



**Commerce SDK License Agreement
(FOR USE IN THE UNITED STATES ONLY)**

This Commerce SDK License Agreement (“**License Agreement**”) is entered into and effective as of the Effective Date (defined on the signature page below) by and between Elavon, Inc. located at Two Concourse Parkway, Suite 800, Atlanta, Georgia 30328 (“**Elavon**”), and the Licensee (defined on the signature page below). Elavon and Licensee may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Elavon has created a certain SDK, called the Commerce SDK, in order to assist its customers and resellers in integrating certain functionality of Elavon’s and its licensors’ software, products and services with customers’ and resellers’ point-of-sale applications;

WHEREAS, Licensee is a customer or reseller of Elavon and desires to license the Commerce SDK from Elavon subject to the terms and conditions set forth herein;

WHEREFORE, in consideration of the promises, covenants, and undertakings set forth in this License Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Elavon and Licensee agree as follows:

AGREEMENT

1. DEFINITIONS. As used in this License Agreement, the following terms shall have the following meanings. Certain other terms are defined elsewhere in this License Agreement.

“**Authorized Licensee Application**” means Licensee’s point-of-sale application that operates with, integrates with, uses or is developed using the Commerce SDK and is designed to operate with Elavon’s merchant acquiring, gateway or other services.

“**Commerce SDK**” means the SDK licensed by Elavon to Licensee under this License Agreement, including any associated reference code, sample code, code snippets, software tools, code libraries, application program interfaces, and other parties’ SDKs and Third Party Software incorporated therein or included therewith. The Commerce SDK also includes the Commerce SDK Documentation and any Software Updates provided to Licensee under this License Agreement. More generally, the Commerce SDK is an SDK that is intended to: (a) integrate with a merchant point-of-sale application, (b) assist a merchant in implementing a pre-certified EMV and contactless payment solution, and (c) streamline the implementation of the payment flow within a merchant point-of-sale application by allowing a developer to code to the Commerce SDK interface and then allowing the Commerce SDK to handle certain remaining aspects of the payment flow, including payment terminal communication, payment processing and receipt printing. In Elavon’s discretion, the Commerce SDK may be available in one or more versions, with each version intended to be compatible with a particular operating system, such as iOS, Android, and/or Microsoft Windows.

“**Commerce SDK Documentation**” means the end user documentation, including white papers and electronically stored information, provided by Elavon to Licensee in connection with the Commerce SDK, including, where applicable, any updates or future versions of the Commerce SDK Documentation that Elavon provides to Licensee.

“**Reseller**” means any person or entity that, pursuant to a written agreement with Elavon, receives the Commerce SDK from Elavon for the purpose of distribution to Reseller’s merchant end user customers as integrated with, and as part of, a point-of-sale application purchased by such end user customers from Reseller. Resellers may include, without limitation, merchant service providers (MSPs), value added resellers (VARs), independent software vendors (ISVs) and independent sales organizations (ISOs).

“**SDK**” (software development kit) generally means a set of software development tools that allows the creation of applications for a certain software package, software framework, hardware platform, computer system, operating system, or similar development platform.



“Software Updates” means all software-related updates, upgrades, enhancements, revisions, patches, fixes, new releases or versions, and any other improvements, modifications or changes to the Commerce SDK.

“Territory” means the United States only.

“Third Party Software” means any portions or components of the Commerce SDK that: (a) are not owned by Elavon, (b) are licensed or sublicensed to Elavon by a third party, and (c) Elavon sublicenses to Licensee, including, without limitation, any associated documentation, reference code, sample code, code snippets, software tools, code libraries, application program interfaces and SDKs.

“United States” means all individual states, the District of Columbia, the Commonwealth of Puerto Rico and all other territories and possessions of the United States.

2. LICENSE GRANT.

2.1 License Grant. Subject to the other terms of this License Agreement, Elavon hereby grants to Licensee a non-exclusive, non-transferable and non-assignable, revocable, royalty-free license to use, run, install and operate the Commerce SDK:

- (a) *in the Territory*, solely as integrated with, and used with, Licensee’s Authorized Licensee Application, as well as any related development or testing of such integration; and
- (b) *outside of the Territory solely in a non-production development or testing environment*, for the sole purpose of developing or testing Licensee’s integration of the Commerce SDK with Licensee’s Authorized Licensee Application.

