



UNITED STATES
COMMERCIAL ACCOUNT AGREEMENT

This United States Commercial Account Agreement ("**Agreement**") is between City of St. Joseph, Missouri a(n) Missouri Municipality ("**Customer**") and U.S. Bank National Association ("**Bank**"). The effective date of this Agreement is the date entered above Bank's signature block. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in Exhibit A (**Commercial Account Agreement Terms and Conditions**).

Recitals

- A. The parties are currently contracted under the United States Commercial Account Agreement dated June 12, 2018, as amended or supplemented from time to time (collectively, the "**2018 Agreement**")
- B. Bank is an authorized issuing member of certain Card Networks and is authorized to provide commercial charge accounts;
- C. Bank offers commercial charge accounts and services (the "**Commercial Account Program**" or "**Program**"); and
- D. Customer desires to utilize the Program.

Now, therefore, Customer and Bank agree to the following:

1. **Product Selection.**

Please Select One or More Products		
<input type="checkbox"/> Corporate Travel & Expense Accounts	<input type="checkbox"/> Purchasing Accounts	<input checked="" type="checkbox"/> One Card™ Accounts
<input type="checkbox"/> Corporate Liability <input type="checkbox"/> Joint and Several Liability	Only Corporate Liability	Only Corporate Liability
Benefits*	Benefits*	Benefits*
Card Network benefits plus Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> • \$500,000 Standard Account • \$1,000,000 Executive Account 	Card Network benefits	Card Network benefits plus Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> • \$250,000 Standard Account • \$1,000,000 Executive Account
Optional Enhancements	Optional Enhancements	Optional Enhancements
Event Planner account** Managed Spend account** Executive account Executive Platinum account FlexPerks rewards account Central Billing account**	Event Planner account Managed Spend account Central Billing account	Event Planner account Managed Spend account Executive account Executive Platinum account FlexPerks rewards account Central Billing account

* Benefits and protections offered by the Card Networks are established by the Card Networks outside of the control of Bank and may be changed from time to time. Bank's additional benefits may be changed from time to time. The details of such programs are outlined in brochures separately provided to Account holders.

**Available only for Corporate Liability.

2. Agreement Term and Commencement Date.

Agreement Term	Commencement Date
12 months (followed by four consecutive 1-year renewal options to be executed with mutual consent from Customer and Bank)	First day of first month following the date above Bank's signature, provided that if that date is on the first day of a month, the Commencement Date will be the same date as Bank's signature.

3. Rebate. Customer may earn a rebate for the products selected in section 1 (Product Selection) above.

3.1 Conditions. To be eligible for and to retain a rebate, Customer must: (i) satisfy all requirements in the Rebate Requirements Table; (ii) complete the Rebate Period in which a rebate is earned; (iii) not be subject to an uncured Customer Default at the time the rebate payment is due for such Rebate Period; and (iv) in the reasonable determination of Bank, based primarily upon Customer's recent Account spend patterns, have a projected expectation of meeting the volume requirement in the Rebate Requirements Table for the next Rebate Period. If Customer fails to satisfy the requirements of this section at the time of the scheduled rebate payment for a particular Rebate Period, Bank will not be required to pay Customer a rebate payment for such Rebate Period. If Customer's final net rebate is a negative amount, Customer shall reimburse Bank up to the amount of rebates Bank has previously paid to Customer.

Rebate Requirements Table	
	One Card Accounts
File Turn Days Payment Performance	≤ 29
Net Standard Charge Volume	≥ \$1,000,000.00
Minimum Rebate Earned	\$3,500.00

3.2. Rebate Calculation. Bank will make the following calculations to determine Customer's rebate:

- (a) Bank will multiply the Net Standard Charge Volume by the applicable percentage on the Payment Performance Percentage Table in section 4.
- (b) Bank will multiply the Net Discount Charge Volume by the applicable percentage on the Payment Performance Percentage Table in section 4.
- (c) Bank will multiply the Net Standard Charge Volume by the applicable percentage on the Net Standard Charge Volume Percentage Table in section 4.
- (d) Bank will multiply the Net Discount Charge Volume by the applicable percentage in the Net Discount Charge Volume Percentage Table in section 4.
- (e) Bank will take the result of sections 3.2.(a) through (d) to arrive at Customer's gross rebate for the Rebate Period.
- (f) Bank will apply Charge-off Adjustments and remedies, if any, to the gross rebate to arrive at Customer's net rebate for the Rebate Period.

For the avoidance of doubt, the deduction of any Charge-off Adjustments and remedies is only a component in the calculation of the rebate payable to Customer for a particular period. It does not constitute the payment, forgiveness or netting of any Charge-offs or any other amounts due to Bank against the rebate payments due to Customer.

3.3. Payment. Bank will pay Customer's net rebate within 90 days after the completion of the applicable Rebate Period. Bank will pay Customer's final net rebate within 90 days after Customer satisfies all Obligations and provides written instruction to Bank to close all Accounts.



Bank may retain and will not be required to pay Customer rebate payments less than \$3,500.00. Bank will not carry forward any rebate payment less than \$3,500.00.

4. Rebate Tables.

Payment Performance Percentage Table	
File Turn Days Payment Performance	Performance Percentage
29	0.0000%
28	0.0050%
27	0.0100%
26	0.0150%
25	0.0200%
24	0.0250%
23	0.0300%
22	0.0350%
21	0.0400%
20	0.0450%
19	0.0500%
18	0.0550%
17	0.0600%
16	0.0650%
15	0.0700%
14	0.0750%
13	0.0800%
12	0.0850%
11	0.0900%
10	0.0950%
9	0.1000%
8	0.1050%
7	0.1100%
6	0.1150%
5	0.1200%
4	0.1250%
3	0.1300%
2	0.1350%
1	0.1400%
0	0.1450%

Net Standard Charge Volume Percentage Table	
Net Standard Charge Volume	Percentage
\$1,000,000.00	1.5000%
\$2,000,000.00	1.5550%
\$3,000,000.00	1.6000%
\$4,000,000.00	1.6350%
\$5,000,000.00	1.6550%
\$6,000,000.00	1.6800%
\$7,000,000.00	1.7050%

