Provide open architecture to easily connect to other systems
 - d. Provide spreadsheet or acceptable alternative format for reports.
 - e. Capability to download reports to Personal Computers/Networks.
 - f. Report View and Printing functions
 - g. Meet or exceed the most current PCI/DSS Compliance Standards
 - h. Allow for User creation of passwords
7. Contractor enterprise systems shall at a minimum provide the Support communications standards: – Ability to

support TCP/IP as well as a frame relay interface.

8. The Contractor shall provide the ability for Commonwealth of Virginia State Agencies, Institutions and Public Bodies to develop proprietary data formats/reporting for credit card authorization and settlement through the use of mechanisms and systems identified in number one (1) above, Value-added Resellers (VAR's)
 - a. Only require applications to provide functional credit card information (credit card number, expiration date, charge amount) that will process the request and return the authorization number to the application.
 - b. Identify any variations or additional data elements required. Describe the justification for any additional requirements.
 - c. Identify and return as raw data any State agency, Institution or Public Body -created code contained within VAR or VAN industry standard market data.
9. Value Added Reseller (VAR) Requirements:
 - a. Contractor shall be certified on VAR Proprietary software including, but not limited to, the following:
 - i. Digital hardware with GSC Computer Services proprietary software for all ABC locations
 - ii. Info 2000 software used for an integrated reservations system for the Department of Conservation and Recreation (State Parks)
 - iii. Southern DataComm, Inc., ProtoBase product
 - iv. Genesis NT software for Call Center

Contractor shall include a list of all VAR's currently certified by your organization.

10. The Contractor shall establish and maintain as requested by participating State Agencies, Institutions, and Public Bodies merchant numbers for each location accepting credit/debit card transactions. New merchant numbers shall be established **within ten business days** or as negotiated with the entity or Treasury. All additions/modifications or deletions to merchant numbers **must be** approved by the Department of the Treasury. **The Contractor will make no changes to the current MIDs without the explicit written approval from designated persons at the Virginia Department of the Treasury.**
11. The Contractor shall provide the mechanism for chargebacks, refunds (e.g. returned merchandise for credit), and adjustments. Sufficient notification prior to the DDA debit should be sent to the State Agency, Institution or Public Body. Discuss the process and any elements required of the agencies to initiate these transactions. Also, discuss the parameters where the customer or their issuing financial institution initiates these transactions. Chargebacks and refunds **must be** cross-referenced in a manner in which the merchant can easily identify the original charge and meet PCI/DSS compliance standards.
12. For merchants requiring the services, the contractor shall provide fraud verification services as listed below but not limited to:
 - i. Address Verification Service, Street Number, Zip Code
 - ii. Card Security Verification Service -- VISA CVV2, MasterCard CVC2
 - iii. Real-time authorizations
13. All services, including customer technical support, should be available twenty-four hours a day, seven days a week, and three hundred sixty-five days per year.
 - a. Describe downtime and timeouts experienced during the last twelve-month period ending June 30, 2009.
 - b. Describe the process used for notification of scheduled and non-scheduled down time.
 - c. Describe backup procedures during scheduled and non-scheduled downtime.
14. The Contractor shall provide a single point of contact for customer support to all agencies participating under the

contract, including support during all business hours that agencies are in operation. For example, State ABC stores are open as late as 10:00 p.m. and are open on Saturday's, Sunday's and some holidays and State Parks are open daily with varying hours depending on the season. Discuss the standard response time. All settlement times will be calculated on Eastern Standard Time.

15. The Contractor shall provide a single point of contact for an account representative responsible for the Commonwealth of Virginia relationship in its entirety.
16. The Contractor shall deposit all receipts types that are processed each day to the financial institution designated by the merchant. The account funded must match the account recorded on the Treasury approved merchant setup request.
 - a. The Contractor shall post transactions at levels according to State Agency, Institutions and/or Public Body requirements and within the most current PCI/DSS compliance standards:
 - (1) Individual merchant number
 - (2) Batch level
 - (3) Total or consolidated
 - b. Chargebacks and adjustments pose a reconciliation challenge since most State Agencies, Institutions, and Public Bodies deposit into a single checking account. However, approximately 1,600 merchant locations/merchant ID's are responsible for addressing the legitimacy of the entry. Adjustments or chargebacks shall be identified by merchant number and transaction. It is imperative that the State Agency, Institution, or Public Body receive notification of all chargebacks and adjustments. In addition, the Department of the Treasury's Bank Reconciliation Department must be notified of all chargebacks and adjustment posting to the State's depository account. Chargebacks and adjustments shall post to the demand deposit account at the financial institution designated by the State Agency, Institution, or Public Body. Chargebacks shall post to the account individually. Chargebacks **cannot be combined**. Chargebacks/adjustments **shall not be netted** against daily transmissions/uploads from agencies. The Commonwealth of Virginia does not allow any deduction from any of its accounts without prior authorization from the appropriate merchant participant. The Contractor shall be able to support agencies that wish to have a separate account for chargebacks.
 - c. The total of the actual transaction amounts shall be posted to the deposit account; not reduced by the applicable discount fee.
 - d. Identify the processing deadline for same and next business day deposits.
17. The Contractor shall provide the ability to pass the merchant ID with each transaction. The Contractor shall arrange with each participant, i.e., State Agency, Institutions, or Public Body that the merchant ID contains the three-digit agency code, agency cost code or other agreed upon unique identifier for Institutions and Public Bodies within the merchant ID. The merchant ID shall accompany the transaction so that it will post to the checking account statement at the Commonwealth's designated financial institution.

This is extremely important. Currently there are approximately 1,600 merchant ID's for the Commonwealth of Virginia. Contractors shall present solutions to the problem presented to our reconciliation department in attempting to identify deposits. In your response, take into account **varying settlement times within the Eastern Time Zone only.**

18. The Contractor shall maintain procedures to establish and review merchant assignments to the pricing schedule on a quarterly basis. Contractor shall receive and make appropriate adjustments for new participants when assessed incorrectly and as requested.
19. Contractor shall notify the merchant and Treasury when a merchant is non-compliant with PCI/DSS current standards:
 - a. Describe reasons for non-compliance
 - b. Describe grace period

- c. Describe assistance provided to bring agency into compliance
 - d. Describe assistance provided to new or existing users implementing new systems
20. Contractor shall notify the merchant and the Treasury when a merchant is found to be non-compliant with current association processing rules:
- a. Describe reasons for non-compliance
 - b. Describe grace period
 - c. Describe assistance provided to bring agency into compliance
 - d. Describe assistance provided to new or existing users implementing new systems or products
21. Contractor shall notify the merchant and the Treasury when any merchant ID has experienced 90 consecutive days without any transaction activity.
- a. List the date of last activity
 - b. Provide a description of the impact of continued inactivity
22. Contractor shall support existing equipment, including but not limited to, the following as it is used to initiate merchant transactions.
- Zon JR XL
 - 462 ACS/ACS Plus
 - 516 Hypercom ICE
 - Hypercom ICE 5500
 - Hypercom T4220IP
 - Hypercom T7
 - Hypercom T7Plus
 - Hypercom T7PlusPIN
 - Print Pack
 - Tranz 330 T1
 - Tranz T2
 - Tranz 380X
 - Tranz 380X2
 - Tranz 460
 - Tranz Stand
 - VeriFone Omni 3730 LE
 - VeriFone Omni 3750
 - VeriFone Omni 5100
 - VeriFone Tranz 330
 - VeriFone Tranz 380
 - VeriFone 250 Printers
 - VeriFone MX870
 - VeriFone 900 Printers
23. The Contractor shall allow convenience fees to be passed through to customers for credit card usage according to the most current card association rules.
24. The Contractor should provide the following reporting mechanisms. Discuss your firm's capabilities:
- a. Data transmission of reports
 - b. Data transmission of raw data

- c. Remote access to reports
 - d. Software for automated updates
 - e. Archival capabilities
 - f. Ability to access reports through the Internet
25. The Contractor should provide additional financial service options (e.g. check verification/authorization) when appropriate to meet individual merchant's needs. Describe potential services.
26. The Contractor shall provide participating agencies sufficient documentation, training related to card processing, and equipment usage. Discuss your approach to training and resources dedicated to this effort.
27. The contractor shall provide a secure environment for the testing of new applications that is entirely separate from the production environment. Test cards, in sufficient number, shall be provided to agencies performing tests.
28. The contractor winning this contract will be required to process AMEX and Discover transactions. For AMEX transactions, the State Treasury Department requires an electronic daily report detailing by Merchant ID, all AMEX deposits to the state's credit card account. AMEX and Discover have separate contracts with the Commonwealth of Virginia. All new Merchant ID's for AMEX and Discover shall be linked in the VISA, MasterCard processor's network to correlate to a corresponding Merchant ID on file with the VI, MC processor.
29. Contractor will be required to support the small number of locations that still have a need to use paper/card imprinters.
30. The following agencies use heavily integrated processing solutions as outlined below.
- a. The Department of Alcoholic Beverage Control (ABC): Contractor must utilize the Elavon interface known as ViaConex. In addition, contractor must utilize existing specifications and ssl certificates. The contractor should be capable of working in a partnership with Elavon to maintain the current processing systems in place.
 - b. The Division of Motor Vehicles (DMV): Contractor must use current UNIX and Windows based environment that will support Protobase.
 - c. The Virginia Community College System (VCCS): Contractor must be compatible with Oracle/PeopleSoft, CyberSource, PowerFlex, TouchNet, CashNet, NelNet, and ePa.y.
 - d. The Department of Conservation and Recreation (DCR), State Parks: the equipment must interface with Atlantis software. One of the state parks uses specialty restaurant software from Micros that uses Merchant Link for the credit card authorization process. This business need must remain in tact.

SECTION IV: PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

A. GENERAL REQUIREMENTS:

1. RFP Response:

- a. Number of Copies. In order to be considered for selection, Offerors must submit a complete response to this RFP. One (1) original, so marked, and five (5) copies, so marked, of each proposal must be submitted to Treasury. Additional copies shall be provided upon request.

2. Proposal Preparation:

- a. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. **Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.**
- d. As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors' proposal.
- e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- f. Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of § 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be

identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. **The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.**

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Department of the Treasury. This provides an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. The issuing agency (Treasury) will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency (Treasury) and may or may not be conducted.

B. SPECIFIC REQUIREMENTS:

Proposals should be as thorough and detailed as possible so that the Treasury may properly evaluate your capabilities to provide the required merchant card services. Offerors are required to submit the following items, separated by tabs within the proposal, as a complete proposal:

TAB 1. The complete RFP, the RFP cover sheet and addenda, if any, filled out as required and signed.

TAB 2. General Qualifications:

1. Submit five references including telephone numbers and persons whom we may contact. References submitted should be applicable to the specific services requested in this RFP. If you provide this service or a similar service to a state or municipal government, please use that entity (is) as a reference.
2. Provide a list of contact personnel including senior level management who will be responsible for the relationship between the Contractor and the Commonwealth of Virginia. Identify the roles and responsibilities of each. Provide resumes for these individuals including the relationship officer, daily contacts for implementation and customer service, and other personnel who can be contacted for support, and problem resolution. Senior level management and staff assigned to this project cannot be replaced without prior consent by the Department of Treasury. Include an organizational chart.
3. Discuss the extent of your commitment to merchant card services.
 - a. Location(s) of card processing site(s).
 - b. Identify the location from which the Commonwealth relationship will be served. If outside the state, discuss the accessibility of personnel.
4. Provide information on merchant card activity including:
 - a. Number of customers and number of merchant ID's managed within your company's average contract.
 - b. Annual volume of transactions processed: credit card and debit card
 - c. Given the Commonwealth's volume in Appendix B, what would the Commonwealth's ranking be for transactions and sales?
 - d. What is the volume of your largest customer?
5. Demonstrate your commitment to quality. Include quality controls and measures used to evaluate current services.
6. Demonstrate five factors that make your company a better service provider than other competitors.
7. Do you use a third party for any segment of your merchant card processing operation? Explain in detail if yes.

TAB 3. Specific plans for providing the proposed goods/services including:

1. Address your financial institution's ability to provide the services noted in SECTION III, STATEMENT OF NEEDS. Please restate each requirement and discuss whether you can provide the service, how you will provide the service or the extent to which you can provide the service, any alternatives you would recommend in addition to or in lieu of the stated objective, and reference any reports provided by your system.
2. The Contractor shall meet the REPORTING AND DELIVERY REQUIREMENTS as outlined in SECTION VI. Please restate each requirement and discuss whether you can provide the service; how you will provide the service or the extent to which you can provide the service; any alternatives you recommend in addition to or in lieu of the stated objective.
3. Detail the provisions that will be made for customer service. Include appropriate contacts for inquiry resolution particularly in the areas of credit/debit processing, transmissions, reconciliation, and service inquiries.
4. Provide a detailed implementation schedule for the contract, indicating tasks and dates for completion of each. Explain your plan for converting existing State agencies to your system. Explain in detail how large State Agencies, Institutions or Local government bodies with over one hundred locations, would be assigned merchant ID's. If, in order to obtain a merchant ID, an agency must complete a document or enter data on a screen, include a copy of the required documentation. Assume a contract starting date of February 1, 2010.
5. Contractor shall certify to the Treasury that a well-defined systems backup and disaster recovery plan exists. These plans should include your provisions for hardware, software, and communications backup for both technical and environmental situations. Also, indicate the last time your backup and disaster plans were tested and note the success rate. The contractor shall certify to the Treasury that "hot sites" exists.
6. Include copies of any agreements which the Commonwealth would be expected to sign if your firm is awarded this contract.

The Code of Virginia prohibits the Department of the Treasury from signing agreements which contain references to either of the following:

**Holding the Contractor harmless
Indemnifying the Contractor**

Under no circumstances will the Department of Treasury execute a contract with the Contractor if either of these clauses is in the agreement. Review your agreements and delete these references if they are present prior to including them in your proposal.

TAB 4. Proposed Price:

1. The Department of the Treasury requests you present to us an Interchange Pass through Pricing with a flat rate markup response. In determining your response offerors should consider that there are currently 1,600 active Merchant ID's and it is likely the number of merchants may increase due to the expansion of this contract to all public bodies in the Commonwealth of Virginia.
2. Recently the Commonwealth has experienced an increase in the number of large dollar transactions. Address your ability to cap the discount rate at a certain amount. For example, if a merchant should receive a large-dollar credit card payment could they pay a fixed amount/fee rather than the quoted rate?
3. Discuss any creative pricing or payment options which you can provide. Describe any special discount rates that could be provided for a merchant with a low average ticket size but with extremely high sales volume.

