

# Terms and Conditions

for the U.S. Bank Commercial Card



This Commercial Account Agreement (“**Agreement**”) is between the entity signing this Application as “**Customer**” and U.S. Bank National Association (“**U.S. Bank**”). Customer desires to retain U.S. Bank as its provider for commercial charge card and account services (the “**Program**”). If U.S. Bank approves Customer’s creditworthiness and this Application, the “**Effective Date**” of this Agreement will be the date this Agreement is signed by Customer.

Now, therefore, for and in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Customer and U.S. Bank agree to the following:

- 1. DEFINITIONS.** “**Account**” means a commercial charge card, regardless of the medium, issued pursuant to this Agreement. “**Billing Cycle**” means the period of time from the date a Statement is generated until the next Statement is generated. “**Charge**” means any transaction posted to an Account that has a debit value. “**Card Network**” means, as applicable, one of the following card networks whose marks are contained on the cards issued under this Agreement: Visa U.S.A. Inc. and Visa International, Inc., MasterCard International Incorporated or such other national card network with respect to which U.S. Bank becomes an issuer during the term of this Agreement. “**Corporate Liability**” means Customer is solely liable to U.S. Bank for all Obligations on corporate liability Accounts. “**Identification Information**” means legal names, physical street addresses, taxpayer identification numbers, dates of birth or other information or documentation required by U.S. Bank to confirm the identity of any entity or person (including Customer, Participants, Guarantors, and/or Account holders). “**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. “**Joint and Several Liability**” means Customer and the Account holder are jointly and severally liable to U.S. Bank for all Obligations accrued on the Account. “**Obligations**” means all Charges, fees, and any other activity posted to an Account. “**Participant**” means any entity that Customer authorizes, and U.S. Bank approves, for participation in the Program through execution of a Participant Agreement. “**Statement**” means, with respect to one or more Accounts, a periodic listing of all Obligations and payments posted to such Accounts.
- 2. PRODUCTS AND SERVICES.** U.S. Bank operates the Program pursuant to which it issues Accounts that can be used to make Charges at participating merchants and agrees to provide Customer access to the Program. U.S. Bank agrees to provide Customer access to its online portal that allows Customer to, among other things, review Statements, establish and modify spend controls, obtain various reports in connection with the Program and, if available, make payments.
- 3. 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 U.S. 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. To the extent such information is not publicly available, U.S. Bank shall treat such financial information as Confidential Information of Customer.
- 4. CREDIT.** U.S. Bank, at its sole discretion and without prior notice, may revise any credit limits or controls associated with this Program. U.S. Bank will endeavor to provide notice to Customer of any decrease in a credit limit. Customer shall make a payment to U.S. Bank within ten days of such notice, sufficient to reduce the Obligations to an amount equal to, or less than, the revised credit limit.
- 5. FEES AND BILLING.**
  - 5.1. Fees.** U.S. Bank may charge Customer the fees set forth in Schedule 1 – Fees, attached hereto. Failure of U.S. Bank to apply any fee or charge set forth in this Agreement, at any time, does not preclude U.S. Bank from ever applying such fee or charge.
  - 5.2. Billing.** Customer will receive an electronic Statement at the end of Customer’s Billing Cycle. Customer shall pay U.S. Bank the amount due as directed on the Statement. Customer shall pay U.S. Bank using an electronic payment method approved by U.S. Bank. Customer shall notify U.S. 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 on a Statement 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. U.S. Bank may suspend any Account that is delinquent. U.S. 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 Schedule 1 – Fees. Due to fluctuations in foreign exchange rates, a credit may not be in the same amount as the original Charge.
- 6. LIABILITY.** 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 (e.g. a temporary card issued to an employee candidate). Customer shall not request the issuance of Accounts for (i) its subsidiaries (or employees of such subsidiaries) that are not Participants; or (ii) any Participant, employee, or individual that is not a permanent resident of the United States. U.S. Bank may refuse to issue an Account to any party that cannot satisfy U.S. Bank’s regulatory requirements referenced in Section 17 herein.