\$8,000,000.00	1.7300%
\$9,000,000.00	1.7550%
\$10,000,000.00	1.7800%
\$12,500,000.00	1.8000%
\$15,000,000.00	1.8200%
\$17,500,000.00	1.8350%
\$20,000,000.00	1.8500%

Net Discount Charge Volume Percentage Table
0.8300%

5. **Rebate Payment Registration.** Customer shall register to receive rebate payments in the manner prescribed by Bank. Bank will not make any rebate payments until Customer has registered to receive payment. If Customer fails to register by the completion of a Rebate Period, Customer forfeits any payment for that Rebate Period. Customer designates the following person to register Customer:

Rebate Payment Registration	
a) Authorized Person's Name	Summer Deatherage
b) Authorized Person's Email Address	sdeatherage@stjosephmo.gov

6. **Interchange Rate and Federal Funds Rate.** Bank reserves the rights to modify the rebate calculations or values set forth in sections "Rebate" and "Rebate Tables", in accordance with this section due to the actions of third parties. These calculations or values may be modified (i) at any time if existing interchange rates or programs are modified or if new interchange rates or programs are developed by applicable Card Network or (ii) at any time after expiration of the initial Agreement Term if there has been any movement in the federal funds rate since the commencement of the initial Agreement Term that has an effect on Bank's cost of funds. Such modifications, in either case, will apply to the then applicable Rebate Period.

7. **Fees.** Bank may charge Customer the fees set forth below. To the extent not addressed below, Bank may also charge Customer for any fees imposed on Bank by the applicable Card Networks related to Customer's specific transactions and actions. Failure of Bank to apply any fee set forth in this Agreement at any time does not preclude Bank from ever applying such fee.

Fees	
Description	Fee
Annual Account Fee	\$0.00
Custom Card Design and Production	\$5,000.00
Cash Advance Transaction Fee	2.5% (minimum \$2.00)
Convenience Checks	
Transaction fee	2.5% (minimum \$2.00)
Returned check fee	\$15.00
Stop payment fee	\$15.00
Copy fee	\$2.00
Delinquency Fee¹ Corporate T&E Accounts	0%

¹ A Statement (the "Original Statement") must be paid in full prior to the issuance of the next Statement. Any amount from an Original Statement not paid in full by the issuance of any subsequent Statement is the "Delinquent Amount".

Fee assessed on the Delinquent Amount outstanding upon the issuance of the first Statement after the Original Statement	2.5% (minimum \$2.00)
Fee assessed on the Delinquent Amount outstanding upon the issuance of the second Statement after the Original Statement (and each statement thereafter)	2.5% (minimum \$2.00)
Purchasing Accounts and One Card Accounts Fee assessed on the Delinquent Amount outstanding upon the issuance of the first Statement after the Original Statement	2.5% (minimum \$2.00)
Fee assessed on the Delinquent Amount outstanding upon the issuance of the second Statement after the Original Statement (and each statement thereafter)	2.5% (minimum \$2.00)
Electronic Attachment Utility	\$12.00, annually, per Account
Executive Account	\$100.00 annually per Account
Executive Platinum Cards	\$345.00 annually per Account
Expedited Card Delivery Fee	\$30.00, per delivery
Foreign Transaction Fee²	3.00%
Logo Setup Fee	\$600.00
Non-Sufficient Funds Fee	\$15.00, per occurrence
Statements	
Paper Statement fee	\$12.00, annually, per Account
Statement copy fee	\$9.00, per copy
Draft copy fee	\$5.00, per copy

8. Notices. The parties will make all notifications, consents, or approvals required under this Agreement in writing, unless otherwise expressly stated to the contrary. The parties will deem any required notices given either (i) two days after the date of mailing if sent by registered or certified mail, return receipt requested; or (ii) one day after the date of mailing if sent by a national overnight courier service to either of the addresses indicated below.

To Customer:

City of St. Joseph, Missouri
1100 Frederick Avenue
St. Joseph, MO 64501

Attn: Bryan Carter, City Manager

To Bank:

U.S. Bank National Association
Corporate Payment Systems
Mail Code EP-MN-L28C
200 S. 6th St.
Minneapolis, MN 55402,
U.S.A.

Attn: CPS Contract Manager

9. Governing Law and Venue. The laws of the state of Missouri and applicable federal laws and regulations of the United States apply to any dispute arising out of this Agreement, its subject matter, or its formation. The parties shall exclusively bring any dispute or claim, arising out of or related to this Agreement, before a state or federal court in the state of Missouri. Each party irrevocably waives any objection it may now or hereafter have as to the venue of any such dispute or claim brought in such a court or that such court is an inconvenient forum.

10. Prior Agreement and Prior Rebate. Pursuant to section 12.7 (Interpretation of Terms) of this Agreement, the 2018 Agreement between the parties will be superseded as of the date of signing of this Agreement. Notwithstanding, the parties agree the 2018 Agreement will remain in effect until the

² Bank may modify the Foreign Transaction Fee upon 90 days prior written notice to Customer.



Commencement Date of this Agreement. Any Customer reimbursement obligations due to losses are still owed to Bank and Bank may deduct such losses from future rebates owed to Customer under this Agreement. Any rebate, if earned, related to the prior rebate cycle under the 2018 Agreement may be prorated.

11. Incorporation. The following are incorporated herein by reference as if set forth at length:

11.1. Recitals.

11.2. Exhibit A – Commercial Account Agreement Terms and Conditions.

12. Authorization and Execution. This Agreement may be executed and delivered by the parties electronically, and fully executed electronic versions of this Agreement, or reproductions thereof, will be deemed to be original counterparts. The signer represents and warrants that (i) he or she is authorized by an applicable bylaw, article or other corporate authority to enter into this Agreement and all transactions contemplated by this Agreement, and (ii) the signatures appearing on all supporting documents of authority are authentic.