4. Describe any transition costs related to this Contract. Include initial as well as ongoing implementation charges.
5. Describe any additional fees or surcharges, warranty, or maintenance of active or inactive merchant ID's that may be imposed on agencies.

TAB 5. Creative solutions and alternative suggestions:

All offerors are encouraged to be as creative as possible in responding to this RFP. Based on your review of the background information, specific needs and requirements, and pertinent Sections of the *Code of Virginia* discuss any creative approaches to this service which have not been specifically requested or which would enhance efficiency and/or reduce costs.

Do not limit your suggestions to the following, but present any creative suggestions for:

1. Large Dollar Items
2. Medical Card Reimbursement Card Processing
3. Verified by VISA
4. Secure Code by MasterCard
5. Other innovative ideas such as Tokenization

Tell us how your company plans to stay abreast and competitive in the merchant card market. Tell us how we will be notified of new services and the timeframe in which we will be notified.

TAB 6 Small Business Subcontracting Plan:

Summarize the planned utilization of DMBE certified small businesses and small businesses owned by women and minorities under the contract to be awarded as a result of this solicitation. (Appendix C). An Offeror which is a small business but which is not yet certified with DMBE can register at <http://www.dmbv.virginia.gov>.

SECTION V: EVALUATION AND AWARD CRITERIA

- A. All proposals received will be reviewed and evaluated by a Selection Committee. The Committee will recommend proposals which most closely meet the requirements of the RFP. The following will be used in making the selection:
 1. Offeror's Qualifications -- This criterion includes the ability of the Offeror to meet the terms of the RFP, the quality controls in place to ensure a high-quality service, and any special processes which the Offeror feels may increase its ability to perform the contract. (Weighted at 20%)
 2. Soundness of Approach -- Emphasis here is on the techniques for providing the services requested, and on the Offeror's capability to deliver the desired services on schedule. (Weighted at 20%)
 3. Pricing -- Charges should be broken down as outlined in Section X, PRICING SCHEDULE. While this area will be weighted heavily, it will not be the primary deciding factor in the selection process. (Weighted at 35%)
 4. Creativity -- The Commonwealth is interested in creative and innovative responses to this RFP. Consideration will be given to suggested alternatives or additional services offered which may not be specifically requested. (Weighted at 5%)
 5. Small Business Subcontracting Plan -- (Weighted at 20%) Complete Appendix C

- B. Award of contract: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia, § 2.2-4359D*). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

SECTION VI: REPORTING AND DELIVERY REQUIREMENTS

The Contractor shall meet the following reporting and delivery requirements:

- A. The Contractor will provide annually at no cost to the Department of the Treasury's contract administrator a SAS 70 Audit Report. The SAS 70 audit report will have been prepared by the contractor's independent external auditing firm to meet the SAS 70 reporting requirements. Please provide the timing of when the SAS 70 reports would be available. An email attachment is Treasury's preferred method of receiving the SAS 70.
- B. The selected contractor shall provide to the Commonwealth of Virginia's Department of the Treasury an annual certification as to their PCI/DSS compliance status. This will include an assurance of meeting the PCI/DSS compliance standards in the areas of Security management, policies, procedures, network architecture, software design including any new critical protective measures that may come to light during the course of this contract to include the renewal periods.

The processor should provide an annual certification that the latest Commonwealth IT Information Security Policy, SEC 500-02 and the IT Information Security Standards, SEC501-01 are met. The Standards specifies requirements in the following risk areas:

Risk Management, IT Contingency Planning, IT Systems Security, Logical Access Control, Data Protection, Threat Management and IT Asset Management. More detail on the security standards, policies, and guidelines can be found at the following web address: <http://www.vita.virginia.gov/library/default.aspx?id=537>

The processor shall certify quarterly that PCI DSS standards are met. PCI DSS = Payment Card Industry, Data Security Standards. The PCI merchant levels should be identified and disclosed. Since levels are based on annual PCI transactions and dollars processed, the PCI merchant level is at risk of changing annually. The credit card processor will work through Treasury to assist agencies in obtaining and maintaining PCI Compliance.

- C. The Contractor shall meet the reporting needs of the State Agencies, Institutions, Public Bodies, and Treasury. Each identity shall establish separate reporting patterns to meet their requirements.
- D. The Contractor shall provide the following reports. Provide samples of these reports and other reports that are available. For each report, provide the options that are available for accessing the information.

The following are to be considered the minimum types of reports State Agencies, Institutions and Public Bodies should have, in addition to electronic inquiry of daily transaction activity.

1. State Agencies, Institutions, Public Bodies

- a. Daily deposit activity report including transaction date, deposit totals by merchant number, and total consolidated deposit by batch and/ or State Agency, Institution or Public Body.
- b. Monthly summary deposit report including total daily deposit by merchant number and total for all depositing entities. Consolidated grand total of deposit for the month by merchant number and in aggregate
- c. Chargeback activity report by merchant number upon occurrence
- d. Monthly chargeback activity report by merchant number and consolidated for all agency activity
- e. Detailed transaction activity by merchant number, batch, or agency upon request.
- f. Separate monthly invoicing for each State Agency, Institution, or Public Body with details of monthly activity by merchant ID.

2. Treasury

Monthly consolidated summary report sorted by State Agencies, Institutions and Public Bodies. Report shall include the following:

- a. Number of merchant numbers
- b. Number and amount of transactions
- c. Average ticket price
- d. Number and amount of chargebacks. (Also, discuss your ability to provide a report for the Bank Reconciliation Section that provides individual chargebacks by merchant number for entities depositing to the State's DDA account.)
- e. Merchant's invoiced amount
- f. At least once a year, the contractor will meet with the Department of the Treasury, the Department of Alcoholic Beverage Control (ABC) and the Department of Motor Vehicles (DMV) to discuss the current contract processing along with new products and services.

3. Distribution of Reports

- a. Reports shall be distributed as agreed upon by the individual State Agencies, Institutions, Public Bodies, and the Contractor
- b. Treasury reports shall be mailed by the tenth day of each month to:

Assistant Manager, Banking Services
Department of the Treasury
P.O. Box 1879
Richmond, VA 23218-1879

- E. The Contractor shall ensure the following information is passed with the ACH transaction to the demand deposit account at the designated financial institution:
 1. Dollar amount of credit/deposit
 2. Merchant number of entity that generated transaction total
- F. All invoices shall be submitted on a monthly basis to each participating State Agency, Institution, or Public Body at the designated address(s) within ten business days of month end. Invoices shall provide the following by merchant number:
 1. Transaction activity
 2. Discount rate calculation and assessment
 3. Interchange rate calculation and assessment
 4. Other related charges, if any
- G. Discuss your capability to provide a download/import of the information in numbers 1 through 5 on a monthly basis, by merchant number.
- H. A roll-up of total charges at the State Agency, Institution, and Local Government level will be provided.
- I. Twice a year in January and July, the **contractor will** provide to the Department of the Treasury a complete list of existing active and inactive merchant ID's and the American Express, Discover and Voyager merchant numbers associated with those ID's, sorted by merchant name (DBA) and including address and telephone number. The contractor will highlight the changes from the previous report.

SECTION VII: GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan,

subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
 - 1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which State Agency, Institution or Public Body is being billed.
 - d. The following shall be deemed the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:

- (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

- 3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

- 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror

shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the

Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 per occurrence.
- S. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.
- T. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- U. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a

written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- V. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
 - b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
 - c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- W. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

SECTION VIII: SPECIAL TERMS AND CONDITIONS:

- A. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to the Department of the Treasury will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.
- C. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- D. **AWARD:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia, § 2.2-4359D*). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.
- E. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- F. **EXTRA CHARGES NOT ALLOWED:** No additional charges will be allowed under the Contract. Any changes to the scope of services that impact prices must be approved in writing in advance by the Procurement Officer.
- G. **IDENTIFICATION OF PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____
 Name of Bidder/Offeror Due Date Time

Street or Box Number

IFB No./RFP No.

City, State, Zip Code

IFB/RFP Title

Name of Contract/Purchase Officer or Buyer _____

The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- H. **INSURANCE, MONEY AND SECURITIES:** Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the Contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the Contractor by the Commonwealth of Virginia for Loss Inside the Premises Coverage and for Loss Outside the Premises Coverage, with limits of coverage to be determined by the Contractor and Department of the Treasury. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and types of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The Contractor agrees to maintain such policy until the completion of the contract and all money and property of the Commonwealth is remitted to the Commonwealth.
- I. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- J. **QUANTITIES:** Quantities set forth in this solicitation are estimates only, and the Contractor shall supply at proposal prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.
- K. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for three successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 60 days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to extend the Contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the Contract prices of the original Contract, or the Contract prices of the original Contract increased/decreased by the percentage increase/decrease of the "Other Services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest 12 months for which statistics are available.
 2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the "other services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

- L. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- M. **eVA Business-To-Government Contracts and Orders:** The solicitation/contract will result in multiple purchase orders with the eVA transaction fee specified below assessed for each order.
- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov

- N. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the *Code of Virginia*. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

O. **ESTIMATED ANNUAL DOLLAR VOLUME:** It is anticipated that the current Commonwealth of Virginia Agencies, and Institutions will continue to participate in this program. However use of this contract does not preclude any participating entity from using other contracts or competitive processes. The volume estimates provided are based on the volume reports from Contract CMI 01-010 and are given only as a guideline for preparing your proposal and should not be construed as representing actual amounts to be purchased under this contract. Volumes set forth in this RFP are estimates only, and the successful offeror(s) shall supply pricing regardless of whether volumes are more or less than those shown.

P. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

1. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
2. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a quarterly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
3. Each prime Contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

Q. **COMPLIANCE WITH VIRGINIA INFORMATION TECHNOLOGY ACCESSIBILITY STANDARD:**

The Contractor shall comply with all State laws and Regulations with regards to accessibility to information technology equipment, software, networks, and Web-sites used by blind and visually impaired individuals. This accessibility standards are State law see § 2.2-3500 and § 2.2-3504 of 43 The Code of Virginia. Since this is a State law and the regulations apply to accessibility to information technology equipment, software, networks, and Web-sites used by blind and visually impaired individuals, the Contractor shall comply with the Accessibility Standards at no additional cost to the Department. The Contractor must also keep abreast of any future changes to The Virginia Code as well as any subsequent revisions to the Virginia Information Technology Standards. The current Virginia Information Technology Accessibility Standards are published on the Internet at <http://www.vita.virginia.gov/library/default.aspx?id=663>

SECTION IX: METHOD OF PAYMENT

Payment for transaction fees, discount fees, and other related charges shall be directed to each participating State Agency, Institution or Public Body. Payment will be made after the merchant statement has been received and verified by the State Agency, Institution, or Public Body. The demand deposit account (DDA) is not to be automatically charged unless the merchant and the Department of the Treasury have given specific, written authorization. Please refer to Section VII, Paragraph J.1.b regarding payment terms.

The Department of the Treasury is not and shall not be liable for any of the obligations, acts, or omissions of the participating entities utilizing this contract.

SECTION X: PRICING SCHEDULE

MERCHANT CARD/FINANCIAL PROCESSING SERVICES

The Department of the Treasury requests you present to us an Interchange Pass through Pricing response with a flat rate markup for payment processing and authorization. Please take into account that there are approximately 1,600 Merchant ID's. This contract will be available to State Agencies, Institutions and Public Bodies of the Commonwealth of Virginia, thereby providing the opportunity to expand the number of merchants.

The sales and transactions for calendar year 2008 are shown below. Note, Only VISA and MasterCard sales and transactions are quoted. While the processor winning this contract will have to also process AMEX and Discover transactions, these are separate contracts and therefore the sales/transactions are not applicable to this bid.

SECTION XI: APPENDICES

**APPENDIX A
FORM OF COMMONWEALTH OF VIRGINIA CONTRACT**

Appendix A represents the proposed Contract which the Commonwealth would expect the Contractor to sign. Please note any suggestions or additions you would like considered.

COMMONWEALTH OF VIRGINIA
Department of the Treasury
MERCHANT CARD/FINANCIAL PROCESSING SERVICES
Contract Number CMI 10-001

This Contract is entered into this ___ day of _____, 2010, by _____, hereinafter called the "Contractor", and the Commonwealth of Virginia Department of the Treasury, hereinafter called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Commonwealth as set forth in the Contract Documents.

PERIOD OF CONTRACT: From February 1, 2010 through January 31, 2015, with three successive one-year options to renew the Contract under the terms and conditions stated herein.

COMPENSATION AND METHOD OF PAYMENT: Service charges are to be included in the Contractor's monthly merchant statement. The fees/discount rate will be paid by each participating Merchant of the Commonwealth of Virginia or an alternative method as specified in the Contractor's Proposal, at the Commonwealth's option.

CONTRACT DOCUMENTS: The Contract Documents shall consist of this signed contract, the Request For Proposals dated July 20, 2009 together with all written modifications thereof and the Proposal submitted by the Contractor dated August 21, 2009, and all written modifications thereof, all of which Contract Documents are incorporated herein.

Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in the Commonwealth of Virginia's *Vendor's Manual*.

IN WITNESS WHEREOF the parties have caused this Contract to be duly executed intending to be bound thereby, and certify they are authorized to sign this Contract for the Contractor or the Commonwealth.

CONTRACTOR

PURCHASING AGENCY

(Signature) (Date)

(Signature) (Date)

(Printed Name)

(Printed Name)

(Title)

(Title)

APPENDIX B

AGENCY PARTICIPATION AND VOLUME INFORMATION

For Calendar Year 2008

The chart on the following page represents VISA and MasterCard sales. AMEX and Discover sales and Transactions are shown below.

