

VILLAGE OF LOMBARD  
REQUEST FOR BOARD OF TRUSTEES ACTION  
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) \_\_\_\_\_ *Waiver of First Requested*  
X Recommendations of Boards, Commissions & Committees (Green)  
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Timothy Sexton, Director of Finance

DATE: March 1, 2018 (COW)(B of T) March 15, 2018

TITLE: Approval of Corporate Resolution for Credit Card Services

BACKGROUND/POLICY IMPLICATIONS:

The Village currently utilizes a credit card provider to make small purchases. The Village currently has 21 individuals with Village-issued credit cards with a spending limit of up to \$2,500 per transaction and \$5,000 per month. The Village has a Purchase Card Policy included in the Purchasing Manual that each cardholder must follow. The current service provider does not offer a rebate. In addition, the customer service has been very difficult to work with when there are fraudulent claims on the Village's account. If approved, staff will cancel this account.

The Village of Lombard has been approved for a VOX Business Card program with an aggregate credit limit of \$50,000. The proposed program will allow the Village to institute added security to restrict purchases by card holder and provides a rewards program with rebates to the Village based on volume of usage. The program is endorsed by the Village's primary banking services provider, Wheaton Bank and Trust. Staff contacted three local government entities who utilize this program and have 15-30 individual cards. All three entities had very positive reviews. Each entity said the customer service is good and the website is user friendly with more capabilities than they had with their previous vendors.

Staff requests Village Board recommend approval of the attached bank resolution to authorize signers to enter into an agreement with First National Bank of Omaha (VOX Business Card) for credit card services

Review (as necessary):

Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X *Timothy Sexton* \_\_\_\_\_ Date 2/28/18  
Village Manager X \_\_\_\_\_ Date \_\_\_\_\_

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.

I, the undersigned, do hereby certify to First National Bank of Omaha ("FNBO") that I am the duly qualified and acting Village Manager \_\_\_\_\_ (Title/Position), of Village of Lombard \_\_\_\_\_ (Business Name), a Non-Profit \_\_\_\_\_ (Legal Entity Type), referred to as the "Organization". I certify that the Organization is (a) duly formed and validly existing under the laws of the State of Illinois \_\_\_\_\_ and is authorized to do business in the State of Illinois \_\_\_\_\_; and (b) in good standing under both the laws of the state of its formation and the state in which it is authorized to do business. I further certify to FNBO that the following resolutions have been duly adopted by the Board of Directors, Executive Committee, Members, Managers, Owners or other governing body, as applicable, and such resolutions are in full force and effect as of the date hereof:

RESOLVED that:

1. The First National Bank of Omaha Commercial Card Agreement and all respective schedules, addenda, and exhibits ("Agreement") is approved.
2. The individual(s) designated below (the "Authorized Official(s)"), being duly qualified and designated by the Organization and its governing body, and holding the title(s) or position(s) shown, is/are authorized and directed to (a) borrow money on behalf and in the name of the Organization, (b) execute the Agreement on behalf of the Organization as well as any notes, drafts, agreements and other documents and instruments, pledge and encumber property of the Organization (including, without limitation, bank accounts), and (c) name and appoint the individuals who shall be authorized to instruct FNBO to issue credit cards under the Agreement and perform all other duties identified in the Agreement on behalf of the Organization. If there is more than one Authorized Official listed below, each shall independently have full and complete authority to act on behalf of Organization as designated herein and related to FNBO and the Agreement. The initial Authorized Official(s) who is/are appointed to act on behalf of the Organization are listed immediately below (and the signatures below are the genuine signatures of such persons).

Authorized Official(s):

Scott Niehaus _____ Printed Name	Village Manager _____ Title	_____ Signature
Timothy Sexton _____ Printed Name	Finance Director _____ Title	_____ Signature
Jamie Cunningham _____ Printed Name	Assistant Finance Director _____ Title	_____ Signature
_____ Printed Name	_____ Title	_____ Signature

3. The resolutions shall continue to be in full force and FNBO shall be entitled to rely upon the resolutions, until express written notice of rescission, modification or termination has been received by FNBO. Any and all prior resolutions received by FNBO shall continue in full force and effect until FNBO receives such written notice. Any rescission, modification or termination of a resolution must be accompanied by written notification to FNBO.