Date:	Date:
By Customer:	By Bank:
City of St. Joseph, Missouri (Please Insert Full Legal Entity Name)	U.S. Bank National Association (Please Insert Full Legal Entity Name)
(Signature of Authorized Signer)	(Signature of Authorized Signer)
(Printed Name of Authorized Signer)	Brian Richter (Printed Name of Authorized Signer)
(Printed Title of Authorized Signer)	Senior Vice President (Printed Title of Authorized Signer)

EXHIBIT A
COMMERCIAL ACCOUNT AGREEMENT
TERMS AND CONDITIONS

These Commercial Account Agreement Terms and Conditions (the “**Terms and Conditions**”) set forth the rights and obligations of Customer and Bank.

1. DEFINITIONS

- 1.1. “**Account**” means a commercial charge card, regardless of the medium, issued pursuant to the Agreement.
- 1.2. “**Billing Cycle**” means the period from the date a Statement is generated until the next Statement is generated.
- 1.3. “**Card Network**” means, as applicable, one of the following Card Networks whose marks are contained on the cards issued under the Agreement: Visa U.S.A. Inc. and Visa International, Inc., MasterCard International Incorporated or such other national card network with respect to which Bank becomes an issuer during the term of the Agreement.
- 1.4. “**Charge**” means any transaction posted to an Account that has a debit value.
- 1.5. “**Charge-off**” means any amount due and owing to Bank by Customer, its Participants or Account holders related to the Agreement that is classified as a charge-off under Bank’s then applicable accounting policies.
- 1.6. “**Charge-off Adjustment**” means the difference between Charge-offs and one-half of Charge-off Recoveries.
- 1.7. “**Charge-off Recovery**” means an amount equal to any monetary recovery related to a Charge-off.
- 1.8. “**Corporate Liability**” means Customer is solely liable to Bank for all Obligations on corporate liability Accounts.
- 1.9. “**Discount Interchange Rate Program**” means an interchange rate program where the rates assessed on particular transactions are less than the standard rates. Subcategories subject to differentiated discount volume percentage include transactions processed on large ticket program indicators and transactions assessed at network negotiated rates, all as reasonably determined by Bank. Transactions subject to Discount Interchange Rate Programs may change from time to time without notification to Customer.
- 1.10. “**File Turn Days**” means the number of days from the date Bank funds a Charge to the date of payment, inclusive of the beginning and ending dates.
- 1.11. “**File Turn Days Payment Performance**” means the weighted average File Turn Days during the applicable Rebate Period.
- 1.12. “**Fraudulent Charge**” means a Charge that is not initiated, authorized or otherwise requested by Customer, its Participants, or an Account holder and does not directly or indirectly benefit Customer, its affiliates, its Participants or an Account holder.
- 1.13. “**Identification Information**” means legal names, physical street addresses, taxpayer identification or business numbers, dates of birth, or other information or documentation required by Bank to confirm the identity of any entity or person.
- 1.14. “**Intellectual Property**” or “**Intellectual Property Rights**” means any patent rights, inventions, design rights, copyrights, database rights, trade secrets, trade names, trademarks, service marks, moral rights, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force.
- 1.15. “**Joint and Several Liability**” means Customer and the Account holder are jointly and severally liable to Bank for all Obligations accrued on the Account.
- 1.16. “**Net Discount Charge Volume**” means all Charges set forth on the Statement furnished for the Accounts in the applicable Rebate Period that qualify for and have applied to them a Discount Interchange Rate Program (but excluding all Ultra Low Network Negotiated Volume), less credits, and net of Charge-off Adjustments for the same Rebate Period. Bank reserves the right at any time to exclude from Net Discount Charge Volume those Charges subject to a Discount Interchange Rate Program where the interchange payable to Bank is less than or equal

- to rate set forth in the Net Discount Charge Volume Percentage Table for such category of Net Discount Charge Volume. All other Charges, fees, cash advances, Fraudulent Charges, and chargebacks are also excluded from Net Discount Charge Volume.
- 1.17. **"Net Standard Charge Volume"** means all Charges set forth on the Statements furnished for all Accounts in the applicable Rebate Period other than those Charges qualifying for and having applied to them Discount Interchange Rate Program, less all credits, cash advances, fees, Fraudulent Charges, chargebacks (other than those counted as Fraudulent Charges) and net of Charge-off Adjustments for the same Rebate Period.
 - 1.18. **"Obligations"** means all Charges, fees, and other activity posted to an Account.
 - 1.19. **"Participant"** means any entity wholly or majority owned or controlled (which is at least 51% or more of voting rights) by Customer that Customer authorizes and Bank approves for participation in the Program through execution of a Participant Agreement.
 - 1.20. **"Participant Agreement"** means an agreement in form and substance acceptable to Bank pursuant to which a Participant has access to the Program.
 - 1.21. **"Rebate Period"** means each 12 month period, with the first period beginning on the Commencement Date of the Agreement.
 - 1.22. **"Statement"** means, with respect to one or more Accounts, a periodic listing of all Charges, fees, and payments posted to such Accounts.
 - 1.23. **"Ultra Low Network Negotiated Volume"** means all Charges with Discount Interchange Rate Programs established by a Card Network with certain merchants where interchange rates are set in Bank's reasonable determination from time to time, below both the standard interchange rates or other Discount Interchange Rate Programs.

2. CREDIT PROVISIONS

- 2.1. **Financial Information.** Customer shall provide its fiscal year-end financial statements as soon as available, but not later than 120 days following the end of Customer's fiscal year. Customer shall provide additional information, upon request by Bank, regarding the business, operations, affairs, and financial condition of Customer, including reviews or audits of fiscal year-end financials performed by certified public accountants and Customer prepared quarterly financial statements.
- 2.2. **Credit Controls.** Bank, at its sole discretion and without prior notice, may revise any credit limits or controls associated with the Program. Bank will endeavor to provide notice to Customer of any decrease in a credit limit. Customer shall make a payment to Bank, within ten days of such notice, sufficient to reduce the Obligations to an amount equal to or less than the revised credit limit.