Amex Net Sales	Amex Net Items	Amex Credit Volume	Amex Item Volume	Discover Card Net Sales	Discover Card Net Items	Discover Card Credit Volume	Discover Card Item Volume
\$28,127,144.23	243,570	\$1,445,552.88	4,265	\$8,679,806.05	116,026	\$105,687.76	588

Chain Name	Visa Net Sales	Visa Net Items	Visa Credit Volume	Visa Item Volume	MasterCard Net Sales	MasterCard Net Items	MasterCard Credit Volume	MasterCard Item Volume
Department of Motor Vehicle	\$156,961,519.51	2,392,114	\$111,729.91	996	\$42,756,223.26	608,950	\$15,770.52	215
Department of ABC	\$209,321,614.26	6,327,470	\$389,929.90	9,807	\$46,913,274.69	1,282,314	\$101,347.90	2,401
VCU-Virginia Commonwealth	\$43,584,575.39	132,758	\$2,558,666.82	3,703	\$15,351,810.33	28,088	\$801,132.39	1,024
VSU-Virginia State	\$2,842,834.71	6,890	\$1,600.00	3	\$658,298.69	1,578	\$0.00	0
George Mason University	\$83,566,307.42	248,732	\$2,023,589.08	3,099	\$35,720,228.16	68,666	\$933,682.97	1,202
VA Circuit Courts	\$2,991,952.51	21,895	\$10,037.17	56	\$922,396.06	5,810	\$801.00	10
VA District Courts	\$56,018,340.02	393,162	\$152,235.95	1,223	\$15,246,531.75	100,960	\$44,052.45	309
VA Juvenile Court	\$2,120,082.13	20,036	\$8,212.25	88	\$599,580.95	4,914	\$2,238.00	23
Department of Health	\$12,886,458.42	30,109	\$246,985.68	453	\$5,322,087.54	7,555	\$76,178.86	153
Department of Criminal Justice	\$225,010.00	6,696	\$2,690.00	42	\$101,710.00	1,940	\$2,080.00	21
Northern VA Community College	\$44,744,682.91	103,337	\$7,623,456.34	21,492	\$13,266,659.16	27,671	\$2,351,370.44	6,359
Southside VA Community College	\$736,516.85	2,942	\$46,594.37	223	\$246,953.78	922	\$15,635.99	73
Western Community College	\$3,793,893.52	13,154	\$320,370.93	1,302	\$1,094,352.44	2,691	\$90,902.69	391
Wytheville Community College	\$470,218.38	1,013	\$8,777.90	38	\$199,634.51	398	\$5,006.25	15
Blue Ridge Community College	\$2,254,065.14	5,065	\$112,154.24	383	\$692,666.27	1,439	\$37,864.55	109
New River Community College	\$2,415,908.37	4,228	\$132,959.91	444	\$671,124.54	1,155	\$45,641.45	128
Piedmont VA Community College	\$2,986,788.62	6,299	\$271,716.31	880	\$1,009,364.67	1,874	\$93,973.61	314
Paul D Camp Community College	\$396,210.66	1,501	\$22,716.53	117	\$144,773.15	473	\$7,726.05	40
Danville Community College	\$651,564.42	1,388	\$42,846.38	162	\$274,422.51	504	\$21,140.45	69
Patrick Henry Community College	\$670,151.00	1,620	\$30,363.77	93	\$229,578.95	530	\$9,599.75	32
Germanna Community College	\$3,937,426.30	8,367	\$311,188.35	1,031	\$1,564,798.74	2,400	\$91,248.75	306
Southwest VA Community College	\$967,212.25	18,055	\$23,674.10	98	\$554,902.54	6,256	\$9,913.40	39
Mountain Empire Community College	\$646,679.44	3,286	\$28,859.58	149	\$183,009.28	654	\$12,146.39	48
Lord Fairfax Community College	\$2,600,456.78	4,926	\$206,180.68	911	\$933,731.02	1,617	\$83,962.38	326
VA Highlands Community College	\$469,070.13	1,156	\$0.00	0	\$166,993.37	360	\$0.00	0
Rappahannock Community College	\$808,969.52	1,881	\$47,663.10	153	\$335,627.76	723	\$21,542.35	65
Thomas Nelson Community College	\$3,670,460.84	10,038	\$275,077.53	886	\$2,301,632.04	6,154	\$198,769.25	605
J Sargeant Reynolds Community College	\$7,701,419.97	12,634	\$767,842.33	2,458	\$1,989,604.89	2,917	\$200,808.07	639
John Tyler Community College	\$4,778,851.72	11,013	\$405,351.80	1,865	\$1,860,351.08	2,946	\$129,898.65	558
Dabney Lancaster Community College	\$364,296.62	1,616	\$6,054.09	36	\$101,148.85	411	\$1,460.10	12
Tidewater Community College	\$16,172,152.98	29,175	\$1,528,626.98	4,612	\$5,234,677.38	8,128	\$510,478.21	1,461
VA Board of Accountancy	\$433,223.45	11,858	\$2,879.55	23	\$213,054.00	6,530	\$874.00	9
Commonwealth of VA MISC	\$560,472.44	6,102	\$3,107.95	55	\$138,655.86	1,447	\$246.44	9
Commonwealth of VA General Services	\$3,295,276.00	15,422	\$24,736.34	163	\$2,214,651.38	5,184	\$14,476.92	87
Commonwealth of VA VIPNET	\$12,957,359.08	247,163	\$16,899.36	86	\$6,443,674.28	75,108	\$86,187.85	225
Department of Professional and Occupation	\$2,763,310.48	30,177	\$2,782.00	31	\$953,326.79	10,268	\$615.00	6
Department of Business Assistance	\$20,306,255.05	253,222	\$61,789.60	594	\$8,072,550.27	81,058	\$25,206.16	215
VA College Savings	\$168,125.00	6,725	\$225.00	9	\$92,175.00	3,687	\$150.00	6
VA Department of Housing	\$5,965.01	30	\$50.00	1	\$18,451.24	17	\$200.00	1
VA State BAR	\$171,070.00	4,737	\$6,085.00	174	\$55,380.00	1,481	\$1,925.00	55
Central VA Community College	\$3,858,255.97	19,987	\$160,941.83	505	\$1,223,916.85	4,951	\$43,021.48	133
Longwood University	\$22,129.42	814	\$1.01	1	\$2,545.94	98	\$0.00	0
Eastern Shore Community College	\$247,324.70	690	\$1,338.43	3	\$109,934.08	257	\$246.50	1
VA State Parks	\$5,714,793.92	76,703	\$440,470.37	4,681	\$2,295,561.79	22,924	\$203,898.51	1,834
Secretary of the Commonwealth	\$13,894.75	470	\$0.00	0	\$5,067.00	123	\$20.00	2
University of Mary Washington	\$619,075.83	3,537	\$20,476.44	36	\$331,848.28	1,438	\$18,315.40	23
Radford University	\$472,057.16	5,763	\$3,363.95	22	\$143,389.78	1,154	\$570.00	5
Blue Ridge Community College	\$36,247.25	2,275	\$0.00	0	\$19,601.51	211	\$250.00	1
Christopher Newport Community College	\$783,787.94	56,890	\$2,760.41	71	\$207,065.04	13,031	\$275.50	12
Total	\$724,184,314.24	10,565,121	\$18,466,059.22	63,258	\$219,188,997.45	2,409,965	\$6,312,851.63	19,571

Appendix C

Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- B. If you are not a DMBE-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

- _____ Small Business
- _____ Small and Women-owned Business
- _____ Small and Minority-owned Business

Certification number: _____ Certification Date: _____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract

Totals \$					

WRITTEN MODIFICATIONS TO ELAVON'S PROPOSAL
DATED JANUARY 29, 2010

Elavon and the Commonwealth agree to the following modifications to the Exceptions/Clarifications to Commonwealth of Virginia RFP #CMI- 10-001 contained in Elavon's Proposal as follows:

1. To the extent that the RFP provides the Commonwealth with any audit or inspection rights, any such audit or inspection will occur during normal business hours, with at least ten (10) days prior written notice, at the Commonwealth's expense, subject to Elavon's standard security procedures, and no more than once annually.

**Commonwealth of Virginia,
Department of Treasury**

By: Manju Ganerivala
Name: Manju S. Ganerivala
Title: Treasurer of Va.

ELAVON, INC.

By: 

Name: TIMOTHY I. MILLER
Title: Senior Vice President



PAYMENT DEVICE PROCESSING AGREEMENT

This Payment Device Processing Agreement ("Agreement") is entered into as of the Effective Date by and among the entity identified below as the Merchant (together with any affiliated entities listed on Schedule B to the Agreement), referred to collectively as the "Merchant," **Elavon, Inc.** ("Elavon") and **Member**, as designated on the Merchant Application, and includes the following Terms of Service (the "TOS") and all Schedules and other attachments to the Agreement, each of which is incorporated in full by this reference. The Agreement governs the Merchant's receipt and use of the Processing Services.

PAYMENT DEVICE PROCESSING SERVICES ELECTED BY MERCHANT. Merchant elects the following Payment Device Processing Services as described in the Agreement (including all applicable Schedules) and subject to the additional terms and conditions of the applicable provisions of the Merchant Operating Guide (the "MOG"):

- TOS, General Provisions and the MOG
- Schedule A, Schedule of Fees
- Schedule B, Affiliated Entities
- Schedule C, Merchant Application (Large Relationship)

Payment Device Processing Services Available to Merchants Generally (check desired Processing Services):

- Credit Card Services
- Debit Card (signature-based) Services
- Debit Card (PIN-based) Services
 - Bill Payment (Pinless Debit) Services
- Convenience Fee Services – Merchant-collected
- DCC Services
- Wireless Services
- Contactless Services
- Schedule D, Electronic Gift Card Services
- Schedule E, Electronic Check Services

Payment Device Processing Services Available to Merchants Operating in Certain Merchant Categories (check desired Processing Services):

- EBT Services
- Hospitality Services
- No Signature Required Program Services
- Schedule F, Petroleum Services
- Schedule I, Processing Services for Government Entities and Institutions
- Schedule J, PaymentCare Services

Payment Device Processing Services Available to Merchants Operating in Certain Jurisdictions (check desired Processing Services):

- Schedule G, Processing Services in Canada
- Schedule H, Processing Services in Puerto Rico

IN WITNESS WHEREOF, the parties hereto have executed the Agreement.

Commonwealth of Virginia,
Department of Treasury,
on behalf of itself and each of the affiliated entities
identified on Schedule B (the "Merchant"):

By: Manju S. Ganerivala
Name: Manju S. Ganerivala
Title: Treasurer of Va.

ELAVON, INC.

By: [Signature]
Name: Timothy I. Miller
Title: Senior Vice President
Date: 2/4/10
("Effective Date")

MEMBER

By: [Signature]
Name: Timothy I. Miller
Title: Senior Vice President



TERMS OF SERVICE

Section A - General Provisions Applicable to All Services

1) DEFINITIONS; RULES OF CONSTRUCTION.

Capitalized terms used in the Agreement and in any applicable Schedule shall have the meanings ascribed to such terms in the Glossary set forth in Section B of this TOS or in such Schedules. All Schedules are expressly incorporated in their entirety and made a part of the Agreement. Captions in the Agreement and in the attached Schedules are for convenience only and do not constitute a limitation of the terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The word "day" shall mean "calendar day", unless specifically stated otherwise. In the event of a conflict between the terms of Section A - General Provisions, and any applicable Schedule, the terms of the applicable Schedule shall prevail.

2) ACCEPTANCE OF PAYMENT DEVICES.

Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices and processing services it will agree to accept as a form of payment from its Customers by selecting the applicable processing services on page 1 of the Agreement or on the appropriate Schedule. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant's use of the Payment Device Processing Services are set forth in the Agreement and in the Merchant Operating Guide (the "MOG"), incorporated herein and located at our website https://www.merchantconnect.com/CWRWeb/tech_support.do. Each Schedule to the Agreement shall be governed by the TOS and the applicable provisions of the MOG, as well as by the terms set forth in the Schedule.

3) TRANSACTIONS.

a) **Merchant Compliance.** Merchant must comply with all the requirements under the Agreement. Merchant must also comply with the procedures set forth in the MOG and any other guides, manuals, or rules provided in writing by Elavon from time to time.

b) **Settlement of Transactions.** Subject to the other provisions of the Agreement and subject to Merchant's compliance with the terms of the Agreement and the Payment Network Regulations, Elavon and Member will process Transactions daily, and if Merchant maintains its DDA with Member, provisional credit for Transactions (less recoupment of any Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties and other amounts due to Elavon or Member under the Agreement) may be available as soon as the next

banking day after the banking day on which Elavon and Member process the Transactions. Regardless of where Merchant maintains its DDA, Merchant acknowledges and agrees that Elavon and Member may use either "net" (Transaction proceeds less any Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties and other amounts due to Elavon or Member under the Agreement) or "direct" (ACH debit authority) methods to recover any amounts owed by Merchant to Elavon or Member under the Agreement. To the extent required, Merchant authorizes and appoints Elavon or Member to act as Merchant's agent to collect Transaction amounts from the Customer, the Issuer or the Customer's financial institution.

i) **Deposits.** Merchant agrees that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Merchant acknowledges that its obligation to Elavon and Member for all amounts owed under the Agreement arises out of the same transaction as Elavon's and Member's obligation to deposit funds to the DDA and such amounts are owed in the ordinary course of business.

ii) **Provisional Credit.** Merchant acknowledges that all credits for funds provided to it are provisional and subject to reversal in the event that Elavon and Member do not receive payment of corresponding settlement amounts from the Payment Networks. Merchant further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. Merchant authorizes Elavon or Member to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries in accordance with the Agreement as may be necessary to grant or reverse provisional credit for any Transaction. Further, Elavon may delay Merchant-issued Cardholder credits for up to five (5) business days for accounting verification. Cardholder credits issued by Merchant to PIN-Debit Cards will not be subject to this delay.

iii) **Chargebacks.** Merchant agrees to accept for Chargeback, and will be liable to Elavon and Member in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason under the Payment Network Regulations. Merchant authorizes Elavon and Member to offset from funds due Merchant for Transaction activity or



- to debit the DDA or the Reserve Account for the amount of all Chargebacks. Merchant will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding all Chargebacks.
- iv) **Original Transaction Receipts.** Under no circumstances will Elavon or Member be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Elavon and Member.
- c) **DDA and ACH Authorization.** Merchant will establish and maintain with Member (or with another ACH participating financial institution) one or more DDAs to facilitate payment for Transactions. Merchant will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement. Merchant irrevocably authorizes Elavon, Member, and their respective authorized vendors and agents who provide services under the Agreement at Merchant's request, to initiate ACH debit and credit entries to the DDA or the Reserve Account for any products or services requested by Merchant, in order to make payments to or collect payments from Merchant due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Merchant's obligations to Elavon and Member have been paid in full. Elavon and Member have the right to delay, within their reasonable discretion, crediting the DDA with funds related to Transactions in order to investigate any Transactions related to suspicious or fraudulent activity or funds for Transactions for which Elavon or Member have not received funding from the applicable Payment Networks. Elavon and Member will endeavor to investigate or process any delayed Transactions expeditiously and will endeavor to notify Merchant if any Transactions are delayed for more than forty-eight (48) hours. Elavon has the right to rely upon written instructions submitted by Merchant requesting changes to the DDA. In the event Merchant changes the DDA, the ACH debit and credit authorization established hereunder will apply to the new account and Merchant shall provide Elavon and Member such information regarding the new DDA as they deem necessary to effect payments to and from the DDA as provided under the Agreement. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA.
- d) **Depository Institution.** Merchant authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA reasonably requested by Elavon and/or Member to debit or credit the DDA and to otherwise exercise their rights under the Agreement with respect to the DDA.
- e) **Indemnity.** See Schedule I.
- f) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. Merchant must promptly examine all statements relating to the DDA and promptly notify Elavon and Member in writing of any errors in the statement Merchant received from Elavon. Merchant's written notice must include: (i) Merchant 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 Merchant believes an error exists and the cause of it, if known. That written notice must be received by Elavon within forty-five (45) days of the date of the Elavon statement containing the asserted error. If Merchant fails to provide such notice to Elavon within said forty-five (45) days, Elavon and Member shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against Elavon or Member for any loss or expense relating to any asserted error for sixty (60) days immediately following Elavon's receipt of Merchant's written notice. During that sixty (60) day period, Elavon will (i) be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying Elavon, and (ii) notify Merchant of its proposed resolution of the asserted error.
- 4) **SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.**
- a) **Security Interests.**
- i) **Security Agreement.** Deleted pursuant to Schedule I.
- ii) **Perfection.** Deleted pursuant to Schedule I.
- b) **Reserve Account.**
- i) **Establishment.** Elavon may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing security and a source of funds to pay Elavon and Member for any and all amounts that may be owed by Merchant hereunder. Elavon and Member shall have sole control of the Reserve Account.
- ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For



purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the Cardholder receives and is satisfied with the product or service. Further, for purposes of this calculation, Elavon will determine, in its sole reasonable discretion, the applicable period considering factors such as Merchant's Transaction volume and seasonality.