IN WITNESS WHEREOF, I have subscribed my name to this document on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Signature  
  
Scott Niehaus  
\_\_\_\_\_  
Printed Name  
Village Manager  
\_\_\_\_\_  
Title/Position



## Maximum Rewards for Business products

*(Both small and large business)*

### What's the Earn?

You earn 1 point for every \$1 dollar in qualifying credit card transactions.

### How to redeem points earned?

Customers can access the Rewards website via their online account access 24/7 or they can call the Rewards Service center during normal business hours.

### What's the Burn?

Gift Cards			
MACYS		Visa/ Mastercard	
Denom	Point Value	Denom	Point Value
\$25.00	3,200	\$25.00	4,200
\$50.00	6,300	\$50.00	7,200
\$100.00	12,500	\$100.00	12,500
\$250.00	31,300	\$250.00	31,200

Merchandise		
Merchandise samples		
Item	Point Value	Point Value
Cuisinart Mini-Prep Processor		8,200
Bose Headphones		15,500
Ray Ban Sunglasses		18,800
Samsonite® HYPERspace Spinner Bag		25,900

Cash		
Statement Credits		
Cash	Point Value	Point Value
\$25		3,200
\$50		6,500
\$100		13,000
\$250		32,500
\$1,000		100,000

Travel			
Includes air, hotel & car rental			
Booking	Cost	Point Value	Point Value
Car Rental	\$150		15,789
Hotel	\$425		44,737
AirLine	\$515		54,211
AirLine	\$826		86,947

price of ticket/.0095= points

**COMMERCIAL CARD TERMS AND CONDITIONS**

The following Commercial Card Terms and Conditions and its schedules, exhibits and addenda (the “**Terms and Conditions**”) are incorporated into and made a part of the Commercial Card Agreement between First Bankcard®, a division of First National Bank of Omaha (the “**Bank**”) and the party identified as the “**Company**” in the Commercial Card Agreement. Capitalized terms used in the Terms and Conditions that are not defined in the context of their first use or elsewhere in the Agreement are generally defined in Schedule A to these Terms and Conditions which is fully incorporated herein by reference. Capitalized terms using the singular form in the Agreement also include their plural form (and terms using the plural form also include their singular form).

The First Bankcard® cards in this Program are Powered by Paymentflex Technologies, LLC. Bank is an authorized user of Paymentflex US Patents #5,933,817 and #6,836,764, and of the Paymentflex® registered trademark pursuant to license from Paymentflex Technologies, LLC - ©2012 Paymentflex Technologies, LLC. Bank is the card issuer and creditor of the Program.

**ARTICLE 1: ISSUANCE OF CARDS; IDENTIFICATION OF CARDHOLDERS**

**Section 1.1** Bank shall open and establish an Account for Company (a) upon Bank’s receipt of all required forms, documents and other information from Company and Program Administrator, and (b) pursuant to Bank’s operating procedures.

**Section 1.2** Promptly after the Effective Date and throughout the Term, Program Administrator shall: (a) request issuance of Cards and establishment of Card Accounts for certain Employees, (b) provide Bank requested information regarding each Employee to whom a Card or Card Account is to be established and issued, (c) request and identify an initial Charge Limit for each Card Account and Card requested, (d) designate and identify where each Card, Billing Statement, Card Account Statement, and other materials related to the Program should be delivered, (e) designate and identify any Transaction Limits, and (f) provide Bank with such other information or documentation as Bank reasonably requests in order to operate the Program. Company and Program Administrator shall use Bank’s standard forms, requirements and procedures, as amended from time to time, in complying with the provisions of this Section.

**Section 1.3** Subject to applicable law, Bank’s policies and procedures and Operating Rules, Bank will issue a Card to, and open a related Card Account for, each Employee requested by Program Administrator. Cards, together with each Cardholder Agreement, will be mailed to the address specified by Program Administrator. Unless Bank receives written notice from Program Administrator to not reissue a Card at least 30 calendar days prior to expiration, Bank will issue new replacement Cards for expiring Cards during the Term.