3. PRODUCTS

- 3.1. **Exclusivity.** Customer agrees Bank will be the sole provider to Customer and its Participants of the products, and services selected in section 1 of the Agreement. Upon request by Bank, Customer shall provide an officer's certificate to Bank, within 30 days of such request, certifying Customer and its Participants were and will continue to be compliant with this section.
- 3.2. **Billing and Payment.** Customer will receive an electronic Statement at the end of Customer's Billing Cycle. Customer shall pay Bank the amount due as directed on the Statement. Customer shall pay Bank using a payment method approved by Bank. Customer shall notify Bank of all disputes regarding Charges or billings for the Program within 60 days of the Statement date, identifying the specific items and the basis for such dispute. All disputes must be submitted in accordance with the Card Network operating rules and regulations. If the amount shown as owing under an Account (other than those subject to a bona fide dispute) has not been paid in full by the issuance of the next Statement, the Account is delinquent. Bank may suspend any Account that is delinquent. Bank may recover any reasonable legal fees and other expenses incurred in collecting any delinquent amounts on an Account. If an Account is used for Charges in a currency other than the billing currency, the amount shown on the Statement for that Charge will be shown as a single amount that is the aggregate of (i) the amount of the Charge converted, in each case at the applicable exchange rate to the billing currency from the currency in which the Charge was made and (ii) the "Foreign Transaction Fee" on such amount as set forth in Fee Schedule included in the Agreement. Due to fluctuations in foreign exchange rates, a credit may not be in the same amount as the original Charge.

3.3. Account Issuance; Liability

- (a) Account Issuance.** Customer shall only be permitted to request the issuance of Accounts in the name of the following parties: (i) in Customer's or Participant's own name, (ii) in the name of any Customer or Participant employee, (iii) in the name of any individual that is acting directly or indirectly as an independent contractor of Customer or Participant and (iv) in the name of any other individual provided on a temporary basis and so long as such individual has a bona fide connection to Customer or Participant (i.e. a temporary card issued to an employee candidate). Customer shall not request the issuance of Accounts for its subsidiaries (or employees of such subsidiaries) that are not Participants. Bank may refuse to issue an Account to any party that cannot satisfy Bank's regulatory requirements referenced in the section of Exhibit A entitled Miscellaneous Provisions – Compliance with Applicable Statutes and Regulations.
- (b) Mandatory Notification.** Customer shall immediately notify Bank, in writing, of any (i) termination of employment or contractor status of any Account holder or removal of a Participant from the Program and (ii) any actual or suspected lost, stolen, or compromised Account. Customer shall take all necessary action through the available on-line tools under the Program to terminate the Accounts of any party that would not qualify for the issuance of an Account as set forth in this Agreement. Customer is liable for Obligations on Accounts, without regard to the type of liability, if it fails to timely take the actions set forth in the prior sentence.
- (c) Trailing Transactions.** Upon cancellation of an Account, or termination of the Agreement, Customer shall cancel the billing of all reoccurring transactions to an Account. Bank is not liable for any reoccurring transactions Customer has failed to cancel.
- (d) Merchant Category Codes.** Bank is not liable for Charges declined or approved, as a result of inaccurate merchant category codes used by a merchant.

4. SECURITY AND CONFIDENTIALITY

4.1. Security. "Secured Information" means information regarding Accounts, passwords, personal identification numbers, and other sensitive information or Confidential Information of either party.

- (a)** Either party may receive or otherwise have access to Secured Information and shall implement or maintain an information security program designed to (i) ensure the security, integrity and confidentiality of Secured Information; (ii) protect against any anticipated threats or hazards to the security or integrity of such Secured Information; (iii) protect against unauthorized access to or use of such Secured Information that could reasonably result in harm to the person or entity that is the owner, user or subject of the Secured Information; and (iv) ensure the proper disposal of such Secured Information.
- (b)** Bank will maintain physical, electronic, and procedural safeguards designed to (i) maintain the security and confidentiality of Identification Information; (ii) protect Identification Information against anticipated threats or hazards to the security or integrity of Identification Information; and (iii) prevent unauthorized access to or use of such Identification Information that could reasonably result in harm or inconvenience to Customer.
- (c)** Customer will safeguard Secured Information provided by Bank in a manner that is no less stringent than those applicable to Customer's own proprietary information.
- (d)** At a minimum, Customer will install and maintain commercially reasonable cybersecurity defenses against any feature, routine, or device that is intended or designed to (i) disrupt the operation of any Bank owned or licensed software or system, including any timeout functionality; (ii) cause any Bank owned or licensed materials, software, or system to be destroyed, altered, erased, damaged or otherwise made inoperable; or (iii) permit any person or entity to destroy, alter, erase, damage or otherwise render inoperable any Bank owned or licensed materials, software, or system, including, but not limited to, any cyber-attacks such as any computer virus, trap door, back door, time bomb, or malicious program. Furthermore, Customer will perform routine hygiene on its system to insure proper use of software locks, routine password checking, and CPU serial number checking.