- (A) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equals or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed one percent (1%) of the total dollar value of incoming items to Elavon, (c) Elavon's reasonable belief that Merchant has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against Merchant, (e) termination of the Agreement for any reason or the occurrence of an event listed in Section (A)(12)(b)(ii)(B) or (C) giving Elavon or Member the right to terminate the Agreement, (f) nonpayment of amounts owed to Elavon or Member, (g) fines imposed or reasonably expected to be imposed by the Payment Networks, (h) the occurrence of a material adverse change in Merchant's financial condition, (i) assignment of the Agreement by, or a change in control of, Merchant without Elavon's consent, and (j) revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or any other Alternate Security provided in connection with the Agreement, if applicable.
- iii) **Funding.** Elavon and Member may fund the Reserve Account up to the Reserve Amount by any one or more of the following means.
- (A) Elavon and Member may require Merchant to deposit funds into the Reserve Account;
- (B) Elavon and Member may debit the DDA; and/or
- (C) Elavon and Member may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant.
- iv) **Use of Funds in Reserve Account.** Elavon or Member may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes under the Agreement. Also, Elavon or Member may debit the Reserve Account to exercise their rights

under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Elavon or Member. Further, Merchant agrees that Elavon or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.

- v) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account, and shall be used only to pay amounts due to Elavon and Member (except as otherwise provided in the Agreement), until the Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. In no event shall Merchant be entitled to a return of any funds remaining in the Reserve Account before two hundred seventy (270) days following the effective date of termination of the Agreement.
- vi) **Alternate Security.** In lieu of or in addition to establishing and funding a Reserve Account, Elavon may, in its sole and absolute discretion, accept an alternative form of security ("Alternate Security") for the purpose of providing a source of funds to pay Elavon and Member for any and all amounts owed by Merchant. Elavon retains the right at any time to require that the amount held in the Reserve Account equal the Reserve Amount even if Elavon previously accepted and currently holds Alternate Security; provided that Elavon shall not require that the aggregate of the amount held in the Reserve Account and the Alternate Security taken together, exceed the Reserve Amount.
- c) **Recoupment and Set-off.** Elavon and Member have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them hereunder from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe Merchant under the Agreement. Merchant acknowledges that in the event of a Bankruptcy Proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 to Elavon and Member hereunder, Merchant must create or maintain a Reserve Account as required by Elavon and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to Elavon and Member, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.
- d) **Remedies Cumulative.** The rights conferred upon Elavon and Member in this section are not intended



to be exclusive of each other or of any other rights and remedies of Elavon and Member under the Agreement, at law or in equity. Rather, each and every right of Elavon and Member under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

5) **PROCESSING SERVICES; FEES; OTHER AMOUNTS OWED; TAXES.** Elavon and Member will provide Merchant with Processing Services in accordance with the Agreement. Merchant will compensate Elavon and Member for Processing Services as indicated on Schedule A, Schedule of Fees.

- a) **Fees.** Merchant will pay Elavon and Member fees in the ordinary course of business for all Processing Services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated and debited from the DDA or the Reserve Account once each day or month for the previous day's or month's activity as applicable, or will be deducted from the funds due Merchant under the Agreement.
- b) **Research.** In addition, Merchant will pay Elavon at its standard rates for research as set forth on Schedule A including, but not limited to, research required to respond to any third party or government subpoena, levy, garnishment or required reporting on Merchant's account.
- c) **Change of Fees.** The fees set forth in the Agreement and any additional application or set up form will not be amended by Elavon for the Initial Term of the Agreement except to pass through to Merchant increases in interchange, assessments, or fees imposed by a third party.
- d) **Other Amounts Owed.** Merchant will promptly pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of Merchant's Transaction processing), and any other payments due under the Agreement. Elavon or Member may offset these amounts from funds otherwise owed by Elavon or Member to Merchant or may debit these amounts from Merchant's DDA or Reserve Account by ACH. In the event such offset or ACH debit does not fully reimburse Elavon or Member for the amount owed, Merchant will promptly pay Elavon or Member such amount upon demand. Elavon will charge interest on all uncollected amounts owed to Elavon or Member that are more than thirty (30) days past due at a rate equal to the lesser of (i) the product of the uncollected amounts and the then-current Federal Funds Rate plus 10% (calculated and computed on the basis of a 365-day year), or (ii)

the maximum daily rate of interest permitted under applicable law.

- e) **Taxes.** Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement excluding the income taxes attributable to Elavon or Member. If Merchant is a tax-exempt entity, Merchant will provide Elavon and Member with an appropriate certificate of tax exemption.

6) **ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.**

- a) **Accuracy of Information.** See Schedule I.
- b) **Indemnification.** See Schedule I.
- c) **Limitation of Liability.** Merchant acknowledges that fees for the Processing Services provided to Merchant by Elavon and Member are very small in relation to the funds advanced to Merchant for Transactions and consequently Elavon's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the lesser of (a) the fees paid by Merchant to Elavon and Member during the last three (3) months, exclusive of fees and variable costs incurred by Elavon and Member to process Transactions, such as Interchange costs, assessments, and fees imposed by a third party or, (b) fifty thousand dollars (\$50,000); provided that this limitation of liability shall not apply to Elavon's indemnification obligations set forth in the Agreement. In no event will the parties, or their agents, officers, directors, or employees be liable to any other party to the Agreement for indirect, exemplary, punitive, special, or consequential damages.
- d) **Performance; Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ELAVON AND MEMBER MAKE NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROCESSING SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. ELAVON AND MEMBER DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No party hereto shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of such party and without the fault or negligence of such party.



7) **REPRESENTATIONS AND WARRANTIES; COVENANTS.**

a) **Merchant Representations and Warranties.**

Merchant represents and warrants to Elavon and Member the following as of the Effective Date:

- i) **Information.** Merchant is a validly existing entity organized in the United States. All written information provided in the Merchant Application, in the bid process if applicable, or any other document submitted to Elavon or Member is true and complete and properly reflects the business, financial condition and ownership of Merchant in all material respects.
- ii) **Authority and Power.** Merchant and the person signing the Agreement on Merchant's behalf have the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Elavon to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.
- iii) **MasterCard MATCH™ System and Consortium Merchant Negative File.** Merchant has never been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), or been named to the Consortium Merchant Negative File maintained by Discover or, if it has, it has disclosed this fact to Elavon in writing.
- iv) **No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened that would reasonably be expected to materially impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would materially and adversely affect Merchant's financial condition or operations.

b) **Merchant Covenants.** Merchant covenants the following to Elavon and Member during the Initial Term and any Renewal Term:

- i) **Compliance with Laws and Payment Network Regulations.** Merchant will comply with all Laws and Payment Network Regulations.
- ii) **Business Use.** Merchant is obtaining and using the processing services from Elavon and Member for business purposes only and to facilitate lawful business Transactions between Merchant and its Customers. Merchant will not

submit Transactions for processing to Elavon or Member for any businesses, materially different products, or methods of selling other than those set forth in the Merchant Application without the prior written consent of Elavon. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.

- iii) **Transactions.** To the best of Merchant's knowledge, all Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the payment to Merchant or a return or adjustment related to such payment. No Transaction involves a Cardholder obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing by Elavon.
- iv) **Responsibility for Actions.** Merchant is responsible for the actions of or failure to act by Merchant's officers, directors, employees, agents, Value Added Servicers, business invitees, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to information related to Transactions from Merchant or access to systems under Merchant's control, but excluding all actions to the extent attributable to Elavon's or Member's breach of the Agreement, negligence or willful misconduct.

c) **Elavon and Member Representations and Warranties.** Elavon and Member, each on their own behalf and not on behalf of the other, represent and warrant to Merchant the following as of the Effective Date of the Agreement:

- i) **Information.** Elavon is a corporation validly existing and organized under the laws of the State of Georgia. Member is a banking association validly existing and organized in the United States.
- ii) **Corporate Power.** Elavon, Member and the persons signing the Agreement on behalf of each of them have the power to execute and perform the Agreement. The persons executing the Agreement are duly authorized to bind Elavon and Member, as applicable, to all provisions of the Agreement and such persons are authorized to execute any document and to take any action on behalf of Elavon and Member, respectively, which may be required to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which they are respectively subject.
- iii) **No Litigation.** There is no action, suit, or proceeding pending, or to Elavon's or Member's knowledge threatened, which if decided adversely would impair Elavon's or



Member's ability to carry on their business substantially as now conducted or which would adversely affect Elavon's or Member's financial condition or operations.

- d) **Elavon and Member Covenants.** Elavon and Member, each on their own behalf and not on behalf of the other, covenants to Merchant the following during the Initial Term and any Renewal Term:
- i) **Compliance with Laws and Payment Network Regulations.** Elavon and Member will comply with all Laws and Payment Network Regulations including the requirements of the Payment Card Industry ("PCI") Data Security Standard, as applicable to them and their respective systems, for the Processing Services provided under the Agreement. The Merchant may review Elavon's current PCI compliance status on the Payment Network websites as available.
 - ii) **Responsibility for Actions.** Elavon and Member will be responsible for the actions of or failure to act by their officers, directors, employees, agents, business invitees, and those of any other Person who, with or without their consent or cooperation, obtains access to information related to Merchant's Transactions from Elavon or Member or the payment systems under their respective control, but excluding actions to the extent attributable to Merchant's breach of the Agreement, negligence or willful misconduct.
- 8) **AUDIT AND INFORMATION.**
- a) **Audit.**
 - i) **Elavon or Member Audit.** In the event that Elavon or Member reasonably suspects that they are subject to a financial or reputational risk due to Merchant's actions or omissions, Merchant authorizes Elavon and Member to perform an audit or inspection of Merchant's operations to confirm compliance with the Agreement upon reasonable advance notice and at Elavon's or Member's expense. Merchant agrees to cooperate, in good faith, with any such audit conducted by Elavon or Member.
 - ii) **Data Compromise, Security, and Payment Network Audit.** In the event of a known or suspected data compromise, security incident, the occurrence of suspicious activity, or otherwise if required by the Payment Networks, Merchant will obtain, at the request of Elavon, Member or any Payment Network, and submit a copy of a forensic audit from a qualified incident response assessor of the information security of Merchant's business at Merchant's expense. Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's operations to confirm

compliance with the Payment Network Regulations.

- b) **Information.**
 - i) **Authority.** Merchant authorizes Elavon and Member to make, upon receipt of the Merchant Application and from time to time, any business credit or other inquiries they consider reasonably necessary to review the Merchant Application or continue to provide Processing Services under the Agreement. Merchant also authorizes any person or credit reporting agency to compile information to answer those business credit inquiries and to furnish that information to Elavon.
 - ii) **Financial Information.** See Schedule I.
 - iii) **Merchant Information.** Merchant agrees that any information about Merchant or any of its principals, affiliates or agents that is provided to Elavon or Member on the Merchant Application or otherwise obtained by Elavon or Member in connection with the Agreement may be (i) used by Elavon and Member, and their respective affiliates and agents, in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services; (ii) disclosed and shared for reporting purposes to credit rating agencies, under the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (iii) used or disclosed in the course of any actual or potential sale, reorganization or other change to Elavon's or Member's business; (iv) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (v) retained for such periods of time as required by Elavon and Member to perform their obligations and exercise their rights under the Agreement.
 - c) **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. Accordingly, Merchant must provide certain information and identifying documents to allow Elavon and Member to identify Merchant.
- 9) **FRAUD MONITORING.** Merchant is solely responsible for monitoring its Transactions. Elavon and Member are under no duty to monitor Merchant's Transactions for fraudulent or other suspicious activity.
- 10) **BUSINESS CONTINUITY.**
 - a) **Merchant.** Merchant is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by Elavon. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with



respect to Transactions and will provide such information and data to Elavon or Member upon request in order to reconstruct any information or data lost due to any malfunction of Merchant's or Elavon's or Member's systems. Elavon is under no duty to recreate lost Transactions or Transaction Receipts unless such loss results from Elavon's breach of the Agreement.

- b) **Elavon and Member.** Elavon and Member are required, pursuant to federal banking regulations, to establish, maintain, and test an effective and comprehensive business continuity plan ("BCP"). Elavon and Member maintain BCPs that are commercially reasonable within the industry for the Processing Services. Elavon and Member will continue to adhere to their respective BCPs and will modify those plans from time to time to meet the objectives and requirements of their respective businesses.

11) **THIRD PARTIES.**

- a) **Products or Services.** See Schedule I.
- b) **Third Party Contractors.** Merchant acknowledges and understands that Elavon or Member may use the services of third party service providers in connection with the performance of their obligations under the Agreement, including any Schedule to the Agreement. Except as otherwise provided in the Agreement, Elavon and Member shall be responsible for the performance of their obligations hereunder notwithstanding any use of or delegation of any responsibility to a third party service provider.

12) **TERM AND TERMINATION.**

- a) **Term.** Unless terminated as set forth below, the Agreement, including all Schedules hereto executed as of or following the Effective Date, will remain in effect for the Initial Term, as defined on Schedule A, Schedule of Fees, following the Effective Date set out on page 1 of the Agreement. Thereafter, the Agreement, including all Schedules thereto, will automatically renew for successive Renewal Terms, as defined on Schedule A, Schedule of Fees, unless terminated as set forth below. If Merchant processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement shall govern such Transaction processing.

b) **Termination.**

i) **By Merchant.**

- (A) The Agreement may be terminated by Merchant effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Elavon at least ninety (90) days prior to the expiration of the then current term.