Customer is liable for all billed transactions and other Charges made by Customer, its Participants, and its Account holders. Regardless of the liability option selected in the Application, Customer is liable for: (i) all Charges originating outside the United States; (ii) all Charges made to an Account by any Account holder residing outside of the United States; or (iii) Customer’s failure to provide U.S. Bank with immediate notice of: (a) Customer’s termination of employment of any Account holder or removal of a Participant from the Program; (b) actual or suspected lost, stolen, or compromised Account; (c) any suspected or actual breach, or misuse of an Account or information regarding Accounts or other sensitive information; or (d) relocation of any Account holder to a foreign jurisdiction. U.S. Bank is not responsible for controlling the use of any Accounts, other than as specifically provided herein. 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 Section 6. U.S. Bank may, in its sole discretion, close any Account for an Account holder that relocates to a foreign jurisdiction. Upon cancellation of an Account or termination of this Agreement, Customer shall cancel the billing of

all reoccurring transactions to an Account. U.S. Bank is not liable for (i) any Account holder misuse of an Account; (ii) Charges declined or approved as a result of inaccurate merchant category codes used by a merchant; or (iii) any reoccurring transactions Customer has failed to cancel.

## SECURITY AND CONFIDENTIALITY.

- 7.1. Either party may receive or otherwise have access to Secured Information. **"Secured Information"** means information regarding Accounts, passwords, personal identification numbers, and other sensitive information or Confidential Information of either party. Each party shall 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. Each party shall secure and protect the other's Secured Information using at least the same degree of care as it uses to secure and protect its own Secured Information, but no less than a reasonable degree of care as determined by the nature of this Agreement and the highest industry standards to prevent the unauthorized use, disclosure, or duplication of Secured Information. 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 U.S. Bank owned or licensed software or system, including any timeout functionality; (ii) cause any U.S. 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 U.S. 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 systems to ensure appropriate use of software locks, routine password checking, and CPU serial number checking.
- 7.2. Each party may have access to, and each party may provide to the other party, information the owner of such information regards as confidential or proprietary. **"Confidential Information"** means 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 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 business objectives, 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. Confidential Information does not include information that (i) is already rightfully known to the recipient 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 this 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 this Agreement; (iv) is contained in, or is capable of being discovered through examination of, publicly available records or materials; or (v) is developed by either party without the use of any proprietary, non-public information provided by the other party.
- 7.3. U.S. Bank may (i) use and disclose Customer's Confidential Information to the extent necessary to maintain compliance with Card Network operating rules and regulations, applicable law or regulatory authorities; or (ii) use and disclose non-identifying data to any entity or third party to the extent 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. 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 U.S. Bank for purposes of this Section 7. In the event the recipient receives notice of any order by a court or governmental agency to disclose any Confidential Information of the disclosing party, the recipient shall promptly notify the disclosing party so the disclosing party may seek an appropriate protective order. Notwithstanding the foregoing, U.S. Bank may be prohibited by applicable law or a governmental agency from disclosing a request for Confidential Information and under such circumstances U.S. Bank is excused from notifying Customer of any disclosure of Confidential Information. Each party shall disclose Confidential Information only to the extent required by applicable law or regulatory authority.
- 7.4. Each party shall hold Confidential Information in confidence and disclose Confidential Information only to those employees, agents, subcontractors or independent contractors whose duties reasonably require access to such information. Each party must protect Confidential Information using at least the same degree of care as it uses to protect its own Confidential Information, but in no event less than a reasonable degree of care, to prevent the unauthorized use, disclosure, or duplication (except as required for backup systems) of such Confidential Information. Each party shall cause its agents, employees, subcontractors and independent contractors, to maintain Confidential Information in confidence and use and disclose such Confidential Information only for the purpose of performing its obligations, or exercising or enforcing its rights, under this Agreement, or as otherwise expressly permitted by this Agreement.
- 7.5. Upon termination of this Agreement, each party shall immediately, upon the written request and at the election of the disclosing party, return or destroy all Confidential Information in its direct or indirect possession or control that belongs to the disclosing party; provided, that U.S. 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 return or destruction of Confidential Information. Any Confidential Information maintained in an electronic format shall be returned to the disclosing party in an industry standard format or, at the option of the disclosing party, deleted and removed from all computers, electronic databases and other media. Each party may retain one copy of Confidential Information solely for compliance purposes and subject to the terms of this Agreement.
- 7.6. Customer shall not make any "case study," testimonial, press release, or other public announcement regarding this 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 U.S. Bank's Media Relations department for any press release that Customer seeks to release that contains U.S. Bank's identity. Customer shall provide U.S. Bank at least 15 business days to review and respond to any such request for approval.