Licensee may exercise the foregoing license rights through its employees and/or independent contractors subject to the requirements of Section 9 (Confidentiality) below, provided that any such employees or independent contractors shall comply with the terms and conditions of this License Agreement, and Licensee shall be liable for any breach of the terms and conditions of this License Agreement by such parties.

2.2 Additional License Grant Specific to Resellers. If and only to the extent that Licensee is a Reseller, Elavon additionally grants Licensee the limited right to sublicense and distribute the Commerce SDK to its merchant end user customers *in the Territory* solely for use by such end user customers as integrated with, and used with, a point-of-sale application purchased by such end user customers from Reseller, subject to the requirements of Section 9 (Confidentiality) below; provided, however, that Licensee shall have no authority to, and shall not attempt to, grant such end user customers any further rights in or to the Commerce SDK, including any right to further sublicense and distribute the Commerce SDK to other third parties.

3. LICENSE RESTRICTIONS. Licensee is not granted any right to, and will not:

- (a) sublicense or distribute the Commerce SDK except to the extent necessary to exercise the license rights granted to Licensee in Section 2.2 above, and then only to the extent Licensee is a Reseller;
- (b) copy or reproduce the Commerce SDK except to the extent necessary to exercise the license rights granted to Licensee in Sections 2.1 and 2.2 above;
- (c) sell, offer to sell, lease, offer to lease, rent, lend, import or export (except to the extent necessary to exercise the license rights granted to Licensee in Sections 2.1 and 2.2 above), encumber, publicly display, publicly perform or make publicly available the Commerce SDK;
- (d) modify or create any derivative works of the Commerce SDK;
- (e) reverse engineer, decompile, disassemble or attempt to derive the source code for any portion of the Commerce SDK (except as and only to the extent the foregoing restriction is prohibited by applicable law);
- (f) separate the Commerce SDK, which is licensed as a single product, into its various components (which components may include, without limitation, one or more third party SDKs or other Third Party Software being offered by Elavon to Licensee through a sublicense);
- (g) remove, alter or obscure any labels, trademarks, logos, copyright notices, or other proprietary or legal notices or terms in or on the Commerce SDK or any copies thereof; and/or



(h) subject the Commerce SDK, in whole or in part, to any license that requires, as a condition of use: (i) modification and/or distribution of the Commerce SDK, or (ii) that the Commerce SDK or other software combined and/or distributed with it be: (x) disclosed or distributed in source code form; (y) licensed for the purpose of making derivative works; or (z) redistributable at no charge.

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4.1 Notwithstanding anything to the contrary stated in Section 2 above or elsewhere in this License Agreement, Licensee acknowledges that the Commerce SDK may contain certain Third Party Software to which Elavon has limited license rights. Elavon does not guarantee that any Third Party Software will be available or offered to Licensee for any duration of time, and any Third Party Software may be withdrawn by Elavon or its licensor or otherwise become unavailable.

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4.3 Licensee acknowledges that it is being granted limited license rights to the Commerce SDK (including the Third Party Software) as expressly set forth in this License Agreement and that any violation of such license rights by Licensee may also be, or result in, a violation of the license between Elavon (as licensee) and a third party (as licensor) pursuant to which Elavon sublicenses the Third Party Software to Licensee; and, in that event, Licensee will indemnify and hold Elavon and its affiliates harmless from and against any and all resulting third party Claims and Losses arising in connection therewith.

5. **CHANGES TO THE COMMERCE SDK.** Elavon may, in its sole discretion, update (through Software Updates or otherwise), modify, supplement, and/or cease distributing or offering the Commerce SDK (or any portions, components, or features thereof). Elavon may also withdraw or recall any prior or current versions of the Commerce SDK (or any updates, modifications or supplements thereto) that Elavon, in its sole discretion, determines should be withdrawn or recalled due to an error, defect, security risk or vulnerability, or other deficiency associated therewith. Any updates, modifications or supplements that Elavon may make to the Commerce SDK may be incompatible with Licensee's systems and applications, including any Authorized Licensee Application developed by Licensee using previous versions of the Commerce SDK. Elavon may, but is not obligated to, create or make available any Software Updates. Elavon is under no obligation to provide technical support under this License Agreement and provides no assurance that any specific errors, defects or deficiencies in the Commerce SDK will be corrected.