- (B) The Agreement may be terminated by Merchant in the event of a material breach of the terms of the Agreement by Elavon or Member, provided Merchant gives Elavon

and Member written notice of any alleged breach and such breach remains uncured for a period of sixty (60) days following receipt of written notice by the party Merchant claims to be in breach of the Agreement.

(C) See Schedule I.

ii) **By Elavon or Member.**

- (A) The Agreement may be terminated by Elavon or Member effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Merchant at least ninety (90) days prior to the expiration of the then current term.

- (B) The Agreement may be terminated by Elavon or Member immediately upon the occurrence of one or more of the following:

- (1) The occurrence of a material adverse change in Merchant's financial condition.

- (2) The garnishment or attachment of Merchant's deposit accounts with Member, Alternate Security, the DDA, the Reserve Account, or any of Merchant's property in the possession of Elavon or Member.

- (3) The commencement of a Bankruptcy Proceeding by or against Merchant.

- (4) Any representation, warranty or covenant by Merchant is false or misleading in any material respect as of the date made, or becomes false or misleading in any material respect at any time during the term of the Agreement.

- (5) Any Payment Network requires Elavon or Member to terminate the Agreement or cease processing transactions for Merchant.

- (6) Any change, whether or not reported to Elavon or Member, to the information submitted in the Merchant Application that Elavon or Member deems, in its discretion, to materially increase the risk to either of them of providing the Processing Services.

- (7) Assignment of the Agreement or a change in control of Merchant without Elavon's written consent.

- (8) Revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or other Alternate Security executed in connection with the Agreement, if applicable.



- (C) The Agreement may be terminated by Elavon or Member if, after providing thirty (30) days written notice, any of the following conditions remain:
- (1) The occurrence of Excessive Activity.
 - (2) The acceptance of Card Not Present or Convenience Fee Transactions without proper disclosure to Elavon and Member in the Agreement or an amendment to the Agreement.
 - (3) The failure to pay Elavon or Member any amount Merchant owes Elavon or Member.
 - (4) The failure by Merchant to perform a material obligation of the Agreement.

The parties' rights of termination under the Agreement are cumulative. A party may exercise its termination rights with respect to an individual Schedule to the Agreement without terminating other Processing Services or Schedules, provided that any termination of the Agreement in whole shall automatically terminate all related Processing Services and Schedules. A specific right of termination in this section shall not limit any other right of the party to terminate the Agreement or any Schedule expressed elsewhere.

c) **Notice of Termination.**

- i) Notice of termination by Merchant, Elavon, or Member must be given in writing. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's account with Elavon may take up to thirty (30) days following Elavon's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Elavon following termination by either Merchant or Elavon in the Initial or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

d) **Action upon Termination.**

- i) **Accounts.** All obligations of a party regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until Merchant pays all amounts Merchant owes Elavon or Member or for which Merchant is liable under the Agreement. Merchant must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination.
- ii) **Equipment.** If Merchant's equipment is leased, Merchant is obligated to honor the terms and

conditions of Merchant's leasing contract. If Merchant's equipment is owned or supplied by Elavon, Merchant must return all equipment to Elavon and pay Elavon any amounts Merchant owes for such equipment within thirty (30) days.

- iii) **Early Termination Fee.** Deleted pursuant to Schedule I.

13) **COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE.**

- a) **Compliance with Laws and Payment Network Regulations.** Merchant, Elavon and Member agree to comply with all applicable Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account as applicable, and with any policies and procedures provided by Elavon or Member. Merchant, Elavon and Member further agree to comply with all Laws applicable to the selected Processing Services, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic fund transfers; (iii) confidential treatment of information; and (iv) the Fair and Accurate Credit Transactions Act of 2003 (FACTA), including its requirements relating to the content of Transaction Receipts provided to Cardholders. Merchant will execute and deliver to Elavon and Member all documents they may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.
- b) **Privacy Laws.** In addition to Section (A)(14)(b), each party hereto must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information and in a manner that complies with applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act, the federal Gramm-Leach-Bliley Act, FACTA or other applicable privacy laws.
- c) **MATCH™ and Consortium Merchant Negative File.** Merchant acknowledges that Member and/or Elavon is required to report Merchant's business name and the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa or to the Consortium Merchant Negative File maintained by Discover, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to Elavon's and Member's fulfillment of the obligations related to the listing of Merchant in such databases, and Merchant waives all claims and



liabilities Merchant may have as a result of such reporting.

- d) **Security Program Compliance.** See Schedule I.
- e) **Data Compromise.**
 - i) **Notice and Investigation.** Merchant acknowledges and agrees that Cardholder data and bank account information obtained by Merchant in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Merchant must notify Elavon and Member within twenty-four (24) hours (and if notice is given orally, it must be confirmed in writing within the same twenty-four hour period), if Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used without authorization from Merchant, Merchant's Agents or systems within Merchant's or its agent's control (a "Data Incident"). The notice must include: (a) a detailed written statement about the Data Incident including the contributing circumstances, (b) the form, number and range of compromised account information, (c) specific account numbers compromised, and (d) details about the ensuing investigation and Merchant's security personnel who may be contacted in connection with the Data Incident. Merchant must fully cooperate with the Payment Networks, Elavon and Member in the forensic investigation of the Data Incident. Within seventy-two (72) hours of becoming aware of the Data Incident, Merchant must engage the services of a data security firm acceptable to the Payment Networks and/or to Elavon and Member to assess the vulnerability of the compromised data and related systems. Merchant must provide weekly written status reports to Elavon and Member until the forensic audit is complete. Merchant must promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks and/or Elavon and Member may request. In addition, Merchant must provide all audit reports to Elavon and Member, and such audits must be completed to the satisfaction of the Payment Networks and/or of Elavon and Member. If Merchant fails to supply the forensic audits or other information required by the Payment Networks and/or by Elavon and Member, Merchant will allow Elavon or Member to perform or have performed such audits at Merchant's expense.
 - ii) **Preservation of Records.** In the event of a Data Incident, Merchant must take immediate steps to preserve all business records, logs and

electronic evidence relating to the Data Incident. Merchant shall cooperate with Elavon and Member to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon and Member with (and obtaining any necessary waivers for) all relevant information to verify Merchant'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 and Member's rights and remedies, Merchant is liable for all fraudulent transactions related to any Data Incident and all costs Elavon or Member incur as a result of such Data Incident, including any fees, fines, and/or penalties assessed by the Payment Networks, claims from third parties, all costs related to the notification of Cardholders or Customers and cancellation, re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI DSS review for a report of compliance.
 - iv) **Elavon Data Compromise.** If Elavon suffers a data incident and Cardholder, Customer, or Transaction information has been accessed from Elavon, its employees or agents, or systems within Elavon's control, then Elavon will follow all applicable Payment Network Regulations with respect to such data incident including providing the required reporting and forensic audits to the Payment Networks.
- 14) **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.**
- a) **Use of Trademarks.** Merchant may use and display the Payment Networks' marks, and shall display such marks in accordance with the standards for use established by the Payment Networks. Merchant's right to use all such marks will terminate upon termination of the Agreement or upon notice by a Payment Network to discontinue such use, and Merchant must thereafter promptly return any materials displaying the marks. Merchant's use of promotional materials provided by the Payment Networks will not indicate, directly or indirectly, that such Payment Networks endorse any goods or services other than their own and Merchant may not refer to any Payment Networks in stating eligibility for Merchant's products or services.
 - b) **Confidentiality.**
 - i) **Cardholder and Transaction Information.** Merchant, Elavon and Member shall, at all times, protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. No party will disclose Cardholder or Transaction information to any third party, except to an agent of theirs assisting in completing a Transaction, or as required by



Laws or the Payment Network Regulations. Merchant, Elavon and Member must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than their authorized personnel or agents. Merchant, Elavon and Member must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that they no longer deem necessary or appropriate to maintain. Further, Merchant, Elavon and Member must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2 data after authorization for record keeping or additional authorization processing.

- ii) **Bankruptcy.** In the event of failure or other suspension of Merchant's business operations, including any Bankruptcy Proceeding, Merchant must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. Merchant must:
 - (A) Return this information to Elavon, or
 - (B) Provide acceptable proof of destruction of this information to Elavon.
- iii) **Confidential Information.** Merchant, Elavon and Member shall at all times protect the other party's Confidential Information. Merchant, Elavon and Member will not disclose any Confidential Information to any third party except as required by Laws or the Payment Network Regulations.
- c) **Passwords.** See Schedule I.
- d) **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Elavon, unless specifically agreed to in a separate license or use agreement between Merchant and Elavon. Nothing in the Agreement shall be construed as granting Merchant any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Elavon's services, equipment, or software.

15) MISCELLANEOUS PROVISIONS.

- a) **Entire Agreement.** The Agreement (including all Schedules, attachments, exhibits, addenda and other documents incorporated by reference into the Agreement or any of its Schedules, attachments, exhibits or addenda) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any amendment or Schedule to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Operating Guide; and (v) any other guides or manuals provided to Merchant from time to time.
- b) **Jurisdiction and Venue; Governing Law.** Deleted pursuant to Schedule I.
- c) **Exclusivity.** Deleted pursuant to Schedule I.
- d) **Construction.** Any alteration or strikeover in the text of the Agreement or any Schedule thereto will have no binding effect and will not be deemed to amend the Agreement. The headings used in the Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.
- e) **Assignability.** The Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Elavon. If Merchant, nevertheless, assigns the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as Merchant. Elavon will not transfer or assign the Agreement without the prior written consent of Merchant, provided that such consent shall not be required for (i) the assignment or delegation to an affiliate of Elavon, or (ii) the assignment or delegation to any Person into or with which Elavon shall merge or consolidate, or who may acquire substantially all of Elavon's stock or assets.
- f) **Notices.** Any written notice to the other party under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or (iii) one (1) business day after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to the Merchant's last address shown on the records of Elavon, or to Elavon at 7300 Chapman Highway, Knoxville, TN 37920.
- g) **Bankruptcy.** Merchant will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Merchant. Merchant will include Elavon on the list and matrix of creditors as filed with the



Bankruptcy Court, whether or not a claim may exist at the time of filing. Merchant acknowledges that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy.

- h) **Attorneys' Fees.** Deleted..
- i) **Customer Contact.** Merchant authorizes Elavon and Member to contact Merchant's Customers or their Issuer if Elavon or Member determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.
- j) **Telephone Recording.** For quality assurance and training purposes Merchant authorizes Elavon to monitor and record telephone conversations at any time. The decision to record any conversation shall be solely in Elavon's discretion and pursuant to applicable Law.
- k) **Communication with Merchant.** Merchant agrees that Elavon and Member may provide Merchant with information about their services including, without limitation, information about new products and/or services by telephone and/or electronic mail.
- l) **Amendments.** Except as otherwise provided in the Agreement, amendments to the Agreement shall be in writing and signed by the parties. Notwithstanding the foregoing, Elavon and Member may amend or modify the Agreement, to the extent such changes are required by or attributable to changes in the Payment Network Regulations or other Laws, upon written notice to Merchant. Elavon or Member will inform Merchant of such a change in a periodic statement or other written notice, and such change will become effective not less than thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided. Further, Elavon is entitled to pass through to Merchant any fee increases or new fees imposed upon Elavon by any Payment Network and any other third party vendor used by Elavon or Member to provide the Processing Services.
- m) **Severability and Waiver.** If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalid or unenforceable provision shall be deemed to be curtailed or revised to the extent necessary to make such provision valid and enforceable and all other provisions of the Agreement shall remain enforceable and unaffected thereby. None of the failure, 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 shall such amend the Agreement.

All waivers requested by a party must be signed by the waiving party.

- n) **Independent Contractors.** Elavon, Member, and Merchant 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 provided herein. The Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
- o) **Survival.** All of the obligations of each party hereto that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including, without limitation, Sections 3, 4, 5, 6, 7, 10, 12, 13, 14, 15(b) and 15(h) of the TOS, shall so survive and remain binding upon and for the benefit of the parties hereto.
- p) **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

Section B - Glossary

- 16) **ACH Rules:** The NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.
- 17) **Agreement:** The Payment Device Processing Agreement, including the TOS, MOG, any Schedules, attachments, exhibits, addenda, the Merchant Application, amendments, or additions as permitted under the terms of the Agreement.
- 18) **Alternate Security:** The security described in Section (A)(4)(b)(vi).
- 19) **American Express:** American Express Travel Related Services Company, Inc.
- 20) **ACH:** Automated Clearing House.
- 21) **ACH Network:** The funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically.
- 22) **Bankruptcy Proceeding:** With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (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 a petition seeking to take advantage of any other applicable 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 Person 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 law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) 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 (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.
- 23) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
- 24) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
- 25) **Cardholder:** (i) the individual in whose name a Payment Device has been issued; or (ii) any individual who possesses or uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or who purports to be an authorized user of the Payment Device.
- 26) **Chargeback:** A Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- 27) **Confidential Information:** All information or items proprietary to any party to the Agreement, of which another party to the Agreement obtains knowledge or access as a result of the relationship formed as a result of the Agreement, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.
- 28) **Convenience Fee:** A fee charged by Merchant for an added convenience to the Cardholder for the use of a Payment Device in a Transaction in accordance with the Payment Network Regulations.
- 29) **Credit Card:** A card or device associated with a revolving line of credit that may be used to purchase goods and services from Merchant or to pay an amount due to Merchant. A "Credit Card" includes any of the following cards or devices that are associated with a line of credit extended to the Person to whom the card or device is issued: (i) a Visa card or other card or device bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card or device bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); (iii) a Discover Network card or other card or device bearing the symbol(s) of Discover Network; or (iv) any card or device bearing the symbol of any other Credit Card Association.
- 30) **Credit Card Associations:** (i) Visa; (ii) MasterCard; (iii) American Express; (iv) Discover Network; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards or signature-based Debit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.
- 31) **Customer:** A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder).
- 32) **Debit Card:** A card or device bearing the symbol(s) of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from Merchant or to pay an amount due to Merchant by an electronic debit to the Cardholder's designated deposit account. A "Debit Card" includes (i) a card or device that bears the symbol of a Credit Card Association and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct PIN-based, online debit Transactions.
- 33) **Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to Elavon and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement.
- 34) **Diners:** Diners Club International Ltd.
- 35) **Discover:** DFS Services LLC.