**ARTICLE 2: USE OF ACCOUNT, CARDS AND CARD ACCOUNTS; CANCELLATION OF CARDS**

**Section 2.1** Company understands and agrees that the Account, Cards and Card Accounts may only be used by Cardholders and Company for business-related Transactions. Company shall notify Cardholders regarding the use and restrictions of the Account, Cards and Card Accounts. Bank shall have no duty to question or evaluate the underlying purpose of any Transaction or investigate whether any Cardholder is exceeding the limits of his or her authority to use the Account, a Card or Card Account.

**Section 2.2** Bank shall have sole discretion over the management, operation, content and features of the Program. Bank may modify any aspect of the Program as provided in the Agreement and the Cardholder Agreements.

**Section 2.3** Program Administrator may direct Bank to cancel any Card or Card Account at any time by providing Bank a cancellation notice in the form, time and manner required by Bank. Upon receipt of a cancellation notice from Program Administrator and after a reasonable opportunity to act, Bank will cancel and close the Card or Card Account identified. Company shall immediately notify and direct Bank to cancel any Card and related Card Account upon a Cardholder’s termination of employment with Company. Company shall make reasonable efforts to recover and prevent use of any Card from any person no longer employed or designated by Company to use the Card.

**Section 2.4** Bank may, at any time for any reason and without advance notice, temporarily or permanently suspend the right to use and charge Transactions to the Account or any Card or Card Account. Company’s obligations under the Agreement shall continue notwithstanding any termination or suspension of the right to use the Account or any Card or Card Account.

**ARTICLE 3: LIABILITY FOR TRANSACTIONS, FEES AND OTHER CHARGES; UNASSIGNED CARDS**

**Section 3.1** Company authorizes and directs Bank to extend credit to Company through the Account from time to time by paying the amount of Transactions from the use of each Card and Card Account. As detailed in the Pricing Schedule, Bank shall charge Program Fees and Charges and provide Company certain benefits.

**Section 3.2** Company acknowledges and agrees that it is fully liable to and shall pay Bank for any and all Program Fees and Charges and Transactions resulting from use of the Account, each Card, each Card Account, and any Unassigned Card and its related Card Account, regardless whether any such Transactions were Unauthorized Transactions (including any Transactions made using lost or stolen Cards, fraud or unauthorized use). These liability and payment obligations include Transactions and Program Fees and Charges that exceed any Charge Limit.

**Section 3.3** Company shall not be liable for additional Unauthorized Transactions, fraud or unauthorized use on applicable Cards and Card Accounts after (a) Bank’s receipt of a notice under Sections 2.3 or 10.1, and (b) a reasonable opportunity for Bank to act.

**ARTICLE 4: CHARGE AND TRANSACTION LIMITS; TRANSACTIONS ABOVE LIMITS**

**Section 4.1** Bank, from time to time, will establish, modify and advise Company of its Charge Limit for the Account and for each Card Account. Bank reserves the right to modify the Charge Limit of the Account or any individual Card Account at any time.

**Section 4.2** Bank will assign the Charge Limits and Transaction Limits associated with the Account and each Card Account in accordance with Bank’s policies and procedures and with due consideration given to Program Administrator requests.

**Section 4.3** Program Administrator may request changes (including increases or decreases) to the Charge Limits and Transaction Limits associated with the Account and each Card Account. If Bank agrees, and subject to its policies and procedures, Bank will modify such Charge Limits and Transaction Limits as requested by Program Administrator.

**Section 4.4** Company acknowledges that the Account and Card Accounts may exceed Transaction Limits and Charge Limits and agrees that Bank may allow or reject Transactions that would cause the Account or a Card Account to exceed a Charge Limit or Transaction Limit. Company and its Cardholders shall remain liable and must promptly remit payment to Bank for any and all Transactions that would cause the Account or a Card Account to exceed a Charge Limit or Transaction Limit, as well as any related Program Fees and Charges.