## 8. DEFAULT.

- 8.1. Customer shall be deemed in default upon the occurrence of any of the following events (each a **"Customer Default"**) (i) any violation of its obligations set forth in Section 7 (Security and Confidentiality) and Section 10 (Intellectual Property); (ii) any failure to make a payment on any Account as set forth in Section 5 (Fees and Billing); (iii) any default of any other agreement between U.S. Bank and any of Customer, a Participant, or Customer's affiliate that has not been cured in the time specified in the applicable agreement; (iv) any representations or warranties made in this Agreement fail to be true and correct at any time during the Term of this Agreement; (v) any violation of any other covenants, conditions, or provisions set forth in this Agreement, (vi) 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**"); (vii) Customer's or Guarantor's merger or amalgamation where it is not the surviving entity; (viii) Customer's or Guarantor's sale, or transfer of all or substantially all of its assets; or (ix) a Guarantor, if any, revokes its guaranty of Customer's obligations.

**8.2.** U.S. Bank will be in default upon the occurrence of any of the following events (each a "**U.S. Bank Default**") (i) any of U.S. Bank's representations or warranties made in this Agreement fail to be materially true and correct at any time during the Term of this Agreement; (ii) U.S. Bank materially violates of any covenants, conditions, or provisions set forth in this Agreement; or (iii) 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 U.S. Bank.

**8.3** Customer shall cure any Customer Default arising under Section 8.1(ii) within five days after the payment became delinquent. Customer shall cure any Customer Default arising under Section 8.1 (i), (iii), (iv) or (v) within 30 days after notice of a Customer Default. Notwithstanding the foregoing, as Customer Default under Section 17 and a Customer Default arising under Sections 8.1 (vi) – (ix) shall not be entitled to notice or the right to cure and U.S. Bank may immediately terminate this Agreement as a result of any such default. U.S. Bank shall cure any U.S. Bank Default arising under Section 8.2(i) or (ii) within 30 days after notice of a U.S. Bank Default. U.S. Bank shall not be entitled to cure a U.S. Bank Default under Section 8.2(iii).

**8.4.** 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, U.S. Bank may: (i) immediately terminate this Agreement or suspend or cancel any Accounts; (ii) retain and will not be required to pay Customer any amounts due pursuant to this 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 U.S. Bank, and any reasonable court and legal costs incurred by U.S. Bank, to exercise its rights or remedies under this Section 8. If Customer violates its obligations under Section 7 (Security and Confidentiality) or Section 10 (Intellectual Property), in the addition to the foregoing, U.S. Bank shall be 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 U.S. Bank's remedies at law may be inadequate to protect U.S. Bank against immediate and irreparable harm caused by any anticipated or actual breach of Customer's obligations as set forth in Section 7 (Security and Confidentiality) or Section 10 (Intellectual Property), and because damages resulting from such a breach may be difficult to ascertain. Any delay or failure on the part of U.S. Bank to take action upon the occurrence of a Customer Default shall not constitute a course of dealing on the part of U.S. Bank, shall not constitute a waiver of such Customer Default or prevent U.S. 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 Section 4 (including requiring security or prefunding) are independent rights and are not dependent upon the existence of a Customer Default.