6. WARRANTY DISCLAIMER; LIMITATION OF LIABILITY. THE COMMERCE SDK, INCLUDING ANY SOFTWARE UPDATES THERETO, ARE LICENSED "AS IS," AND ELAVON DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, SATISFACTORY QUALITY, TITLE, SECURITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE COMMERCE SDK UNDER THIS LICENSE AGREEMENT REMAINS WITH LICENSEE. IN NO EVENT SHALL ELAVON BE LIABLE FOR ANY DAMAGES WHATSOEVER RELATED TO OR ARISING OUT OF LICENSEE'S USE OF, OR THE INABILITY TO USE, THE COMMERCE SDK, EVEN IF ELAVON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. OWNERSHIP. Except for the limited license rights expressly granted under this License Agreement, as between Elavon and Licensee, Elavon retains all rights, title and interest in and to the Commerce SDK and all intellectual property rights therein, including with respect to any modifications, enhancements or improvements to the Commerce SDK. Elavon agrees that it obtains no rights, title or interest from Licensee under this License Agreement in or to any Authorized Licensee Application, including any intellectual property rights therein.

8. FEES. The fees charged to Licensee for the license and rights granted in this License Agreement (the "**Fees**") may be, in Elavon's discretion, included as part of, or incorporated into, other fees charged to Licensee, including fees for use of Elavon's Converge payment system. Elavon shall have the right at any time to change the Fees, which shall be effective immediately upon notice thereof, and which notice may be given by means including, but not limited to, posting on www.convergepay.com, the Converge payment system, or by electronic or conventional mail, or by any other means by which Licensee obtains actual or constructive notice thereof. Any use of the Converge payment system or the Commerce SDK after such notice shall be deemed to constitute acceptance by Licensee of such changes to the Fees. Licensee shall pay all applicable taxes and other charges imposed by any governmental authority in relation to this License Agreement, excluding any taxes based on Elavon's property or net income. If Licensee is a tax-exempt entity, Licensee will provide Elavon with an appropriate certificate of tax exemption.

9. CONFIDENTIALITY.

9.1 Elavon Confidential Information. For the purposes of this License Agreement, "**Elavon Confidential Information**" means all data and information, regardless of the form or media, that either (i) constitutes a trade secret as defined in Fla. Stat. s. 812.01, (ii) is exempt from disclosure by Fla. Stat. s. 119.071; or (iii) constitutes bank account numbers and debit, charge and credit card numbers under Fla. Stat. s. 119.071(5)(b) or data processing software under Fla. Stat. s. 119.071(1)(f), and which may include (a) the Commerce SDK, including but not limited to Third Party Software, and (b) all information and materials in oral, written, electronic, or other forms relating to the Commerce SDK of which Licensee becomes aware as a consequence of its relationship or dealings with Elavon hereunder (regardless of which Party creates or maintains the information), including, without limitation: Commerce SDK technical information and performance specifications; Commerce SDK customer information; information concerning development or testing of the Commerce SDK; Elavon's business or marketing strategies and plans relating to the Commerce SDK; any bugs, programming errors, or other defects affecting the Commerce SDK; and any actual, contemplated or proposed Software Updates. Notwithstanding the foregoing, Elavon Confidential Information shall not mean data or information (i) which has been voluntarily disclosed to the public by Elavon or with Elavon's consent; (ii) which has been independently developed and disclosed by others; or (iii) which has otherwise entered the public domain through lawful means.

9.2 Confidentiality Requirement. Licensee agrees to treat Elavon Confidential Information as confidential and not to, at any time either before or after termination or expiration of this License Agreement, distribute, disclose or disseminate any portion of Elavon Confidential Information except to its employees and independent contractors who reasonably need access to such Elavon Confidential Information for the limited purposes provided hereunder, are informed of the confidential and proprietary nature of such Elavon Confidential Information, and agree in writing to be bound to obligations of confidentiality with respect to Elavon Confidential Information at least as stringent as those contained in this License Agreement. Licensee shall be responsible for and liable to Elavon for any breach of this License Agreement by or through its employees and/or independent contractors. If Licensee is a Reseller, then prior to providing the Commerce SDK to a merchant end user customer,



Licensee will ensure that such end user customer agrees in writing to be bound to obligations of confidentiality with respect to Elavon Confidential Information at least as stringent as those contained in this License Agreement.