#### ARTICLE 5: DESIGNATION AND RESPONSIBILITIES OF PROGRAM ADMINISTRATOR

**Section 5.1** Company shall designate one or more individual(s) as Program Administrator using Bank's required form, which must be accompanied by any additional documents, certifications and resolutions of Company that Bank requests. By designating a Program Administrator, Company authorizes each such person to act on Company's behalf to: (a) submit requests for Cards and Card Accounts by and on behalf of Company, Employees and Cardholders and designate Employees and Cardholders authorized to receive Cards and use Card Accounts, (b) request, establish or change Charge Limits and Transaction Limits for the Account and each Card and Card Account, (c) request that Bank cancel or suspend any Card and Card Account, (d) act as Company's authorized representative in administering the Program and resolving any disputed Transactions, and (e) perform other administrative duties contemplated by the Agreement or otherwise reasonably required for administering the Program. Program Administrator must promptly advise Bank in writing, using Bank's required forms, of any changes to be made with respect to the Account, any Card and any Card Account. Bank, without further inquiry, may rely on, deal with, and accept Program Instructions from any person who identifies himself or herself as a Program Administrator in all matters related to the operation of the Program. If Company designates more than one Program Administrator, each Program Administrator shall independently have full and complete authority to act on behalf of Company related to the Program. Bank shall not be liable to Company for any Program Administrator that exceeds the limits of his or her authority.

**Section 5.2** Bank will, except as otherwise provided in the Agreement, direct all documents and correspondence relating to the Agreement and Program to Program Administrator. Company must notify Bank of any change in Program Administrator by submitting a new Program Administrator designation form acceptable to Bank. Each Program Administrator designation form shall be effective only after Bank's actual receipt of such form. The submission by Company of a Program Administrator designation form shall constitute a Company's representation that the individual(s) named on the form have been granted general authority from Company's Board of Directors or other governing body (or have been designated by an officer who has been duly authorized by Company's Board of Directors or other governing body) over the transaction of Company's Program-related business with Bank.

#### ARTICLE 6: FINANCIAL REPORTS; GUARANTEED ACCOUNTS

**Section 6.1** At least annually, and when otherwise requested by Bank, Company will provide to Bank reasonably detailed financial statements together with other reports regarding the financial condition of Company including, without limitation, Company's periodic statements of income, statements of cash flow, and balance sheets as well as statements regarding changes in shareholder's equity of Company and any Company Affiliate. Such statements and reports must be audited by an independent public accountant selected by Company or, if permitted by Bank, be accompanied by a certification of Company's chief financial officer that such statements and reports are accurate and complete in all material respects. Bank is authorized to investigate and obtain information about Company as Bank deems appropriate. Bank may provide information about Company and Cardholders to Card Networks, their member institutions and contractors, and credit reporting agencies.

**Section 6.2** If Company or Program Administrator requests and Bank agrees, Bank will open Guaranteed Accounts and issue related Cards. Company hereby acknowledges and agrees to be fully and primarily liable to Bank for any and all Transactions and Program Fees and Charges related to or arising from the use of each Guaranteed Account as well as any and all losses and reasonable costs of collection Bank incurs related to each Guaranteed Account (the "Guarantee"). Company shall execute any additional instruments in the time and manner Bank might request in connection with any such Guarantee. The Guarantee of each Guaranteed Account shall remain in full force and effect after termination of the Agreement and any such Guaranteed Account, until each Guaranteed Account has been paid in full, in cash, and is closed to further activity.

#### ARTICLE 7: CARD REQUIREMENTS AND MARK USE

**Section 7.1** Each Card will bear such language and symbols that Bank deems necessary or appropriate, subject to the applicable requirements and specifications of the Operating Rules. Company shall not use any trademark, service mark, logo, or other intellectual property right of Bank or a Bank Affiliate without the express prior written consent of Bank. Company acknowledges that the Card Network mark(s) are owned by each applicable Card Network and agrees to not do anything inconsistent with such ownership.

**Section 7.2** Except for materials that Bank provides to Company for such purpose, Company shall not provide materials to Employees or Cardholders related to the Program without Bank's prior review and written approval. The Agreement and each Cardholder Agreement shall prevail over any inconsistent statements made by Company, Program Administrator or any Employee about the Program.

**Section 7.3** Bank may use all Company Marks that Company provides to Bank in connection with the Program. Company grants Bank a non-exclusive, non-transferable, non-sublicenseable, royalty-free, paid-up limited license to use such Company Marks, as the same may be modified during the Term, solely in connection with the Program (including use on Cards, periodic statements, Applications, and materials intended for distribution to Employees and Cardholders). Company may update and amend Company Marks during the Term by (a) providing Bank with reasonable notice thereof, and (b) paying any additional expenses Bank incurs in connection with the use of the modified Company Marks. Bank acknowledges that Company is the sole and exclusive owner of Company Marks and all rights, title and interest therein and has full authority to license to Company. Bank shall not authorize any third party to use Company Marks, except for subcontractors and Bank Affiliates engaged by Bank in connection with the Program. On termination of the Agreement for any reason, all Program materials including Cards in the possession of Cardholders that have not expired may continue to bear Company Marks, and the license shall continue, until the later of (i) the expiration of all Cards, (ii) full payment of all outstanding balances on the Account and each Card Account, or (iii) 180 days after termination of the Agreement.