**8.5** Upon the occurrence of a U.S. 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 this Agreement; and (ii) demand and recover payment of any damage amount directly related to any U.S. Bank Default. Any delay or failure on the part of Customer to take action upon the occurrence of a U.S. Bank Default shall not constitute a course of dealing on the part of Customer, shall not constitute a waiver of such U.S. Bank Default or prevent Customer from taking action on such U.S. Bank Default or any other U.S. Bank Default in the future.

**9. TERM, TERMINATION AND SUSPENSION.** This Agreement will remain in effect for five years measured from the first day of the month following the Effective Date (or if the Effective Date is the first day of the month, from the Effective Date) (the "**Agreement Term**"). This Agreement will automatically extend at the end of the Agreement Term for successive one year periods, unless either party provides at least 180 days written notice of termination prior to the expiration of the then current term. During the Agreement Term or any successive term thereafter neither Customer nor U.S. Bank may terminate this Agreement, except by mutual consent or as otherwise provided under this Agreement.

**9.1.** In addition to any rights arising under Section 8.4, U.S. Bank may terminate this Agreement at any time for any reason upon thirty (30) days' prior written notice.

**9.2.** U.S. Bank may immediately (i) suspend or cancel any Account if U.S. Bank is unable to verify the identity of the Account holder or owner of the Account, based on the Identification Information submitted to U.S. Bank, or if U.S. Bank is unable to verify providing services to an Account holder or Participant does not pose a risk to U.S. Bank of violating any applicable law, statute, or regulation; and (ii) terminate this Agreement if U.S. Bank, in its sole discretion, determines provision of services under this 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.

**9.3.** The following provisions shall survive termination of this Agreement: Section 5 (Fees and Billing); Section 7 (Security and Confidentiality); Section 8 (Default); Section 10 (Intellectual Property); Section 12 (Indemnification); Section 13 (Limitation of Liability); Section 14 (Notices); Section 16 (Governing Law and Venue); Section 27 (Set-Off); Section 28 (Cumulative Remedies); and Section 30 (Waiver of Jury Trial). Without limiting or affecting the foregoing, any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall survive termination and shall remain in full force and effect.

## **10. INTELLECTUAL PROPERTY.**

**10.1.** U.S. Bank, or its affiliates, is the owner or licensee of any and all Intellectual Property or other proprietary right associated with U.S. Bank products and services including, but not limited to, the Program, related materials, and derivatives (collectively "U.S. Bank Intellectual Property"). Customer shall not use, copy, redistribute, publish, or retransmit any portion of U.S. Bank Intellectual Property without the express written consent of U.S. Bank. Customer shall not change or delete any proprietary notices contained on or in any written or electronic materials supplied by or through U.S. Bank. Nothing in this provision grants any ownership right to Customer of any U.S. Bank Intellectual Property. U.S. Bank remains the sole owner of any and all U.S. Bank Intellectual Property.

**10.2.** Subject to Customer's compliance with this Section 10, U.S. Bank grants Customer and any Participant a non-exclusive, non-transferrable license to use and access Accounts on U.S. Bank's or its third party licensor's software. U.S. 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. Customer shall permit U.S. Bank reasonable access to any records, systems, or operations to ensure Customer is in compliance with the license granted in this Section 10.

**10.3.** U.S. Bank, or its third party licensors, retains all rights, title, and ownership of the Accounts (but not the Account data, which is controlled independently by each party) and software, any documentation provided with the Accounts or software, and any works derived from the software that contain all or part of the software or U.S. Bank or its third party licensors' Intellectual Property. U.S. Bank asserts the Accounts and software is protected by copyright and may be protected by patent, trademark, or other proprietary rights and laws of the United States or other jurisdictions. Any property rights not granted in this Section 10 are reserved by U.S. Bank or its third party licensors. 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 U.S. Bank; (iv) disclose part or all of the software to any third parties, except as explicitly authorized by U.S. Bank; (v) use all or part of the software to advise, consult, or otherwise assist any third parties except as explicitly authorized by U.S. Bank; and (vi) otherwise use the software in any manner that would compete in any way with U.S. Bank's business.