- 36) **Discover Network:** The payment network operated and maintained by Discover.
- 37) **EBT Card:** A card utilized for electronic benefits transfers.
- 38) **ECS Association:** Visa (in its operation of the Visa POS Check Service), NACHA and any regional ACH association or network, the Federal Reserve (in its processing of ACH entries or Demand Drafts or other legal replacements or substitutes for a Paper Check, including under the Check Clearing for the 21st Century Act or under applicable provisions of the Uniform Commercial Code), and any other organization or association used by Elavon and/or Member in connection with the ECS that is hereafter designated as an ECS Association by Elavon from time to time.
- 39) **EFT Networks:** (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
- 40) **Effective Date:** The date set forth in the signature block of Elavon on page 1 of the Agreement.
- 41) **Elavon:** As applicable, Elavon, Inc., a Georgia corporation, and any affiliate or subsidiary of Elavon, Inc. that provides processing services to a Merchant related to Transactions. Elavon is a registered member service provider of each Member. Elavon may also be referred to as "Servicer" in the Agreement, the MOG or other documents provided to Merchant in connection with the Processing Services.
- 42) **Electronic Check Services (ECS):** The service offering by Elavon pursuant to which Transactions effected via an ACH Payment Device are presented for clearing and settlement by or through an ECS Association.
- 43) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant.
- 44) **Electronic Gift Card (EGC):** A special stored value card provided by Merchant that is redeemable for merchandise, services or other Transactions.
- 45) **Excessive Activity:** The occurrence, during any monthly period, of Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of Merchant's Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of Transactions.
- 46) **Interchange:** The clearing and settlement system for Visa, MasterCard and, where applicable, Discover Credit Cards and Debit Cards, where data is exchanged between Elavon and the Issuer through the applicable Payment Network.
- 47) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
- 48) **JCB:** JCB International Co., Ltd.
- 49) **Laws:** All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.
- 50) **Mail Order/Telephone Order (MO/TO) Transaction:** For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.
- 51) **MasterCard:** MasterCard International Incorporated.
- 52) **Member:** The sponsoring Member designated on the Merchant Application or on a particular Schedule hereto, as applicable. Any Member may be changed by Elavon at any time and the Merchant will be provided notice of same.
- 53) **Merchant:** The entity set out in the first page of the Agreement and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B.
- 54) **Merchant Application:** The Merchant Application attached hereto as Schedule C and any additional document containing information regarding Merchant's business that is submitted to Elavon and Member in connection with Merchant's application for processing services, including documents submitted by Merchant as a part of the bid process, if applicable.
- 55) **Merchant Operating Guide (MOG):** Elavon's operating manual that prescribes rules and procedures governing Transactions and Merchant's use of the Processing Services. The MOG may be amended from time to time by Elavon in its sole discretion, which amendments will be effective upon notice to Merchant.
- 56) **NACHA—The Electronic Payments Association:** The national association that establishes standards, rules, and procedures governing the ACH Network, including the ACH Rules.
- 57) **Payment Device:** Any device or method used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device or method, including an Electronic Gift Card, check (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.
- 58) **Payment Network:** Any Credit Card Association, EFT Network, ECS Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.



- 59) **Payment Network Regulations:** Individually and collectively, as the context may dictate, all rules and operating regulations of the EFT Networks, Credit Card Associations and ECS Associations, and all rules, operating regulations, and guidelines for Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.
- 60) **Person:** Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.
- 61) **POS Device:** A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Elavon and the applicable Payment Network.
- 62) **Processing Services:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- 63) **Reserve Account:** The account established pursuant to Section (A)(4).
- 64) **Reserve Amount:** The amount established pursuant to the calculation set forth in Section (A)(4).
- 65) **Reserve Event:** The events designated in Section (A)(4).
- 66) **Retrieval Request:** A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.
- 67) **Servicer:** See "Elavon."
- 68) **TOS:** These Terms of Service and all additions, amendments, modifications and replacements to the TOS, as applicable.
- 69) **Transaction:** Any action between a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).
- 70) **Transaction Receipt:** The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.
- 71) **Value Added Servicer:** Any entity that stores, processes, transmits or accesses Payment Device data or Transaction data on behalf of Merchant or that provides software to Merchant for transaction processing, storage, or transmission, except to the extent such services are performed by the entity in its capacity as an agent of Elavon performing Elavon's obligations under the Agreement.
- 72) **Visa:** Visa U.S.A., Inc.

SCHEDULE A - SCHEDULE OF FEES

I. ASSUMPTIONS / MERCHANT PROFILE

Legal Entity Name	Commonwealth of Virginia
Business Segment	Services, Government
Category Description	Government Services-Not Elsewhere Classifi
MCC	9399
Multiple MCCs?	Yes (Reference Additional List)
Locations	1,228
Initial Contract Term (yrs)	5
Date Fees Last Updated	

PRICING SCHEDULE

RSM

	Annual Volume	Average Ticket	Annual Transactions
VISA	\$ 724,184,314	\$ 68.54	10,565,864
MasterCard	\$ 219,188,997	\$ 90.95	2,409,994
Discover	\$ 8,679,806	\$ 74.81	116,025
American Express	\$ 28,127,144	\$ 115.48	243,567
JCB & Diners	\$ -	\$ -	0
PIN-Debit	\$ -	\$ -	0
Checks	\$ -	\$ -	0
EBT	\$ -	\$ -	0
Other	\$ -	\$ -	0
Total	\$ 980,180,262	\$ 73.50	13,335,450

- SEE PAGE 2

II. ACCOUNT IMPLEMENTATION & MAINTENANCE FEES

	Merchant Fee	Application	Comments
Account Set-Up & Implementation Fee	\$ -		
Application Fee	\$ -		
Rush Fee	\$ -		
Monthly Statement Fee	\$ -		
Supply Fee	Pass-through		
Terminal reprogram Fee (per unit)	\$ -		
Wireless Service			
Activation Fee	\$ 20.00	Per Unit	
Monthly Fee	\$ 19.95	Per Unit	
Onsite Training	\$ -		
Research Fee	\$ -		
Other Fee	\$ -		

III. CARD PROCESSING FEES

Pricing Type: Pass-Through

All Visa, MasterCard, Discover and debit network authorization and Interchange fees, assessments, dues and other fees and charges are passed to Merchant at cost. Servicer Transaction processing fees include:

	Auth Fee (\$)	Settle Fee (\$)	Settle Fee (%)
Visa	\$ -	\$ -	0.0000%
MasterCard	\$ -	\$ -	0.0000%
PIN-Debit	\$ -	\$ -	0.0000%

Billing Method: **Gross**

Interchange, assessments, and dues will be assessed on all Visa, MasterCard, and Discover settled volume.

Transaction Count Pricing – Beginning on the Agreement Effective Date, Merchant will be assigned to one of the following count/pricing tiers based on Merchant's anticipated annual Transaction count (the aggregate annual number of all Visa, MasterCard and Discover Transactions processed by Servicer). If Merchant's actual aggregate Transaction count during any rolling twelve (12) month period qualifies Merchant for a tier with lower pricing, Merchant may so notify Servicer in writing and the new tier pricing will be applied on the first day of the calendar month following Servicer's receipt and verification of Merchant's notification. If Merchant's actual aggregate Transaction count during any rolling twelve (12) month period qualifies Merchant for a tier with higher pricing, Servicer may so notify Merchant in writing and the new tier pricing will be applied on the first day of the calendar month following such notification to Merchant.

Tiers	Annual Transaction Ranges		Auth \$	Settle \$	Settle %
	Min	Max			

SCHEDULE A - SCHEDULE OF FEES

Tier 1	1	10,000,000	\$	0.0300	\$ -	0.0000%
Tier 2	10,000,001	22,000,000	\$	0.0250	\$ -	0.0000%
Tier 3	22,000,001	Greater	\$	0.0200	\$ -	0.0000%

IV. AUTHORIZATION FEES - Servicer

Telecom Method	N/A	
Additional Fee for Telecom	\$ -	
Discover	\$ -	
American Express	\$ -	
Diners	\$ -	
JCB	\$ -	
EBT	\$ -	
Other Card Type	\$ -	0.0000%
Other Card Type	\$ -	0.0000%
Voice (VRU) Authorization	\$ 0.55	
Voice Authorization with Address Verification	\$ 0.65	
Operator-Assist Authorization	\$ 1.25	
Bank Referral Authorization	\$ 3.00	

V. OTHER TRANSACTION FEES & SERVICES

Batch Header Fee (per occurrence)	\$ -
AVS Fee (per occurrence)	\$ -
ACH Fee (per occurrence)	\$ -
ACH Returned Item Fee (per occurrence)	\$ -
FedWire Settlement (per occurrence, where available)	\$ -
Chargeback Fee (per occurrence)	\$ 5.00
Monthly Minimum (per location)	\$ -
Monthly Minimum Start Date	
Other Fee	\$ -
Other Fee	\$ -

VI. OPTIONAL SERVICES

A. Reporting

Merchant Connect Basic	
Setup Fee	Waived
Monthly Fee	Waived
Merchant Connect Premium	
Setup Fee	Waived
Monthly Fee	Waived
1 User	Waived
2-5 Users	Waived
6-10 Users	Waived
11+ Users	Waived
ACS Reporting	
Setup Fee (per MID)	\$ -
Monthly Fee	\$ -

B. Foreign Networks & Gateways

Using a third party network or gateway below requires Servicer to add an additional fee per authorization. For foreign networks, this is a separate authorization fee, and for gateways, this Servicer fee will be added to the Servicer authorization fee noted in Section IV.

- TSYS Acquiring Solutions (Vital) Foreign Network
- ADS Foreign Network
- BuyPass Foreign Network
- Global (Mapp or NDC) Foreign Network
-

	Dial	IP
\$	0.040	\$ 0.020
\$	0.040	\$ 0.040

SCHEDULE A - SCHEDULE OF FEES

- MerchantLink Gateway
- Pay by Touch Gateway
- Other

\$	0.060

\$	0.040

C. Equipment/Software

VII. VALUE ADDED PRODUCTS

VIII. TERM

Term:

Initial Term of five (5) years with one (1) year Renewal Terms

Early Termination Fee \$ - X number of months remaining

MERCHANT ACKNOWLEDGEMENT

Signature: _____

Name: _____

Title: _____



(Commonwealth of Virginia) PAYMENT DEVICE PROCESSING AGREEMENT v.01.01.09 dtd 01.29.10 FINAL

SCHEDULE A
SCHEDULE OF FEES

[Separately Provided]



**SCHEDULE B
AFFILIATED ENTITIES**

Check one: Merchant is a Virginia (insert state) Corporation LLC LP
 Other _____

Check one:

- Merchant named on page 1 only, and all locations will operate under Federal Tax ID Number 546001745.
- Merchant named on page 1, with Federal Tax ID Number _____ and the following affiliate(s):

Name	Tax ID Number
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

MERCHANT, on behalf of itself and each of the affiliated entities identified above:

By: Manju Ganesan
 Name: Manju S. Ganesan
 Title: Treasurer Va.

ELAVON, INC.
 By: [Signature]
 Name: Timothy L. Miller
 Title: Senior Vice President
 Date: 3/4/10
 (Schedule B "Effective Date")

MEMBER
 By: [Signature]
 Name: Timothy L. Miller
 Title: Senior Vice President



(Commonwealth of Virginia) PAYMENT DEVICE PROCESSING AGREEMENT v.01.01.09 dtd 01.29.10 FINAL

SCHEDULE C
MERCHANT APPLICATION (LARGE RELATIONSHIP)

[Separately Provided]



SCHEDULE D
ELECTRONIC GIFT CARD SERVICES

Merchant elects to receive and agrees to abide by the Electronic Gift Card Services as part of the Payment Device Processing Services, as such Electronic Gift Card Services are described in this Schedule D and the Merchant Operating Guide (the "MOG").

This Schedule D supplements, is made a part of and is subject to the terms and conditions of the Agreement. Capitalized terms used and not otherwise defined in this Schedule shall have the meanings ascribed to them in the Agreement or the MOG.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule D to the Agreement.

**Commonwealth of Virginia,
Department of Treasury**

By: Manju Gasinda
Name: Manju S. Ganeriwala
Title: Treasurer of Va.

ELAVON, INC

By: [Signature]
Name: Timothy I. Miller
Title: Senior Vice President
Date: 2/4/10
(Schedule D "Effective Date")

MEMBER

By: [Signature]
Name: Timothy I. Miller
Title: Senior Vice President



Section A – Electronic Gift Card Services General Requirements

- 1) **PROCESSING SERVICES.** Elavon and Member will provide the EGC Services to Merchant described in this Schedule and the MOG.
- 2) **MERCHANT RESPONSIBILITIES.**
 - a) Merchant will comply with the Agreement and with all applicable provisions of the MOG in connection with Merchant's receipt and use of the EGC Services.
 - b) Merchant acknowledges and agrees that it is Merchant's sole responsibility to comply with any and all applicable Laws governing the issuance, use, and acceptance of Electronic Gift Cards (including all laws relating to purchase, service and dormancy fees, laws relating to expiration dates, and laws governing the treatment of unused or unclaimed funds or other property). Further, Merchant agrees to comply in a complete and timely manner with any such Laws, including but not limited to all escheatment, unclaimed property and consumer protection laws now or hereafter applicable to the acceptance of Electronic Gift Cards.
 - c) Until such time as Cardholder Data and Transaction data has been received and validated by Elavon, Merchant will maintain sufficient "backup" information and data (e.g. Transaction Receipts or detailed reporting) with respect to Electronic Gift Cards sold to reconstruct any information or data loss due to any system malfunction or error in transmission.
 - d) Elavon must participate in all Electronic Gift Card Transactions. In the event that a third party must also participate in such a Transaction, Merchant will only use such third parties as have been approved by Elavon for such purposes.
 - e) Merchant agrees to comply with the Graphic Specifications and Procedures provided by Elavon and incorporated herein by reference, as such may be amended from time to time by Elavon in its sole discretion.
 - f) Merchant shall pay the fees for the Electronic Gift Card Services as set forth in Schedule A, Schedule of Fees, to the Agreement. In addition to any other applicable fees, Merchant is responsible for all card production and delivery costs.
- 3) **DIRECT SETTLEMENT.** Merchant authorizes Elavon to initiate credit and debit entries among Merchant's individual chain locations for any transactions that change the balance of an Electronic Gift Card. In the event Elavon is unable to accomplish a credit or debit entry to reflect the effect of a Transaction, Merchant further authorizes Elavon to credit and/or debit the designated Master Account or Primary Merchant. Merchant also understands that Elavon may, in its sole discretion, offset any debits against the related credit Transactions of the applicable chain or Merchant location. Merchant also agrees to notify Elavon in writing of any asserted errors within sixty (60) days of the statement date on which the asserted error first appeared and understands that any failure to do so will preclude further claims or assertion of the error. Both the Merchant and the individual chain locations agree to pay related direct settlement fees.
- 4) **WARRANTIES/LIABILITY.**
 - a) Elavon is not responsible for lost, stolen or fraudulent Electronic Gift Cards.
 - b) Elavon makes no warranty, express or implied, with respect to the services provided hereunder including, without limitation, any express or implied warranty regarding compliance of the Processing Services or EGCs with any applicable Laws governing the issuance, use, and acceptance of gift certificates or gift cards. This includes but is not limited to all escheatment, unclaimed property and consumer protection Laws.
- 5) **ADDITIONAL LOCATIONS.** Locations, including chain locations, added to this processing relationship will be boarded on Elavon's system pursuant to the paperwork submitted by Merchant to Elavon. However, in the event of an error or omission of fees payable by Merchant on the submitted paperwork, the Processing Services fees and other monthly fees applied to the locations during the initial set up or subsequent negotiations will be applied to such locations.
- 6) **CLOSING LOCATIONS.** In the event that a particular location closes or changes its Merchant Identification Number (MID), Merchant agrees that Elavon may bill the Primary Merchant for any fees associated with subsequent Transactions processed on Electronic Gift Cards activated by the closed MID. This would apply to any system generated transactions including, but not limited to, deduction and points conversion transactions. Monthly fees billed for Loyalty Cards/members activated at the closed location may also be billed to the Primary Merchant.
- 7) **POST TERMINATION.** Following termination, Merchant will pay Elavon a transfer fee based on but, not limited to, the number of issued Electronic Gift Cards that must be converted to another processor and the data specifications required.