#### ARTICLE 8: PROGRAM STATEMENTS AND REPORTS; BILLING CYCLES; PAYMENTS

**Section 8.1** A Card Account Statement will be generated for each Card Account with a balance for each applicable billing cycle. A Billing Statement will be generated as requested by Company or Program Administrator for each applicable month. Unless directed otherwise by Company, Program Administrator or a Cardholder, each Card Account Statement and Billing Statement shall be sent to the address designated by Program Administrator.



The act of delivering or making available Card Account Statements to Cardholders shall not be deemed Bank's acknowledgment or consent to hold anyone other than Company liable for the sums owed with respect to any associated Card Account. Unless otherwise directed by Company or Program Administrator, Bank will send or make available Card Account Statements for Card Accounts associated with Unassigned Cards to Program Administrator.

**Section 8.2** Company, Program Administrator and each Cardholder shall promptly examine each Billing Statement and Card Account Statement for accuracy, unauthorized use, Unauthorized Transactions and disputed Transactions. If Company, or Program Administrator or a Cardholder suspect or identify any errors, unauthorized use or Unauthorized Transaction on any Billing Statement or Card Account Statement, Program Administrator shall immediately notify Bank and, as applicable, comply with Sections 2.3, 10.1 and 10.2.

**Section 8.3** Bank will establish a monthly periodic billing cycle for the Account and each Card Account. Bank shall assign the Statement Date for each Billing Statement and Card Account Statement. The Payment Due Date will be at least 20 days after the Statement Date disclosed on each Billing Statement or Card Account Statement. Company hereby promises and agrees to pay Bank in full on or before each applicable Payment Due Date an amount equal to at least the minimum payment amount listed on each Card Account Statement and Billing Statement. The Commercial Card Agreement signed by the Parties establishes how Bank will determine the minimum payment amount that Company and its Cardholders must pay Bank for each Billing Statement and Card Account Statement. All payments must be remitted to Bank in U.S. dollars. Payments on the Account and Card Accounts may be applied in the order Bank selects from time to time. Until Bank determines a payment is unlikely to be returned for insufficient funds or some other reason, the credit available for the Account and Card Accounts may not reflect the payment.

**Section 8.4** Company agrees to make payments to Bank in the time, manner and amount required by the Agreement, each Card Account Statement and each Billing Statement. If Company fails to pay any amount when due under the Agreement, Bank may, and Company hereby authorizes Bank to, without further notice to Company, apply any account balances of Company held by Bank toward any balance owed under the Agreement. Payments received at Bank's designated payment processing center after 5:00 p.m. Central Time on a Bank business day (or on any day that is not a Bank business day) will be credited to Company's Account and related Card Accounts on the next Bank business day. Bank is permitted to accept late payments, partial payments or payments marked with restrictive endorsements without losing any of its rights under the Agreement.

#### ARTICLE 9: MERCHANT DISPUTES; TRANSACTIONS MADE IN FOREIGN CURRENCIES

**Section 9.1** In the event Company has any dispute concerning goods or services purchased from any seller or service provider using the Account, any Card or any Card Account, Company shall nevertheless pay Bank the amount of the related Transaction and Program Fees and Charges in accordance with the Agreement. Company will contact any such seller or service provider directly to resolve such dispute. If Company cannot directly settle its dispute with a seller or service provider, then Company can request Bank to process a chargeback subject to the Operating Rules. Company acknowledges that Bank is not liable for the quality of any such goods or services and that any dispute between Company and any seller or service provider shall not affect Company's obligation to pay Bank in full for all Transactions and related Program Fees and Charges.

**Section 9.2** If any Transaction is made in a currency other than U.S. dollars outside of the United States, the charges incurred in a foreign currency will be converted by the applicable Card Network into a U.S. dollar amount in accordance with its Operating Rules. Company shall be liable to Bank for all transaction and conversion fees and charges associated with any such Transactions.