## 11. REPRESENTATIONS AND WARRANTIES.

**11.1** Each party respectively represents and warrants, at all times during this Agreement, that (i) this Agreement is valid, binding, and enforceable against itself; (ii) execution of this Agreement and the performance of the obligations hereunder are within such party's powers; have been authorized by all necessary action; do not require action by or approval of any governmental or regulatory body, agency, or official; and do not constitute a breach of any material agreement of such party; (iii) execution of this Agreement and the performance of the obligations hereunder will not cause a material breach of any duty arising in law or equity; (iv) the transaction contemplated by this Agreement is within the scope of the normal course of business, and does not require further authorization for such party to be bound by this Agreement; (v) each party possesses the financial capacity to perform all of its obligations under this Agreement; and (vi) each party shall comply with all requirements of this Agreement and all applicable laws, rules, regulations, and requirements of governmental authorities related to the Program.

**11.2** Customer represents and warrants, at all times during this Agreement, that (i) the material information provided by Customer to U.S. Bank is true, complete, and accurate; (ii) Customer shall use Accounts, and shall instruct its Account holders to use Accounts, solely for business purposes; (iii) the consent of no third party, including, without limitation, a lender, is required with respect to the execution of this Agreement, or if any such third party consent or approval is required, Customer has obtained any and all such consents or approvals; (iv) Customer shall comply with, and shall cause its affiliates, Participants and Account holders to comply with, (A) the terms and conditions of any applicable Account holder Agreement or End User License Agreement that governs the use of an Account (collectively, the "**End User Agreements**") (which U.S. Bank may amend from time to time without notice to the Account holder, but U.S. Bank will provide Account holders with notice of any material change to the End User Agreements), (B) Card Network operating rules and regulations; and (C) 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 (if applicable), or any related or successor operating rules; and (v) Customer will not, in connection with the services contemplated by this Agreement or in connection with any other business transactions involving U.S. Bank, receive compensation, make, offer, or promise to make any payment or transfer anything of value, directly or indirectly if such compensation, payment, or transfer would have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business, in breach of any applicable laws, statutes, regulations, and codes relating to anti-kickback, anti-bribery, and anti-corruption. This paragraph shall not, however, prohibit normal and customary business entertainment of nominal value or the giving of business mementos of nominal value.

**11.3** Customer represents that it or its Participants has received any and all necessary consents from Account holders (i) prior to providing U.S. 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. U.S. 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 U.S. 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 U.S. Bank that it (or its Participants) has obtained such Account holder's express consent to receive Transactional Messages from U.S. 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 U.S. Bank in connection with establishing the Account for the Account holder, whether or not such messages result in charges imposed by a communications provider.

**11.4** **Except as expressly provided herein, U.S. 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 party, in connection with this Agreement, or with respect to software products provided or made available to Customer for its use by U.S. Bank, in connection with this Agreement.**

**12. INDEMNIFICATION.** Customer agrees to indemnify and hold harmless U.S. Bank and its agents, officers, directors, employees, contractors and subcontractors 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 Customer or any third 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 Customer, Participant, Account holders or any third party; (iii) any gross negligence or intentional act of Customer, Participant or Account holders, including, but not limited to, Customer's, Participant's or an Account holder's transmission of incorrect, illegible, duplicate, or fraudulent data to U.S. Bank; or (iv) any Customer Default. U.S. Bank shall notify Customer of any claim that is asserted and each action or suit that is filed or served, and provide Customer with a copy of any written documentation received in relation with the claim, for which U.S. Bank is seeking indemnification pursuant to this Section, provided, however, that failure to give such notice shall not relieve Customer of its indemnification obligations. Customer may thereafter assume control of such claim, *provided* that U.S. Bank shall have the right to participate in the defense or settlement of such claim. U.S. Bank 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 Customer or its counsel or because Customer does not assume control, Customer shall bear the expense of such counsel. Customer may not settle any claim, admit to any liability, or consent to any judgment with respect thereto without the consent of U.S. Bank (which consent may not be unreasonably withheld, delayed or rejected).