4.2. Confidentiality.

- (a) **Confidential Information.** Each party may have access to and each party may provide to the other party information that the owner of such information regards as confidential or proprietary. "Confidential Information" includes information of a commercial, proprietary, or technical nature whether now in existence or hereafter created. Confidential Information includes, but is not limited to, the following: (i) information marked as "confidential" or similarly marked, or information that a party should, in the exercise of reasonable judgment, recognize as confidential; (ii) Intellectual Property of each party; (iii) Identification Information; (iv) the business, financial or technical information of each party and its respective affiliates; (v) each party's objectives, materials, financial results, technological developments and other similar proprietary information and materials; and (vi) notes, memoranda, analyses, compilations, studies and other documents, whether prepared by either party or for either party, which contain or otherwise reflect Confidential Information.
- (b) **Exceptions.**
- (i) **General Exceptions.** Confidential Information does not include information that (i) is already rightfully known to the receiving party at the time it obtains Confidential Information from the disclosing party; (ii) is or becomes generally available to the public other than as a result of disclosure in breach of the Agreement or any other confidentiality obligations between the parties; (iii) is received on a non-confidential basis from a third party reasonably believed to be authorized to disclose such information without restriction and without breach of the Agreement; (iv) is contained in, or is capable of being discovered through examination of, publicly available records or materials; or (v) is developed by Bank or Customer without the use of any proprietary, non-public information provided by the other party.
- (ii) **Bank Exceptions.** Bank may (i) use and disclose Customer's Confidential Information to the extent necessary to maintain compliance with Card Network operating rules and regulations; or (ii) use and disclose non-identifying data to any entity or third party to the extent that such data is aggregated, summarized, or otherwise presented in a manner that does not directly or indirectly identify such data as attributable to Customer, its affiliates, or Account holders.
- (iii) **Third Parties.** Portions of Customer's Account and transaction data are captured by third parties, including, but not limited to, the Card Network, third-party service providers, merchants, and merchant processors during the course of normal business operations. All such third parties shall not be considered an agent of Bank for purposes of this section.
- (c) **Restriction and Care.** Each party shall hold Confidential Information in confidence and disclose Confidential Information only to those employees or agents whose duties reasonably require access to such Confidential Information. Each party must protect Confidential Information using at least the same degree of care it uses to protect its own Confidential Information, but in no event, less than a reasonable degree of care to prevent unauthorized disclosure or duplication (except as required for backup systems) of such Confidential Information. Each party shall cause its agents and employees, to hold and maintain Confidential Information in confidence, and shall only use and disclose such Confidential Information for the purpose of performing its obligations, exercising its rights, or enforcing its rights under the Agreement, or as otherwise expressly permitted by the Agreement.
- (d) **Disposition of Confidential Information.** Upon termination of the Agreement, each party shall immediately, upon election by the disclosing party, return or destroy all Confidential Information in its direct or indirect possession or control that is the sole property of the disclosing party; provided, that Bank may retain particular transaction data with respect to the Accounts as is necessary to perform its billing functions and to maintain compliance with the Card Network operating rules and regulations. Upon written request, the recipient will provide the disclosing party written certification of destruction of any Confidential Information. Bank may retain one copy of Confidential Information for archival purposes in accordance with applicable law, rule, or regulation. The receiving party shall return any Confidential Information maintained in an electronic format to the disclosing party in an industry standard format or, at the option of the owner, deleted and removed from all computers, electronic databases, and any other media.

- (e) **Compelled Disclosure.** Each party shall promptly provide, to the disclosing party, notice of any order by a court or governmental agency to disclose any Confidential Information, so the disclosing party may seek an appropriate protective order. Bank may be prohibited by a governmental agency from disclosing the governmental agency's request for Confidential Information, and under such circumstances, Bank is excused from notifying Customer of any disclosure of Confidential Information thereunder. Each party shall disclose Confidential Information only to the extent required by applicable law.
- (f) **Non-Publicity.** Customer shall not make any "case study," testimonial, press release, or other public announcement regarding the Agreement or any activities performed hereunder, unless required to do so by applicable law. Customer and its affiliates shall obtain the prior written approval of Bank's Media Relations department for any press release that Customer seeks to release that contains Bank's identity. Customer shall provide Bank with at least 15 business days to review and respond to any such request for approval.

5. DEFAULT

- 5.1. **Customer Defaults.** Customer will be in default upon the occurrence of any of the following events (each a "**Customer Default**"):
 - (a) any violation of its obligations set forth in the sections of Exhibit A entitled Exclusivity; section 4 (Security and Confidentiality); and section 7 (Intellectual Property);
 - (b) any failure to make a payment on any Account as set forth in the section of the Agreement entitled Billing and Payment);
 - (c) any default of any other agreement between Bank and any of Customer, a Participant, or Customer's affiliates that has not been cured in the time specified in the applicable agreement;
 - (d) any default of any agreement between any of Bank's affiliates and Customer or Customer's affiliates for the provision of services similar to the Program;
 - (e) any of Customer's representations or warranties made in the Agreement fail to be true and correct at any time during the Agreement;
 - (f) any violation of any other covenants, conditions, or provisions set forth in the Agreement;
 - (g) the filing of a bankruptcy or insolvency proceeding, the appointment of a receiver or trustee for benefit of creditors, or the entry into an arrangement with its creditors by Customer, a Participant or any guarantor of Customer's obligations hereunder (a "Guarantor");
 - (h) Customer's or Guarantor's merger or amalgamation where it is not the surviving entity;
 - (i) Customer's or Guarantor's sale, or transfer of all or substantially all of its assets; or
 - (j) a Guarantor, if any, revokes its guaranty of Customer's obligations.
- 5.2. **Bank Defaults.** Bank will be in default upon the occurrence of any of the following events (each a "**Bank Default**"):
 - (a) any of Bank's representations or warranties made in Agreement fail to be true and correct at any time during the Agreement;
 - (b) Bank materially violates of any covenants, conditions, or provisions set forth in the Agreement; or
 - (c) the filing of a bankruptcy or insolvency proceeding, the appointment of a receiver or trustee for benefit of creditors, or the entry into an arrangement with its creditors by Bank.
- 5.3. **Cure.** Customer shall cure any Customer Default arising under section 5.1 (b) within five days after the payment became delinquent. Customer shall cure any Customer Default arising under section 5.1(a), (c), (d), (e) and (f) within 30 days after notice of a Customer Default. Notwithstanding the foregoing, a Customer Default under section 3.1, section 12.1 and a Customer Default arising under sections 5.1(g), (h), (i) or (j) shall not be entitled to notice or the right to cure and Bank may immediately terminate the Agreement as a result of any such default. Bank shall cure any Bank Default arising under section 5.2(a) or (b) within 30 days after notice of a Bank Default. Bank shall not be entitled to cure a Bank Default under section 5.2(c).
- 5.4. **Bank Remedies.** Upon the occurrence of a Customer Default, after the notice and cure period have run, if any, without cure, in addition to any other remedies at equity or law, Bank may: (i) immediately terminate the Agreement or suspend or cancel any Accounts; (ii) retain and will not be required to pay Customer any amounts then due pursuant to the Agreement (other than a return of prefunded amounts not applied to outstanding obligations); and (iii) demand and recover payment of any damage amount directly or indirectly related to any Customer Default,