9.3 Unauthorized Use or Access. If Licensee discovers any unauthorized use of or access to any Elavon Confidential Information, Licensee shall promptly report such incident to Elavon and cooperate with Elavon to help regain possession of such Elavon Confidential Information if lost, stolen, or accessed without authorization, and to prevent its further unauthorized use or access.

9.4 Legally Compelled Disclosure. Licensee may disclose Elavon Confidential Information to the extent required by applicable law, subpoena, or order of a court or governmental or regulatory body of competent jurisdiction, provided that Licensee furnishes Elavon with prior written notice of such disclosure sufficient to afford Elavon a reasonable opportunity to seek a protective order or other appropriate relief, and Licensee will reasonably cooperate with Elavon in connection therewith. In the event Elavon is unable to obtain a protective order or other relief, Licensee agrees to limit its disclosure to that which is legally required.

9.5 Return of Elavon Confidential Information. Within ten (10) days of the termination or expiration of this License Agreement, Licensee shall return to Elavon or permanently destroy (and provide written confirmation of such destruction) any and all hard copies, electronic copies and all other forms of Elavon Confidential Information in Licensee's (or its employees' or independent contractors') possession, custody or control.

9.6 Remedies. Licensee acknowledges and agrees that the provisions of this Section 9 are reasonable and necessary to protect Elavon's interest in Elavon Confidential Information and that any breach of the provisions of this Section 9 may result in irreparable harm to Elavon for which a remedy at law will be inadequate. Accordingly, in the event of any such breach or threatened breach, Elavon, in addition to any other relief available to it at law, in equity or otherwise, shall be entitled to seek temporary and permanent injunctive relief restraining Licensee from engaging in and/or continuing any conduct that would constitute a breach of this Section 9.

10. TERM AND TERMINATION.

10.1 Term. The term of this License Agreement begins on the Effective Date and continues for three (3) years unless earlier terminated as provided in this Section 10. The License Agreement will automatically renew for successive one (1) year terms unless either Party elects not to renew the License Agreement by giving the other Party written notice thereof at least sixty (60) days prior to the end of the then-current term or unless earlier terminated as provided herein. Notwithstanding the foregoing, however, if the Parties have entered into an agreement pursuant to which Elavon provides Licensee with acquiring/processing services (a "**Processing Services Agreement**"), then the term of this License Agreement shall be the same as the term of the Parties' Processing Services Agreement, subject to each Party's rights to termination as set forth below.

10.2 Termination.

10.2.1 Termination for Cause. Either Elavon or Licensee may terminate this License Agreement upon written notice to the other Party if the other Party materially breaches this License Agreement and does not cure the breach within thirty (30) days following its receipt of written notice of the breach from the non-breaching Party; provided, however, that Licensee's violation of its license rights in Section 2 of this License Agreement shall give Elavon, in its sole discretion, the right to immediate termination.

10.2.2 Termination for Convenience by Licensee. Licensee may terminate this License Agreement for convenience at any time upon at least thirty (30) days prior written notice to Elavon.

10.2.3 Effect of Termination or Expiration. In the event of termination or expiration of this License Agreement, all of Licensee's license rights in and to the Commerce SDK hereunder shall immediately terminate, and Licensee shall return or destroy all Elavon Confidential Information in Licensee's possession, custody or control in accordance with Section 9.5 (Return of Elavon Confidential Information) above.

10.3 Survival. Sections 1, 4, 6, 7, 9, 10.2.3, 10.3, and 11 will survive expiration or termination of this License Agreement, along with any other provisions that require survival in order to have their intended or suggested effect.

11. THIRD PARTY BENEFICIARIES. Certain portions or components of the Third Party Software are licensed to Elavon by Ingenico Inc. and ROAM Data, Inc. d/b/a Ingenico Mobile Solutions (collectively, “**Ingenico Software**”). Licensee acknowledges and agrees that Ingenico Inc. and ROAM Data, Inc. d/b/a Ingenico Mobile Solutions are intended third-party beneficiaries of this License Agreement and, as such, have the right to assert a cause of action directly against Licensee with respect to any breach of this License Agreement by Licensee. Certain legal terms and conditions relating to Ingenico Inc.’s and ROAM Data, Inc. d/b/a Ingenico Mobile Solutions’ rights under this License Agreement are set forth in **Exhibit A** attached hereto and are fully incorporated by reference into this License Agreement. Except for Ingenico Inc. and ROAM Data, Inc. d/b/a Ingenico Mobile Solutions, there are no other intended third-party beneficiaries to this License Agreement, and no other third parties will have any cause of action arising out of this License Agreement.