Section B – Glossary

- 8) **Cardholder Data:** One or more of the following data elements pertaining to a Cardholder's account: Electronic Gift Card number, Cardholder name (if applicable), Electronic Gift Card account activity, Cardholder account balance, and/or such other data applicable to the Merchant's EGC program.
- 9) **Electronic Gift Card (EGC):** Has the meaning given in the TOS, and includes any electronic gift card, gift certificate, Loyalty Card or Stored Value Card, as may be applicable, and/or as offered by Merchant to Customers from time to time.
- 10) **Electronic Gift Card (EGC) Services:** Processing Services provided by Elavon to Merchants with respect to EGCs offered by such Merchants, as more fully described in this Schedule D and the MOG.
- 11) **Loyalty Card:** A device used to hold a currency and/or points value in a stored value program (also referred to as a "Stored Value Card").
- 12) **Graphic Specifications and Procedures:** The requirements, specifications and procedures applicable to standard and custom Electronic Gift Cards, including all artwork appearing or permitted to appear on Electronic Gift Cards, as may be provided by Elavon to Merchant from time to time.
- 13) **Master Account:** The account (e.g. funds pool) that is used to hold the value of Electronic Gift Cards that have been issued among a group or chain of merchants, alternatively, this may refer to the back-up account used to offset ACH rejects, if applicable.
- 14) **Primary Merchant:** The Merchant Identification Number (MID)/location originally enrolled for Electronic Gift Cards and set up to be billed for the card orders placed or designated as the corporate or headquarter location.
- 15) **Stored Value Card:** A device used to hold a currency and/or the points value in a stored value program (also referred to as a "Loyalty Card").



SCHEDULE E
ECS SERVICES

This Schedule E supplements, is made a part of and is subject to the terms and conditions of the Agreement.

ELECTRONIC CHECK SERVICES ELECTED BY MERCHANT. Merchant elects and agrees to the following Electronic Check Services as part of the Payment Device Processing Services, as such Electronic Check Services are described in this Schedule E and in the Electronic Check Services Merchant Operating Guide (the "ECS MOG"):

Electronic Check Services General Requirements and the ECS MOG – All additional services will be selected by a Joinder Merchant, and applicable fees will be set forth in a Joinder to the Payment Device Processing Agreement

Processing Options (check desired options):

- | | |
|--|--|
| <input type="checkbox"/> POP (Point of Purchase entries) | <input type="checkbox"/> WEB (Internet-initiated entries) |
| <input type="checkbox"/> BOC (Back Office Conversion entries) | <input type="checkbox"/> TEL (Telephone-initiated entries) |
| <input type="checkbox"/> ARC (Account Receivable Conversion entries) | <input type="checkbox"/> PPD (Prearranged Payment and Deposit entries) |

Image Options (check one):

- | | |
|--|--|
| <input type="checkbox"/> POS with Image | <input type="checkbox"/> Centralized/Enterprise Image (CI) |
| <input type="checkbox"/> Cash Office Image (COI) | <input type="checkbox"/> Outsourced Image (OI) |

Delivery Method (check one):

- | | |
|--|---|
| <input type="checkbox"/> Visa Online | <input type="checkbox"/> EnCircle Batch |
| <input type="checkbox"/> EnCircle Online | <input type="checkbox"/> Elavon Batch |
| <input type="checkbox"/> Visa Batch | |

Service Levels (check one unless combination service is desired):

- | | |
|--|---|
| <input type="checkbox"/> Conversion with Guarantee | <input type="checkbox"/> Conversion with Verification |
| <input type="checkbox"/> Conversion with Verification and Collections* | <input type="checkbox"/> Conversion Only |
| <input type="checkbox"/> Conversion Only with Collections* | |

*A separate collections agreement is required. Collections service not available for use with WEB, TEL or PPD Transactions.

- Schedule E-1, ECS Additional Services Supplement
- Exhibit A to Schedule E-1, Fees for Additional ECS Services
- Exhibit B to Schedule E-1, Hold Check Agreement

Capitalized terms used and not otherwise defined in this Schedule shall have the meanings ascribed to them in the Agreement or the ECS Rules (including in the ECS MOG and the ECS Primer).

IN WITNESS WHEREOF, the parties hereto have executed this Schedule E to the Agreement.

Commonwealth of Virginia,
Department of Treasury

By: Manju Ganerival
Name: Manju S. Ganerivala
Title: Treasurer D Va.

ELAVON, INC.

By: [Signature]
Name: TIMOTHY I. MILLER
Title: Senior Vice President
Date: 2/4/10
(Schedule E "Effective Date")

MEMBER

By: [Signature]
Name: TIMOTHY I. MILLER
Title: Senior Vice President



Section A - Electronic Check Services General Requirements

In the course of its acceptance and use of ECS, Merchant represents, warrants and covenants the following:

- 1) Merchant shall comply with and be bound by (a) the ECS Rules, including the ACH Rules, the ECS MOG and the ECS Primer, and (b) Laws, including, but not limited to, the Check Clearing for the 21st Century Act and Regulation CC, Article 3 and Article 4 of the Uniform Commercial Code as in effect in the applicable state(s), the Electronic Fund Transfer Act and Regulation E, and the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act.
- 2) Merchant shall pay the fees for ECS as set forth in the Schedule A, Schedule of Fees, to the Agreement, and in any exhibits or attachments to this Schedule.
- 3) In the event Merchant accepts for ECS any Paper Check that is ineligible as specified in the ECS MOG for any reason, such Transaction is subject to Chargeback. Merchant may be liable for the face value of the Paper Check and any actual damages related to or arising out of processing a Transaction that has been charged back.
- 4) Merchant shall cause a Check Reader/Imager to be readily available for use at all Merchant locations.
- 5) Merchant must use commercially reasonable procedures to verify the identity of each Customer that presents a Paper Check for payment.
- 6) Merchant shall be solely responsible for providing Customers with notifications and disclosures in connection with ECS, including, but not limited to, posting all point of sale signage and distributing all Customer takeaways and all notices and disclosures required to be provided under the ECS Rules and Laws.
- 7) Merchant may use the ECS only in connection with the presentment and acceptance of a Paper Check in payment for goods or services sold by Merchant, or in payment for an obligation owed to Merchant, and only in compliance with the ECS Rules. Merchant shall be the sole user of the ECS, and Merchant may not resell or otherwise transfer any portion of ECS (or any associated information) in whole or in part to any other Person.
- 8) Merchant represents and warrants, with respect to all ECS Transactions submitted for processing by Elavon, that (i) the Customer has duly authorized the debiting of the Customer's account for the amount of the ECS Transaction in accordance with Laws, (ii) the Transaction represents an obligation of the Person who is tendering the Paper Check, and (iii) the ECS Transaction is for merchandise actually sold or rented, for services actually rendered, or for the actual amount due and owing from the Customer to Merchant, in each case for the actual price of such merchandise or services (including tax) or for the actual amount due and owing to Merchant. Merchant represents and warrants that no portion of any ECS Transaction involves any element of Merchant's extension of credit.
- 9) Merchant may not use ECS for merchandise returns or refunds, as ECS does not support this function. Merchandise returns or refunds must be handled outside ECS by direct negotiation between Merchant and the Customer.
- 10) Merchant is responsible to Elavon for any Transaction charged back by Elavon or its agent in accordance with the Agreement, including the ECS MOG, and for any fines or penalties incurred as a result of Merchant's non-compliance with Laws or the ECS Rules. Merchant agrees to immediately pay to Elavon or its agent (by means of debit or set-off initiated by Elavon or its agent, submission of payment by Merchant, or otherwise, at the sole option of Elavon), an amount equal to the amount of any ECS Transaction that is stopped, not settled, or charged back, as well as any related fees and charges.
- 11) Merchant must fully cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representments, and errors in accordance with the ECS Rules and Laws.
- 12) All of the representations and warranties made to Visa as a Merchant pursuant to the Visa POS Check Service Operating Regulations and all of the representations and warranties an Originating Depository Financial Institution or a Third Party Sender is deemed to make on behalf of an Originator pursuant to the ACH Rules shall be deemed representations and warranties Merchant makes to Elavon and Member upon Merchant's submission of an Item or a Transaction for ECS processing.
 - a) Merchant acknowledges Visa's right to terminate or limit its relationship with Member. Merchant further acknowledges that Visa may permanently prohibit Merchant's participation in the Visa POS Check Service in the event of (A) fraudulent activity, (B) presenting a Transaction that was not the result of an act between Merchant and a Customer, (C) presenting a Transaction as a Customer-present Transactions where the Customer was not present at the point of sale or Merchant accepts previously voided Paper Checks, (D) repeated violations of the Visa POS Check Service Operating Regulations, or (E) any other activity that may result in undue economic hardship or damages to the goodwill of the Visa POS Check Service.
 - b) Merchant has satisfied all of the Merchant standards and obligations set forth in the Visa POS Check Service Operating Regulations and the Originator standards and obligations set forth



in the ACH Rules as of the Effective Date of this Schedule and shall continue to satisfy such standards and obligations during the Initial Term and any Renewal Term, as applicable.

- 13) Merchant is responsible for and will ensure that all information, including MICR data and payment amounts, are accurately captured from a Paper Check in accordance with the applicable ECS Rules, and that all such information is accurately reflected in the related Item Merchant sends to Elavon for processing through ECS. Merchant will not submit for clearing or settlement any physical Paper Check unless and until Elavon and Member have processed and settled a Chargeback to Merchant with respect to any Items created from such Paper Check.
- 14) Merchant will not disclose to third parties any information related to ECS Transactions including, but not limited to, Customer DDA information, driver's license number, telephone number, or social security number except as specified in the Agreement, including the ECS MOG. Merchant shall keep all such information confidential and secure, in accordance with the Agreement and Laws.
- 15) Merchant does not have the right to use ECS data for any purpose other than to support the ECS itself.
- 16) Merchant must treat all ECS documents, including, but not limited to, the Agreement, including the ECS Rules, the ECS MOG and ECS collateral material or related guides, as confidential and proprietary information and must protect it with the same degree of care as Merchant would protect its own confidential and proprietary information and as further specified in the Agreement.
- 17) Merchant's Agreement and use of the ECS may be terminated immediately by Elavon for failure to comply with the terms of this Schedule, the Agreement or Laws.

Section B – Glossary

- 18) **ABA Routing Number:** The ABA number that uniquely identifies the bank on which a check is drawn.
- 19) **Authorization:** A process where a Drawee Bank, processor, or Authorizing Agent approves a Transaction, including as specified in the Visa POS Check Service Operating Regulations.
- 20) **Authorizing Agent:** A third party designated by Elavon to provide approvals and declines for Transactions.
- 21) **Batch:** The total of the Transactions processed since a Merchant's last settlement.
- 22) **Chargeback:** For purposes of this Schedule, "Chargeback" means (i) a sales Transaction disputed by a Customer or an Item not in compliance with Conversion with Guarantee warranty provisions or ECS Rules; (ii) for all Service Levels other than Conversion with Guarantee, the face amount of any Item that is returned by the Drawee Bank or an ECS

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Association to Elavon unpaid and that is ineligible for resubmission to the Drawee Bank or the ECS Association, including any Item returned for non-sufficient or uncollected funds after the third presentment; and (iii) for all Service Levels, an Item that is not in compliance with Merchant's obligations, representations and warranties under the Agreement or this Schedule.

- 23) **Check Reader/Imager:** A device certified by Elavon that electronically captures the MICR line and/or an image of the Paper Check.
- 24) **Check Replacement Document:** A Demand Draft, Photo-In-Lieu, or Substitute Check.
- 25) **Demand Draft:** A negotiable instrument drawn on the Customer's checking account that is created from transaction data included in an Item and that does not bear the Customer's signature but that is authorized by the Customer and is able to be processed via standard check processing methods.
- 26) **Drawee Bank:** The financial institution where a Customer maintains a checking account on which a Paper Check that serves as the source document to generate an Item at the POS Device is drawn.
- 27) **ECS Primer:** The detailed information relating to ECS processes and implementation provided by Elavon to Merchant, which must be used by Merchant in conjunction with the technical specifications and certification requirements provided by Elavon to promote integrated point of sale system connectivity and integration between Merchant and Elavon.
- 28) **ECS Rules:** Means (a) all applicable rules and operating regulations of or applicable to the ECS Associations, (b) the ECS MOG, and (c) the ECS Primer, in each case including without limitation, all amendments, changes, and revisions made thereto from time to time.
- 29) **Item:** An electronic file or entry representing a Transaction that is created from the information captured by Merchant from a Paper Check using a Check Reader/Imager and that is forwarded by Merchant to Elavon or Member in accordance with the Agreement.
- 30) **MICR:** The magnetic ink character read line encoded on a Paper Check that contains information about the Customer's checking account, including the ABA Routing Number and checking account number.
- 31) **Paper Check:** A Customer's paper check presented to Merchant for payment to the Merchant, which check will serve as the source document for Items.
- 32) **Participant:** An organization that agrees to comply with the Visa POS Check Service Operating Regulations, completes comprehensive certification testing with Visa, participates in one or more of the service levels, and performs functions and activities appropriate to participating in the Visa POS Check Service.
- 33) **Photo-In-Lieu:** A photocopy of a Paper Check, other than a Substitute Check.