including any fees or losses sustained by Bank, and any reasonable court and legal costs incurred by Bank to exercise its rights or remedies under this section. If Customer violates its obligations under the Security and Confidentiality or Intellectual Property sections, in the addition to the foregoing, Bank is entitled to injunctive relief in its favor and to specific performance without proof of actual damages and without the requirement of the posting of any bond or similar security, because Bank's remedies at law may be inadequate to protect Bank against immediate and irreparable harm caused by any anticipated or actual breach of Customer's obligations as set forth in the Security and Confidentiality or Intellectual Property sections, and because damages resulting from such a breach may be difficult to ascertain. Any delay or failure on the part of Bank to take action upon the occurrence of a Customer Default shall not constitute a course of dealing on the part of Bank, shall not constitute a waiver of such Customer Default or prevent Bank from taking action on such Customer Default or any other Customer Default in the future. For the avoidance of doubt, the adjustment of the credit limits or controls described in the Credit Provisions section (including requiring security or prefunding) are independent rights and are not dependent upon the existence of a Customer Default.

- 5.5. Customer Remedies.** Upon the occurrence of a Bank Default, after the notice and cure period have run, if any, without cure, in addition to any other remedies at equity or law, Customer may: (i) immediately terminate the Agreement; and (ii) demand and recover payment of any damage amount directly related to any Bank Default. Any delay or failure on the part of Customer to take action upon the occurrence of a Bank Default shall not constitute a course of dealing on the part of Customer, shall not constitute a waiver of such Bank Default or prevent Customer from taking action on such Bank Default or any other Bank Default in the future.

6. TERM AND TERMINATION

- 6.1. Agreement Term.** The Agreement will automatically extend at the end of the Agreement Term for successive one-year periods, unless either party provides at least 90 days written notice of termination prior to the expiration of the then current term. During the Agreement Term or a successive term thereafter, neither Customer nor Bank may terminate the Agreement, except by mutual consent or as otherwise provided under this section.
- 6.2. Termination by Bank.** In addition to any rights arising under the section in Exhibit A entitled Bank Remedies, Bank may terminate the Agreement (i) by providing ten days prior written notice of such termination to Customer upon Bank's determination that the relationship under the Agreement or any related agreements entered into by Bank or its affiliates with Customer or its affiliates is unprofitable or (ii) immediately upon written notice to Customer, if there has been no material activity on Accounts for any 12 consecutive month period.
- 6.3. Regulatory Suspension and Termination.** Bank may immediately, (i) suspend or cancel any Account if Bank is unable to verify the identity of the Account holder or owner of the Account based on the Identification Information submitted to Bank, or if Bank is unable to verify that providing services to an Account holder or Participant does not pose a risk to Bank of violating any applicable law, statute, or regulation; and (ii) terminate the Agreement if Bank, in its sole discretion, determines the provision of any of the services under the Agreement is counter to any existing, new, or amended law, regulation, regulatory interpretation, anticipated regulatory interpretation, or any enforcement of existing, new, or amended law, regulation, regulatory interpretation, or anticipated regulatory interpretation.
- 6.4. Survival.** The provisions contained in Exhibit A of the following entitled sections survive termination of the Agreement: Billing and Payment; Security and Confidentiality; Default; Intellectual Property; Indemnification; Limitation of Liability; Cumulative Remedies; Set-Off; Waiver of Jury Trial. Additionally, the provisions contained in the following entitled sections of the Agreement also survive termination: Notices, Governing Law, and Incorporation. Without limiting or affecting the foregoing, any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall survive termination and shall remain in full force and effect.

7. INTELLECTUAL PROPERTY

- 7.1. Bank Intellectual Property.** Bank, or its affiliates, is the owner or licensee of any and all Intellectual Property or other proprietary right associated with Bank products and services,

including, but not limited to, the Program, related materials, and derivatives. Except as expressly stated in the Agreement, Customer shall not use, copy, redistribute, publish, or retransmit any portion of Bank products or Intellectual Property without the express written consent of Bank. Customer shall not change or delete any proprietary notices contained on or in any written or electronic materials supplied by or through Bank. Nothing in the Agreement grants any ownership right to Customer. Bank remains the sole owner of any and all its Intellectual Property.

7.2. Customer Intellectual Property. Customer is the owner or licensee of any and all Intellectual Property or other proprietary right associated with Customer's name, trademarks and service marks. Bank shall not use, copy, redistribute, publish, or retransmit any portion of Customer's Intellectual Property without the express written consent of Customer. Bank shall not change or delete any proprietary notices contained on or in any written or electronic materials supplied by or through Customer. Customer remains the sole owner of any and all its Intellectual Property.

7.3. Software License.

(a) License Grant. Subject to Customer's compliance with this section, Bank grants Customer and any Participant a non-exclusive, non-transferrable license to use and access Accounts on Bank's or Bank's third-party licensor's software.

(b) Ownership. Bank, or its third-party licensors, retains all rights, title, and ownership of the Accounts (but not the Account data) and software, any documentation provided with the Accounts or software, and any works derived from the software or Bank or its third-party licensors' Intellectual Property. Bank asserts that the software is protected by copyright and may be protected by patent, trademark, or other proprietary rights and laws of the United States, Canada, or other jurisdictions. Any property rights not granted in this section are reserved by Bank or its third-party licensors.

(c) Updates. Bank or its third-party licensors may, from time to time, provide updates of the software. The updates replace the software initially licensed to Customer, and do not constitute an additional license to use the software.