**13. LIMITATION OF LIABILITY.** U.S. 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. U.S. Bank is not liable for any damages under the Program that exceed the fees U.S. Bank collected during the 12 months immediately preceding the alleged liability.

- 14. NOTICES.** All notifications, consents, or approvals given or required under this Agreement must be in writing. The parties will deem a notice received (i) two days after the date of mailing if sent by overnight, registered, or certified mail, return receipt requested, or (ii) one day after the date of mailing if sent by a national overnight courier service. Any other written notice is deemed received upon receipt, which in the case of email communications shall occur upon the sender's receipt of (i) a non-automated acknowledgement from the intended recipient or (ii) the first business day after an automated acknowledgement from the intended recipient such as by the "return receipt requested" function. Notices shall be sent to the following addresses: to U.S. Bank at U.S. Bank National Association, Corporate Payment Systems, Mail Code EP-MN-L29C, 200 South Sixth Street, Minneapolis, MN 55402, U.S.A. Attn: CPS Contract Manager (or in the case of email to [contractnotices@usbank.com](mailto:contractnotices@usbank.com)) and to Customer at the address (or email address) stated on the Application. Either party may change its notification address at any time by written notice to the other.
- 15. ASSIGNMENT AND TRANSFER.** Customer shall not assign or otherwise transfer or delegate its rights, obligations, or duties under this Agreement without U.S. 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 U.S. Bank in advance of any material change (and if prohibited, within 15 days after such change) to any information provided to U.S. Bank at any time in contemplation or in furtherance of this Agreement, including, without limitation, 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 U.S. Bank associated with the request for approval.
- 16. GOVERNING LAW AND VENUE.** The laws of the state of Minnesota 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 city of Minneapolis, Minnesota. 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.
- 17. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS.** The parties will maintain compliance with all statutes and regulations applicable to the products and services contemplated under this Agreement, including, without limitation, all economic sanctions laws, anti-money laundering laws, and trade restrictions imposed by the United States, United Nations, European Union or Canada, and U.S. Bank policies related thereto. U.S. Bank may require Identification Information for Customer, its affiliates, 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 U.S. Bank.
- 18. FORCE MAJEURE AND EXCUSABLE DELAY.**
- 18.1.** Except for payment obligations under this Agreement, neither party is responsible for performance delays or failures resulting from acts of God, acts of civil or military authority, fire, flood, strikes, war, epidemics, 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 this Agreement.
- 18.2.** Either party may terminate this 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.
- 19. CHANGE IN TERMS OF THIS AGREEMENT.** U.S. Bank may change the terms and conditions of this Agreement at any time upon written notice to Customer. If permitted by applicable law, the changes will apply to existing Account balances as well as future transactions. If Customer refuses to accept the changes, Customer must notify U.S. Bank, in writing and within 30 days from the date of the notice, that it refuses to accept the changes and elects to terminate this Agreement. Should Customer terminate this Agreement pursuant to this Section 19, all Obligations will immediately become due and payable by Customer to U.S. Bank, according to the terms of this Agreement. A Customer request to U.S. Bank to take an action that is not covered by the terms of the Agreement may be honored by U.S. Bank in its sole discretion. U.S. 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 U.S. Bank.
- 20. INTERPRETATION; ENTIRE AGREEMENT.** The parties expressly agree this Agreement will not be construed more strongly against the drafting party. This Agreement constitutes the entire agreement between the parties, concerning the matters addressed in this Agreement, and cancels and supersedes any prior agreements, undertakings, declarations, or representations, written or verbal, in respect thereof. Headings are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 21. SEVERABILITY.** Should any provision of this Agreement be declared invalid for any reason, such declaration will not affect the validity of any other provision of this Agreement, which will remain in full force and effect, as if this Agreement had been executed with the invalid provision eliminated. The parties shall use their commercially reasonable efforts to agree upon a valid substitute provision in accordance with the purpose of this Agreement and the parties' intent.
- 22. NO WAIVER.** No failure or delay, by either party to exercise any right, power, or privilege provided under this 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.
- 23. RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in this 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 or bind the other party in any manner whatsoever.
- 24. RELATIONSHIP BETWEEN U.S. BANK AND THIRD PARTY SERVICE PROVIDERS.** U.S. Bank may enter into agreements with third parties, for the purpose of marketing and advertising U.S. Bank's products and services and providing other services to U.S. Bank. U.S. Bank may compensate the third parties based on revenue generated instead of a flat fee for such services. The products or services provided to Customer pursuant to this Agreement may include products or services subject to such compensation paid to third parties. To the extent Customer was referred to U.S. Bank