- 34) **Substitute Check:** A draft that includes images of the front and back of the original Paper Check and that may meet the requirements for a "Substitute Check" under the Check Clearing for the 21st Century Act and related regulations.
- 35) **Visa POS Check Service:** Visa's proprietary check clearing product which utilizes the VisaNet network to offer direct checking account access to authorize, clear and settle consumer checks drawn on banks participating in this service.
- 36) **Visa POS Check Service Operating Regulations:** A set of specifications, guidelines, and principles defined by Visa that govern the operation and flow of information for transactions participating in the Visa POS Check Service.



SCHEDULE I
PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS

PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS. Merchant elects and agrees to accept the Payment Device Processing Services, as such services are further described in this Schedule and Exhibits hereto, and subject to the terms and conditions of the applicable provisions of the Agreement. Except as expressly modified pursuant to this Schedule, all terms and conditions of the Agreement, including all other Schedules to the Agreement, are incorporated herein and made a part hereof by this reference and shall govern the relationship among the parties to this Schedule I.

Elavon Fee Collection Model (unless modified by a Joinder Merchant):

- Direct Debit
- Compensating Balances (when available)
- Monthly Net Settlement
- Invoice (State Agencies and Institutions)

Assessment of Government/Public Institution Service Fees (to be determined by Joinder Merchant)

Capitalized terms used and not otherwise defined in this Schedule I shall have the meanings ascribed to them in the Agreement or the Merchant Operating Guide ("MOG"), which is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule I to the Agreement.

Commonwealth of Virginia,
Department of Treasury

By: Manju Ganeriwala
Name: Manju S. Ganeriwala
Title: Treasurer of Va.

ELAVON, INC

By: [Signature]
Name: Timothy I. Miller
Title: Senior Vice President
Date: 2/11/10
(Schedule I "Effective Date")

MEMBER

By: [Signature]
Name: Timothy I. Miller
Title: Senior Vice President



Section A – General Provisions Applicable to All Merchants under this Schedule

- 1) **Fees.** Elavon and Member will be compensated for the Processing Services provided under this Schedule as provided in the Agreement as such Agreement may be modified by this Schedule.
- 2) The following provisions hereby replace the like-numbered provisions of the Agreement or are hereby deleted from the Agreement, as indicated, for Merchants operating under this Schedule.
 - a) **Section (A)(3)(e) Actions.** Merchant will not make any claims against (i) Elavon or Member for any action they take against the DDA or Reserve Account in accordance with the Agreement, and (ii) the depository institution at which Merchant maintains its DDA for acting in accordance with any instruction from Elavon and/or Member regarding the DDA authorized under this Agreement, in each case except to the extent such actions are attributable to Elavon's or Member's negligence, willful misconduct, or their breach of this Agreement.
 - b) **Section (A)(4)(a)(i) Security Agreement. [DELETED]**
 - c) **Section (A)(4)(a)(ii) Perfection. [DELETED]**
 - d) **Section (A)(6) ACCURACY OF INFORMATION; RESPONSIBILITIES; LIMITATION OF LIABILITY.**
 - e) **Section (A)(6)(a) Accuracy of Information.** Merchant must promptly notify Elavon in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services, the form of entity, change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by Elavon. Merchant will be responsible for all losses and expenses incurred by Elavon or Member arising out of Merchant's failure to provide proper notice or requested information for any such change, and will not make any claims against Elavon or Member for any losses sustained by Merchant as a result of such failure. Elavon may immediately terminate the Agreement upon a material change to the information in the Merchant Application if such change is not approved by Elavon. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to

Merchant's business information. Merchant may request written confirmation of Elavon's consent to the changes to the Merchant's business information.

- f) **Section (A)(6)(b) Responsibilities.**
- g) **Section (A)(6)(b)(i) Merchant Responsibilities.** As between Merchant, Elavon and Member, Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of or in connection with any dispute with a Customer, Cardholder or any third party relating to any Transaction or any breach by Merchant of any obligation under this Agreement ("Merchant Disputes"). Merchant will not make any claims against Elavon or Member for any liabilities, claims losses, costs, expenses and demands of any kind or nature, arising out of or in connection with the Merchant Disputes.
- h) **Section (A)(6)(b)(ii) Elavon Responsibilities.** Elavon will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising solely out of Elavon's negligence, willful misconduct, or failure to comply with its confidentiality or information security obligations under the Agreement.
- i) **Section (A)(6)(c) and Section (A)(6)(d) remain unchanged.**
- j) **Section (A)(8)(b)(ii) Financial Information.** Upon the request of either Elavon or Member, Merchant will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Merchant, or if Merchant is audited by a governmental authority, then Merchant will provide financial statements from such governmental authority. Within one hundred twenty (120) days after the end of each fiscal year (or in the case of a government entity, when available), Merchant will furnish Elavon and Member, 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, each audited as provided above. Merchant shall also provide Elavon and Member such interim financial statements and other information as Elavon or Member may request from time to time.
- k) **Section (A)(11)(a) Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any Value Added Servicer unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf



of Merchant. Further, as between the parties to this Agreement, Merchant will be bound by the acts and omissions of its Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will be responsible for any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any Value Added Servicer. Neither Elavon nor Member is responsible for the Value Added Servicer, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.

- l) **Section (A)(12)(d)(iii) Early Termination Fee. [DELETED]**
- m) **Section (A)(13)(d) Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard (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 as to which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, "Security Programs"). Upon request, Elavon will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. All Value Added Servicers from whom Merchant procures services must comply with the requirements of those Security Programs. Merchant is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents"). Merchant shall be responsible for any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by Merchant or any of Merchant's Agents.
- n) **Section (A)(14)(c) Passwords.** If Merchant receives a password from Elavon to access any of Elavon's databases or services, Merchant will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon's databases or services; (iii) be responsible for all action taken by any user of the password that obtained access to the password from Merchant; and (iv) promptly notify Elavon if Merchant believes Elavon's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party for products or services related to Transaction processing,

Merchant must protect such passwords in the manner required by such third party and be responsible any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords.

- o) **Section (A)(15)(b) Jurisdiction and Venue; Governing Law. [DELETED]**
 - p) **Section (A)(15)(c) Exclusivity. [DELETED]**
 - q) **Section (A)(15)(h) Attorneys' Fees. Deleted.**
- 3) In addition to the termination rights set forth in Section (A)(12)(b)(i) of the Agreement, Merchants operating under this Schedule shall have the following termination right added to the Agreement as Section (A)(12)(b)(i)(C):
- a) **Section (A)(12)(b)(i)(C).** The Agreement may be terminated by Merchant in the event that sufficient legislative appropriation is not available, provided that Merchant gives Elavon and Member sixty (60) days notice, or best practicable, prior to termination.

Section B – Elavon Fee Collection Models

- 4) **Direct Debit Fee Collection Model.** If Merchant elects the Direct Debit fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement remains unchanged and in full force and effect.
- 5) **Compensating Balances Fee Collection Model.** If Merchant elects the Compensating Balances fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:
 - a) **Section (A)(5)(a) Fees.** Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Elavon will send Member an invoice reflecting the amount of fees due, and Member will enter such amount in Merchant's compensating balance calculation. Member will pay Elavon such amount within thirty (30) days. Alternatively, Elavon may net out the fees due from any funds due Merchant under the Agreement.
- 6) **Monthly Net Settlement Fee Collection Model.** If Merchant elects the Monthly Net Settlement fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:
 - a) **Section (A)(5)(a) Fees.** Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member,



Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated daily and will be offset by Elavon and Member against amounts owed by Elavon and Member to Merchant for: (i) Transaction Receipts, on the first day of each month for the prior month's activity, (ii) fees and other amounts owed to Elavon and Member pursuant to Schedule A that are not available or reasonably calculable as of the last day of a particular month, such amounts will be offset the following month. In the event that the funds owed by Elavon and Member to Merchant on the first day of a calendar month are insufficient to offset amounts Merchant owes to Elavon and Member for Processing Services provided during the prior month, Elavon and Member may offset any unpaid balance owed by Merchant against future amounts Elavon and Member owe or will owe to Merchant until Merchant's financial obligations are fully satisfied.

Exhibit A to manage or to have Elavon manage Government/Public Institution Service Fees, then Merchant shall comply with the Government/Public Institution Service Fee Terms and Conditions attached hereto as Exhibit B.

7) **Invoice Fee Collection Model.** If Merchant elects the Invoice fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:

Section (A)(5)(a) Fees. Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated once each month for the previous month's activity. Elavon will send Merchant an invoice reflecting the fees due, which Merchant must pay within thirty (30) days of the invoice date. In addition to all other available remedies, Elavon and Member may offset any outstanding or uncollected amounts that are more than sixty (60) days past due from (i) any amounts they would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon or Member may owe Merchant under this Agreement or any other agreement.

Section C – Government/Public Institution Service Fees

8) **Government/Public Institution Service Fees.** If Merchant is both eligible to charge or to have Elavon charge Government/Public Institution Service Fees (as defined on Exhibit B hereto) and has elected on



JOINDER TO PAYMENT DEVICE PROCESSING AGREEMENT

This Joinder to the Payment Device Processing Agreement (“Joinder”) is entered into as of the Joinder Effective Date by and among the entity identified below (together with any affiliated entities listed on Exhibit B hereto, the “Joinder Merchant”), Elavon, Inc. (“Elavon”), and Member. Upon execution of this Joinder, the entity identified below is hereby added as a Merchant to the Payment Device Processing Agreement between the Commonwealth of Virginia, Department of the Treasury (“Merchant”), Elavon and Member dated February 1, 2010, including the TOS, MOG, any Schedules, attachments, exhibits addenda, amendments, or additions (the “Agreement”), for the Processing Services selected below. Joinder Merchant acknowledges that it has received and reviewed a true and correct copy of the Agreement. Joinder Merchant affirms that it is a Public Body of the Commonwealth of Virginia, defined as any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns, and counties, municipal councils, governing bodies of counties, school boards and planning commissions, boards of visitors of public institutions of higher education, and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds.

By executing this Joinder, the Joinder Merchant hereby acknowledges and agrees that it will be responsible for all obligations of a Merchant outlined in the Agreement, including but not limited to: (i) payment of Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement; (ii) compliance with all Laws (including privacy laws) and Payment Network Regulations, including the requirements of the Payment Card Industry Data Security Standard and all associated audits; (iii) responsibility for disputes with any Customers, Cardholders or third parties relating to any Transaction or any breach by Joinder Merchant of any obligation under the Agreement; (iv) monitoring its Transactions for fraudulent or other suspicious activity; (v) responsibility for Joinder Merchant’s Value Added Services; (vi) any Data Incident, where Joinder Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used without authorization from Joinder Merchant, its agents or systems with Joinder Merchant’s or its agent’s control; and (vii) confidentiality of Cardholder, Transaction and password information.

Joinder Merchant has selected the Processing Services it wishes to receive pursuant to the Agreement as follows:

Payment Device Processing Services Available to Merchants Generally (check desired Processing Services):

- TOS, General Provisions and the MOG
- Schedule A, Schedule of Fees
- Credit Card Services
- Debit Card (signature-based) Services
- Debit Card (PIN-based) Services
 - Bill Payment (Pinless Debit) Services
- Convenience Fee Services – Merchant-collected
- DCC Services
- Wireless Services
- Contactless Services
- Schedule D, Electronic Gift Card Services
- Schedule E, Electronic Check Services (make selections below)
- Schedule I, Processing Services for Government Entities and Institutions

- Electronic Check Services General Requirements and the ECS MOG

Processing Options (check desired options):

- POP (Point of Purchase entries)
- BOC (Back Office Conversion entries)
- ARC (Account Receivable Conversion entries)

Elavon Fee Collection Model (check one):

- Direct Debit
- Compensating Balances (when available)
- Monthly Net Settlement
- Assessment of Government/Public Institution Service Fees (GPISF) (enrollment form required if checked)

Image Options (check one):

- POS with Image
- Cash Office Image (COI)
- WEB (Internet-initiated entries)
- TEL (Telephone-initiated entries)
- PPD (Prearranged Payment and Deposit entries)
- Centralized/Enterprise Image (CI)
- Outsourced Image (OI)

[ECS Selections continued on next page]



Delivery Method (check one):

- Visa Online
- EnCircle Online
- Visa Batch
- EnCircle Batch
- Elavon Batch

Service Levels (check one unless combination service is desired):

- Conversion with Guarantee
- Conversion with Verification and Collections*
- Conversion Only with Collections*
- Conversion with Verification
- Conversion Only

*A separate collections agreement is required. Collections service not available for use with WEB, TEL or PPD Transactions.

- Schedule E-1, ECS Additional Services Supplement (complete Schedule E-1 if any items below checked)
 - Exhibit A to Schedule E-1, Fees for Additional ECS Services
 - Exhibit B to Schedule E-1, Hold Check Agreement

Except as expressly modified pursuant to this Joinder, all terms and conditions of the Agreement are incorporated herein and made a part hereof by this reference and shall govern the relationship among the parties to this Joinder. Capitalized terms used and not otherwise defined in this Joinder shall have the meanings ascribed to them in the Agreement or the Merchant Operating Guide ("MOG"), which are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Joinder to the Agreement.

JOINDER MERCHANT

ELAVON, INC.

on behalf of itself and each of the affiliated entities
identified on Exhibit B

By: _____

Name: _____

By: _____

Title: _____

Name: _____

Date: _____

("Joinder Effective Date")

Title: _____

MEMBER

By: _____

Name: _____

Title: _____



(Commonwealth of Virginia) PUBLIC BODY JOINDER TO AGREEMENT dtd 01.29.10 FINAL

EXHIBIT A TO JOINDER
SCHEDULE A, SCHEDULE OF FEES

[Separately provided]



**EXHIBIT B TO JOINDER
AFFILIATED ENTITIES OF JOINDER MERCHANT**

Check one: Joinder Merchant is a _____ (insert state) Corporation LLC LP
 Other _____

Check one:

Joinder Merchant named on page 1 only, and all locations will operate under Federal Tax ID Number _____

Joinder Merchant named on page 1, with Federal Tax ID Number _____ and the following affiliate(s):

Name

Tax ID Number

JOINDER MERCHANT, on behalf of itself and each of the affiliated entities identified above:

By: _____

Name: _____

Title: _____

ELAVON, INC.

By: _____

Name: _____

Title: _____

Date: _____

(Schedule B "Effective Date")

MEMBER

By: _____

Name: _____

Title: _____



(Commonwealth of Virginia) PUBLIC BODY JOINDER TO AGREEMENT dtd 01.29.10 FINAL

EXHIBIT C TO JOINDER
MERCHANT APPLICATION (LARGE RELATIONSHIP)

[Separately Provided]