#### ARTICLE 10: REPORTING UNAUTHORIZED USE; BILLING ERRORS; LIABILITY PROGRAM

**Section 10.1** If Company, Program Administrator or a Cardholder knows of or suspects the loss, theft or possible unauthorized use (including Unauthorized Transactions) of the Account, a Card or Card Account, Program Administrator shall promptly notify Bank and request that such Card or Card Account be cancelled. Company and Program Administrator shall promptly notify each affected Cardholder and use reasonable efforts to retrieve or destroy each affected Card. Company shall also cooperate and cause Employees and Cardholders to cooperate with Bank in its efforts to resolve any suspected Unauthorized Transactions and fraudulent transaction related to the Account or any Card or Card Account.

**Section 10.2** Program Administrator shall provide written notice to Bank of any suspected error related to any Transaction, the Account and any Card Account, within 60 calendar days after the date of the Billing Statement or Card Account Statement on which any such error first appeared. Each such notice must disclose the dollar amount of the suspected error, a Transaction reference number, and a description of the suspected error. Bank will investigate each report of a suspected error and make a determination. All Billing Statements and Card Account Statements will conclusively be deemed correct, unless Company or a Cardholder has provided Bank with written notice of a suspected error as required by the Agreement and any applicable Cardholder Agreement. Company may not deduct or withhold, without the prior written approval of Bank, any credit, chargeback, disputed or questioned amount from the aggregate amount due when making payment.

**Section 10.3** Company's liability for Unauthorized Transactions, fraud or unauthorized use of the Account or any Card or Card Account may be reduced to the extent of any applicable Liability Program benefits. Company's coverage shall be subject to the terms, exclusions, and conditions of the Liability Program as established, modified or suspended from time to time by the Card Network and the Liability Program's underwriters. Bank shall not have any liability to Company related to any Liability Program.

#### ARTICLE 11: REPRESENTATIONS, WARRANTIES, AND COVENANTS

**Section 11.1** Company represents, warrants and covenants that: (a) Company will cause Bank to issue and maintain ten or more Cards at all times under the Agreement, (b) Company is duly organized, existing and in good standing under the laws of the state of its incorporation or formation and has full right, power and authority to make and perform the Agreement and to comply with all of the provisions of the Agreement, (c) the making and performance by Company of the Agreement and securing extensions of credit from time to time through the issuance or establishment of Company's Account, Cards, and Card Accounts has been validly authorized by all necessary action of Company and does not violate Company's articles of incorporation, articles of organization, partnership agreement, by-laws or any other document or agreement pursuant to which Company is organized, or any provision of applicable law, regulation, order or rule of any governmental agency, or court decision, (d) all information (including without limitation business and financial data) now or hereafter furnished to Bank and the information contained in each Application, notice of cancellation or other documentation submitted by Program Administrator or Company to Bank hereunder shall be true, complete and accurate as of the date thereof and may be relied upon by Bank as being

authorized by Company, (e) the Account and all Cards and Card Accounts established or issued pursuant to the Agreement shall be used only for business or commercial purposes, (f) each entity designated by Company (or Program Administrator) or on behalf of whom Guaranteed Accounts are opened is and shall be a Company Affiliate during the Term, and (g) Company is the sole owner of the Company Marks and has and shall maintain the full right, power and authority to grant any applicable license of Company Marks to Bank and, in doing so, shall not infringe upon or violate any rights or interest held in those marks by any third party or Company Affiliate.

**Section 11.2** Nothing contained in the Agreement shall impair Company's obligation, which shall be unconditional and absolute, to repay all extensions of credit arising out of the use of the Account, Cards, or Cards Accounts for any purpose and to pay all of its other obligations and liabilities as provided in the Agreement. The representations and warranties in this Article are made to induce Bank to issue Cards for Company's Account and Card Accounts and to extend credit to it from time to time. The representations and warranties made by Company in this Article shall constitute continuing representations and warranties, until such time as (a) the Agreement is terminated as herein provided, (b) all Cards have been returned to Bank or cancelled, (c) all Card Accounts and the Account have been cancelled, and (d) all amounts owing Bank under the Agreement have been paid in full.