(d) Restrictions. Customer and Participant may not (i) reverse engineer, decompile, or disassemble the software, or bypass or disable any copy protection or encryption; (ii) reformat or make derivative works from the software; (iii) transmit all or any part of the software by any means, media, or manner that would present the risk of unauthorized access except as provided by Bank; (iv) disclose part or all of the software to any third parties except as explicitly authorized by Bank; (v) use all or part of the software to advise, consult, or otherwise assist any third parties except as explicitly authorized by Bank; and (vi) otherwise use the software in any manner that would compete in any way with Bank's business.

(e) Audit. Customer shall permit Bank reasonable access to any records, systems, or operations to ensure that Customer is in compliance with the license granted in this section.

8. REPRESENTATIONS AND WARRANTIES

8.1. Mutual Representations and Warranties. Each party respectively represents and warrants, at all times during the Agreement, that:

(a) The Agreement constitutes a valid, binding, and enforceable agreement of itself;

(b) The execution of the Agreement and the performance of its obligations under the Agreement are within its corporate powers; has been authorized by all necessary corporate action; and does not constitute a breach of any agreement between itself and any other party;

(c) It shall comply with all requirements of the Agreement;

(d) It complies with all applicable state, provincial, territorial and federal statutes, ordinances, rules, regulations, and requirements of governmental authorities (collectively, "**Governmental Regulations**") related to the Agreement and its execution and performance of the Agreement will not contravene any Governmental Regulations applicable to it; and

(e) It possesses the financial capacity to enter into the Agreement and perform all of its obligations under the Agreement.

- 8.2. **Customer Representations and Warranties.** Customer represents and warrants, at all times during the Agreement, that:
- (a) Customer shall use Accounts, and shall instruct its Account holders to use Accounts, solely for Customer's or Participant's business purposes;
 - (b) The material information provided by Customer or Participant to Bank is true, complete, and accurate; and
 - (c) The consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of the Agreement, or if any such third-party consent or approval is required, Customer has obtained any and all such consents or approvals.
- 8.3. Customer represents that it or its Participants has received any and all necessary consents from Account holders (i) prior to providing Bank with any Account holder Identification Information and (ii) authorizing the recording of information for quality assurance, authentication and security when an Account holder contacts Bank concerning their account. Bank or its third party service provider may desire to send communications, including autodialed, pre-recorded or artificial voice messages, SMS text messages, and/or other electronic messages to Account holders related to servicing Customer's Accounts. Examples of such communications include reminding Account holders that a payment has not been received by Bank, or to provide other information related to the Account holder's Account such as potential or actual fraud, identity theft, data security alerts or other transactional messages (collectively, "**Transactional Messages**"). By requesting an Account to be established for an Account holder, Customer represents and warrants to Bank that it (or its Participants) has obtained such Account holder's express consent to receive Transactional Messages from Bank or its third party service provider to the telephone number(s) (landline or wireless) or email addresses provided by Customer or such Account holder to Bank in connection with establishing the Account for the Account holder, whether or not such messages result in charges imposed by a communications provider.
- 8.4. **Except as expressly provided herein, Bank makes no warranties, express or implied, in law or in fact, including, without limitation, the implied warranties of fitness for a particular purpose and of merchantability, either to Customer or to any other person or third party, with respect to the Program provided by Bank or its representatives, or with respect to Bank's Account management software made available by Bank to Customer or any other person for its use, in connection with the Agreement and any services thereunder.**

9. INDEMNIFICATION

- 9.1. **Generally.** To the extent allowed by law, and except to the extent of the negligence or willful acts or omission of the other party or its affiliates, or its or their employees, agents, or contractors, each party (each, an "**Indemnifying Party**") agrees to indemnify and hold harmless the other party and its agents, officers, directors, employees, and contractors (each, an "**Indemnified Party**") from any third-party claims, actions, demands, damages, injuries, injunctions, suits, fines, penalties, costs, and expenses and liability whatsoever (including reasonable legal fees), arising out of (i) the infringement by an Indemnifying Party of any Intellectual Property or other property or contract right of any other entity; (ii) the violation of any law, rule, regulation or authority by an Indemnifying Party; (iii) any gross negligence or intentional act of an Indemnifying Party; or (iv) any default by the Indemnifying Party.
- 9.2. **Indemnification Procedures.** An Indemnified Party shall promptly notify the Indemnifying Party of any claim that is asserted and each action or suit that is filed or served, and provide the Indemnifying Party with a copy of any written documentation received in relation with the claim, for which the Indemnified Party is seeking indemnification pursuant to this section, provided, however, that the failure to give such notice shall not relieve the Indemnifying Party of its indemnification obligations except to the extent it is actually damaged. The Indemnifying Party may thereafter assume control of such claim, provided that the Indemnified Party shall have the right to participate in the defense or settlement of such claim. The Indemnified Party may employ counsel at its own expense to assist with any such claim; however, if such counsel is necessary because of a conflict of interest of either Indemnifying Party or its counsel, or because the Indemnifying Party does not assume control, the Indemnifying Party shall bear the expense of such counsel. The Indemnifying Party may not settle any claim, admit to any liability, or consent to any judgment with respect thereto without the consent of the Indemnified Party

(which consent may not be unreasonably withheld, delayed or rejected). The Indemnifying Party is not obligated to indemnify and defend the Indemnified Party with respect to a claim (or portions of a claim) if the Indemnified Party (i) fails to promptly notify the Indemnifying Party of the claim and fails to provide reasonable cooperation to defend or settle the claim; and (ii) if, and only to the extent that, the failure materially prejudices the Indemnifying Party's ability to satisfactorily defend or settle the claim.

10. LIMITATION OF LIABILITY. Bank and its affiliates are not liable for any consequential, special, indirect, or punitive damages of any nature, including lost profits, regardless of whether such parties have been advised of the possibility of such damages. Bank is not liable for any damages under the Program that exceed the fees Bank collected during the 12 months immediately preceding the alleged liability.