by a third party, namely PFM Financial Services, LLC ("PFM"), Customer authorizes U.S. Bank to release Customer's Confidential Information pertaining to the Program to PFM, including, without limitation, for the purposes of invoicing, payment, and communicating or computing any revenue or fees that may be due from U.S. Bank to such third party.

25. **DELEGATION.** U.S. Bank may delegate duties herein to one or more third parties without Customer approval or consent, so long as, U.S. Bank remains responsible for the conduct of and payment to such third parties.
26. **NO THIRD PARTY BENEFICIARIES OR CLAIMS.** Except as stated in this Agreement, and with reference to any successors or assigns, any services provided under this Agreement are for the sole and exclusive benefit of Customer and Participants, if any, and nothing in this Agreement will be deemed to create any third party beneficiary rights in any person or entity not party to this Agreement.
27. **SET-OFF.** U.S. Bank may set-off any amounts Customer owes to U.S. Bank pursuant to this Agreement or any other agreement between the parties or their affiliates against any amounts due to Customer by U.S. Bank or its affiliates.
28. **CUMULATIVE REMEDIES.** Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.
29. **INCORPORATION.** The following are incorporated into this Agreement by reference as if set out at length herein:
  - 29.1. U.S. Bank Commercial Account Application.
  - 29.2. Schedule 1 – Fees.
30. **WAIVER OF JURY TRIAL.** Customer and U.S. Bank hereby waive all rights to trial by jury in any proceeding relating to this Agreement.

**Schedule 1 – Fees**

<b>FEES</b>	
<b>Description</b>	<b>Fee</b>
<b>Annual Account Fee</b>	\$0.00
<b>Custom Card Design and Production</b>	
Less than 2,000 cards	\$2,000
More than 2,000 cards	\$5,000
<b>Cash Advance Transaction Fee</b>	2.5% (minimum \$2.00)
<b>Convenience Checks</b>	
Transaction fee	2.5% (minimum \$2.00)
Returned check fee	\$15.00
Stop payment fee	\$15.00
Copy fee	\$2.00
<b>Delinquency Fee*</b>	
<b>Corporate Accounts</b>	
Fee assessed on the Delinquent Amount outstanding upon the issuance of the first Statement after the Original Statement	0%
Fee assessed on the Delinquent Amount outstanding on the issuance of the second Statement after the Original Statement (and each Statement thereafter)	2.5% (minimum \$2.00)
<b>Purchase Accounts and One Card Accounts</b>	
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 on the issuance of the second Statement after the Original Statement (and each Statement thereafter)	2.5% (minimum \$2.00)
<b>Electronic Attachment Utility</b>	\$3.00, annually per Account
<b>Single Sign On (SSO) and Cardholder Application (CAP) Fees**</b>	
SSO Implementation	\$5,000
CAP Implementation	\$5,000
SSO plus CAP Implementation	\$7,500
SSO/CAP Support	\$500, annually
<b>Executive Cards</b>	\$100.00 per Account
<b>Executive Platinum Cards</b>	\$345.00 per Account
<b>Expedited Card Delivery Fee</b>	\$30.00, per delivery
<b>Foreign Transaction Fee</b>	1.5%
<b>Logo Setup Fee</b>	\$0.00
<b>Non-Sufficient Funds Fee</b>	\$15.00, per occurrence
<b>Statements</b>	
Paper Statement fee	\$12.00 annually, per Account
Statement copy fee	\$9.00 per copy

\* 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".

\*\* A separate addendum to this Agreement must be executed in order to utilize the SSO and/or CAP functionality.