12. GENERAL PROVISIONS. The terms and conditions set forth in this Section 12 shall apply except to the extent that the Parties have entered into a Processing Services Agreement containing terms and conditions that conflict with those terms set forth in this Section 12, in which event the terms of the Parties' Processing Services Agreement will govern to the extent of such conflict.

12.1 Assignment. Elavon shall be entitled to sell, assign, transfer or delegate its rights or obligations under this License Agreement without Licensee's consent. Licensee shall not be entitled to sell, assign, transfer or delegate its rights or obligations under this License Agreement without Elavon's prior written consent, which may be withheld in Elavon's sole discretion. Any attempted assignment or transfer in contravention of this Section shall be null and void. Subject to the foregoing provisions, this License Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective, permitted successors and assigns.

12.2 Notices. Unless otherwise agreed in writing by the Parties, all notices required under this License Agreement will be deemed effective when received and made in writing by either (a) personal delivery, (b) nationally recognized courier, or (c) certified mail, return receipt requested, at the following addresses:

For Licensee:

[illegible]

For Elavon:

Elavon, Inc.
Two Concourse Parkway, Suite 800
Atlanta, Georgia 30328
Attn: Global Product & Innovation

In each case with a copy to:

Elavon, Inc.
Two Concourse Parkway, Suite 800
Atlanta, Georgia 30328
Attn: Office of the General Counsel

Such addresses may be changed by written notice given by one Party to the other pursuant to this Section or by other form of notice agreed to by the Parties.

Notwithstanding the foregoing, Elavon may provide notices required under this License Agreement to Licensee using Licensee's most current e-mail address on file with Elavon, which notices shall be deemed received by Licensee upon such e-mail notices being sent. Elavon may also send e-mail or other written notices to Licensee related to the Commerce SDK that are not required under this License Agreement, including, without limitation, notices of the availability of Software Updates.

12.3 Remedies. Except as otherwise provided in this License Agreement, no remedy conferred by any of the specific provisions of the License Agreement is intended to be exclusive of any other remedy. Each and every remedy is cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at



law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

12.4 Export Restrictions. Licensee agrees, at its expense, to comply with all applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in the Territory governing the import, export and re-export of hardware, software or technology applicable to the Commerce SDK and/or Licensee's exercise of its license rights hereunder. Licensee further agrees to indemnify and hold Elavon and its affiliates harmless from and against any claims, actions, liabilities or expenses (including reasonable attorney's fees) resulting from Licensee's failure to act in accordance with the acknowledgements, agreements and representations in this Section.

12.5 Governing Law; Venue. This License Agreement will be governed by the laws of the United States and the State of Georgia, without regard to its conflicts of laws principles. For resolution of any disputes arising out of this License Agreement, the state and federal courts located in Fulton County, Georgia shall be the exclusive venue, and the Parties expressly waive any objection to personal jurisdiction, venue, or convenience of the courts specified above and agree not to commence or prosecute any such dispute other than in the aforementioned courts. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this License Agreement.

12.6 Severability. If any term, condition, or provision in this License Agreement is found by a court of competent jurisdiction to be invalid, unlawful, or otherwise unenforceable to any extent, then such invalid term, condition or provision shall be severed from the remaining terms, conditions, and provisions, and said remaining terms, conditions, and provisions shall continue to be valid and enforceable to the full extent permitted by applicable law.

12.7 No Waiver; Amendments. This License Agreement may not be amended except by a subsequently dated written instrument signed on behalf of both Parties. No waiver of any term or condition is valid unless it is in writing and signed by a duly authorized person of the Party charged with the waiver. A valid waiver is limited to the specific situation for which it was given and shall not be deemed a waiver of any prior or subsequent breach.

12.8 No Agency. This License Agreement will not be construed as creating a partnership, joint venture or agency relationship or as granting a franchise, and neither Party will have any authority to bind the other Party under any circumstances.