11. ASSIGNMENT AND TRANSFER. Customer shall not assign or otherwise transfer or delegate its rights, obligations, or duties under the Agreement without Bank's prior written approval at its sole discretion. For the purposes of this provision, "transfer" refers to a merger, acquisition, consolidation, divestiture, change in control, asset transfer, amalgamation, proceeding under bankruptcy laws, or any other transfer, reorganization, or sale (in whole or in part) of Customer. To the fullest extent not prohibited by applicable law, Customer will notify Bank in advance of any material change (and if prohibited, within 15 days after such change) to any information provided to Bank at any time concerning Customer's primary business, legal organization (e.g., partnership, corporation, etc.) or any change resulting from a transfer as described above. Customer shall promptly provide any information requested by Bank associated with the request for approval.

12. MISCELLANEOUS PROVISIONS.

12.1. Compliance with Applicable Statutes and Regulations. The parties will maintain compliance with all statutes and regulations applicable to the products and services contemplated under the Agreement, including all economic sanctions laws, anti-money laundering laws, and trade restrictions imposed by the United States, United Nations, European Union or Canada and Bank's policies related thereto. Bank may require Identification Information for Customer, its affiliates, and its Participants, and any authorized signers, beneficial owners, Account holders or directors of Customer and its affiliates and Participants. Customer shall promptly provide any such required Identification Information to Bank.

12.2. Other Agreements and Regulations. Customer shall comply with, and shall cause its Participants, and Account holders to comply with the following regulations and terms and conditions to the extent applicable to the Program or the products and services provided pursuant to the Agreement:

(a) Clearing House Operating Regulations. Any applicable automated clearinghouse operating rules or regulations, including, without limitation, the National Automated Clearing House Association Operating Rules, Guidelines of the Canadian Payments Association (Payments Canada) operating rules and guidelines, or any related or successor operating rules;

(b) Card Network Operating Regulations. Card Network operating rules and regulations; and

(c) End User Agreements. Each Account holder may receive and must agree to any and all applicable Cardholder Agreement, Account holder Agreement, Privacy Agreement, or End User License Agreement that governs the use of an Account (collectively, the "End User Agreements"). Bank may amend the End User Agreements from time to time without notice to the Account holder. Bank will provide Account holders with notice of any material change to the End User Agreements.

12.3. Precedence of Terms. In the event of a conflict or inconsistency between the Agreement and these Terms and Conditions, the Agreement will control only to the extent necessary to resolve any such conflict or inconsistency.

12.4. Modification or Amendment. The parties may modify the Agreement only by an instrument in writing signed by Customer and Bank. A Customer request to Bank to take an action that is not covered by the terms of the Agreement may be granted by Bank in its sole discretion. Bank's

- compliance with any such requests on one or more occasions shall not establish a course of dealing or conduct upon which Customer may rely or bind Bank.
- 12.5. Severability.** If any provision of the Agreement be declared invalid for any reason, such declaration will not affect the validity of any other provision of the Agreement, which will remain in full force and effect, as if the Agreement had been executed with the invalid provisions eliminated. The parties may use commercially reasonable efforts to agree upon a valid substitute provision in accordance with the purpose of the Agreement and the intent of the parties.
- 12.6. Cumulative Remedies.** Except as expressly provided elsewhere in the Agreement, each party's rights and remedies under the Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.
- 12.7. Interpretation of Terms.** The parties expressly agree that the Agreement will not be construed more strongly against either party, regardless of which party is more responsible for its preparation. The Agreement constitutes the entire agreement between the parties, concerning the matters addressed herein, and cancels and supersedes any prior agreements, undertakings, declarations, or representations, written or verbal, in respect thereof.
- 12.8. Headings.** The headings of sections are inserted for convenience of reference only, and do not affect the construction or interpretation of the Agreement.
- 12.9. No Third-Party Beneficiaries or Claims.** Except as stated in the Agreement, with reference to any successors or assigns, any services provided pursuant to the Agreement are for the sole and exclusive benefit of Customer. No provision of the Agreement is intended to be a third-party beneficiary contract or to create or vest any third-party beneficiary rights, interests, or privileges in favor of any entity other than Bank and its affiliates and Customer.
- 12.10. Force Majeure and Excusable Delay.**
- (a) Except for any duty arising under the Agreement to make payments, neither party is responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, fire, flood, strikes, war, epidemics, pandemics, shortage of power, telecommunications or Internet service interruptions or other acts or causes reasonably beyond the control of that party. The party suffering the force majeure event will (i) implement its applicable disaster recovery plan to the extent appropriate and practicable; (ii) give the other party prompt notice of the occurrence of a force majeure event; (iii) use diligent efforts to re-commence performance as promptly as commercially practicable pursuant to its disaster recovery plan; and (iv) provide periodic updates to the other party regarding its efforts to re-commence performance, until performance has re-commenced in accordance with the Agreement.
 - (b) Either party may terminate the Agreement, upon written notice to the other, if the non-terminating party is unable to perform a material portion of its obligations, as a direct result of a force majeure event, for more than 30 consecutive days. Delay in either party's performance is excused to the extent its performance is delayed solely due to an act or omission of the other party.
- 12.11. Set-Off.** Bank may set-off any amounts Customer owes to Bank, pursuant to the Agreement or any other agreement between the parties, against any amounts due to Customer by Bank or its affiliates.
- 12.12. Relationship of Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement creates an agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for nor bind the other party in any manner whatsoever.
- 12.13. Delegation.** To the extent necessary to provide the Program, Bank may delegate its duties herein to one or more third parties without Customer's consent or approval, so long as Bank remains responsible and liable for the conduct of and payment to any such third parties.
- 12.14. No Waiver.** No failure or delay by either party to exercise any right, power, or privilege provided under the Agreement or by applicable law, will operate as a waiver thereof; nor will any single or partial exercise of any such right, power, or privilege preclude any future exercise of any other right, power, or privilege.
- 12.15. Waiver of Jury Trial. Customer and Bank hereby waive all rights to trial by jury in any proceeding relating to the Agreement.**