12.9 Counterparts; Electronic Signatures. This License Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one and the same agreement. Facsimile and electronic signatures will be binding for all purposes.

12.10 Entire Agreement. This License Agreement constitutes the entire intent, understanding and agreement between the Parties with respect to the subject matter hereof and supersedes in all respects all prior or contemporaneous proposals, negotiations, conversations, discussions and agreements between the Parties, whether oral or written, with respect to the subject matter hereof. Each Party acknowledges that it has not relied on any prior statements or representations of the other Party in entering into this License Agreement.

12.11 Headings; Conventions. The headings throughout this License Agreement are for reference purposes only. In this License Agreement, the singular includes the plural and the plural the singular; the terms "including" and "include" shall mean "including but not limited to"; and references to a "Section" shall mean a section of this License Agreement, unless otherwise expressly stated.

[signatures on next page]



IN WITNESS WHEREOF, Elavon and Licensee have caused this License Agreement to be signed and delivered by their duly authorized representatives.

City of Sunrise, Florida
(the "***Licensee***")

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Elavon, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

(the "***Effective Date***")



EXHIBIT A

**SPECIAL TERMS APPLICABLE TO INGENICO INC. AND ROAM DATA, INC. D/B/A INGENICO
MOBILE SOLUTIONS AS THIRD PARTY BENEFICIARIES**

1. Licensee agrees that Ingenico Inc. and ROAM Data, Inc. d/b/a Ingenico Mobile Solutions are intended third-party beneficiaries of this License Agreement. Ingenico Inc. and ROAM Data, Inc. d/b/a Ingenico Mobile Solutions are collectively referred to herein as the "Ingenico Entities."
2. Licensee agrees that Licensee shall be liable to the Ingenico Entities for any breach of this License Agreement (including, without limitation, any of the provisions of this Exhibit) by Licensee as well as any Licensee employees, affiliates, licensees, sublicensees, representatives, agents, contractors or other persons or entities that directly or indirectly receive any Ingenico Software (defined above) from Licensee.
3. Notwithstanding anything in this License Agreement to the contrary, Licensee agrees that neither the Ingenico Software nor any of the associated rights granted herein shall be used: (a) to enable or facilitate the operability of point of sale payment devices manufactured or distributed by any competitors of the Ingenico Entities, including, without limitation, VeriFone Holdings, Inc. and Pax Technology Inc. and any of their respective affiliates, subsidiaries and divisions; provided, however, that the Ingenico Entities acknowledge and agree that Elavon may include the Ingenico Software as well as the SDKs of one or more of the Ingenico Entities' competitors or other third parties as part of the SDK or software that Elavon licenses to Licensee; or (b) with regard to Ingenico Software licensed from or provided by ROAM Data, Inc. d/b/a Ingenico Mobile Solutions, to enable, facilitate, complete or process any payment transactions other than payment transactions for which Elavon serves as the merchant acquirer.
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7. THERE ARE NO WARRANTIES MADE BY THE INGENICO ENTITIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE INGENICO ENTITIES' MARKS OR INGENICO SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, RESULTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, TITLE, NON-INFRINGEMENT OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF THE TRADE.
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LIABILITY OR ANY OTHER KIND OF CIVIL OR STATUTORY LIABILITY CONNECTED WITH OR ARISING OUT OF THIS LICENSE AGREEMENT; (B) SURVIVE A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS LICENSE AGREEMENT OR OF ANY REMEDY CONTAINED HEREIN; AND (C) APPLY IN THE AGGREGATE, TO THE INGENICO ENTITIES, THEIR AFFILIATES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

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10. Without the prior written consent of the Ingenico Entities, Licensee shall not refer to the Ingenico Entities in any manner in press releases, advertising or other public or promotional statements regarding the subject matter of this License Agreement, including the Ingenico Software.

11. No remedy conferred upon the Ingenico Entities by any of the specific provisions of the License Agreement is intended to be exclusive of any other remedy. Each and every remedy is cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by any of the Ingenico Entities shall not constitute a waiver of the right to pursue other available remedies.

12. In any dispute concerning or arising under this License Agreement asserted by any of the Ingenico Entities, the prevailing party shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court in its sole discretion giving due consideration to the extent to which the parties prevailed on their respective claims or defenses.