**Section 11.3** Bank represents, warrants and covenants that the Agreement has been authorized by all necessary action of Bank, does not violate Bank's charter, by-laws, any other agreement binding upon Bank, or any provision of applicable law. **BANK MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROGRAM OR BANK'S PERFORMANCE OF SERVICES UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

#### ARTICLE 12: INDEMNIFICATION OBLIGATIONS OF COMPANY; LIMITATION OF BANK LIABILITY

**Section 12.1** Company will indemnify and hold harmless Bank, Bank Affiliates, and their respective officers, directors, agents, subcontractors and employees from and against any and all claims, demands, actions, proceedings, liabilities, losses, actual damages and expenses, including actual and reasonable counsel fees, arising directly or indirectly from: (a) Company's breach of any of its representations, warranties, agreements, or covenants under the Agreement, (b) Bank's compliance with or carrying out any instruction or request which identifies Company as sender, (c) Bank's actions or omissions in performing services in connection with the Program, unless such actions or omissions are determined to result from Bank's gross negligence or willful misconduct, (d) any incorrect classification of a merchant under the Card Network's Merchant Category Codes that allows Transactions that the Parties intended to preclude under Transaction Limits, (e) Bank's good faith refusal to approve any Transaction, or (f) the issuance and use of Unassigned Cards.

**Section 12.2** Bank shall not incur any liability for any failure or delay in carrying out any of its obligations under the Agreement if such failure or delay results from Bank acting in accordance with applicable laws or applicable Operating Rules, or from acts of God, strike or stoppage of labor, power failure, system, network, or equipment failure, adverse weather conditions or any other cause beyond Bank's control.

**Section 12.3** Bank or any person, entity or financial institution presented with a Card or Card Account may refuse to authorize any particular Transaction. Bank shall have no obligation, responsibility or liability to Company or any Employee, Cardholder or user of a Card or a Card Account (including an Unassigned Card user) if (a) any person, entity, third party, Card Network, or financial institution refuses to honor or process a Transaction on a Card, Card Account or the Account, or (b) Bank refuses or fails to authorize the use of or process any Transaction on a Card, Card Account or Account. Bank shall not be responsible or liable in any way for the performance of equipment, software, communication lines and Program services provided by Company or any party other than Bank.

**Section 12.4** The liability of Bank to Company for any loss or damage arising from or relating to the Agreement or any of Bank's services in connection with the Program shall be limited to direct damages attributable to the gross negligence or willful misconduct by Bank, and in no event shall (a) Bank be liable for any other damages, including, without limitation, indirect, exemplary, consequential, punitive or special damages, (b) Bank's liability to Company for damages under the Agreement exceed the Program Fees and Charges Company paid Bank during the six months preceding the date on which Company's claim accrued, and (c) Bank be liable for any claim asserted against Company by any third party, except as set forth in the Agreement.

#### ARTICLE 13: CONFIDENTIALITY

**Section 13.1** (a) Bank agrees to hold Company Confidential Information in trust and to use reasonable efforts to maintain, protect and assure the confidentiality thereof. Except as expressly provided in the Agreement, Bank, whether by act or omission, shall not copy, publish, disseminate, divulge, release, furnish or otherwise disclose Company Confidential Information to any other person or entity for any purpose whatsoever. Bank shall take all reasonable steps to prevent unauthorized disclosure of Company Confidential Information. Bank shall give Company immediate notice of any unauthorized use or disclosure of Company Confidential Information. (b) Company agrees to hold Bank Confidential Information in trust and to use reasonable efforts to maintain, protect and assure the confidentiality thereof. Except as expressly provided in the Agreement, Company, whether by act or omission, shall not copy, publish, disseminate, divulge, release, furnish or otherwise disclose Bank Confidential Information to any other person or entity for any purpose whatsoever. Company shall take all reasonable steps to prevent unauthorized disclosure of Bank Confidential Information. Company shall give Bank immediate notice of any unauthorized use or disclosure of Bank Confidential Information.

**Section 13.2** This Article shall not apply to Bank Confidential Information or Company Confidential Information that: (a) was already rightfully in the possession of a Party before receipt from the other Party, (b) is or subsequently becomes a part of the public domain through no fault of the recipient Party, (c) is subsequently disclosed to a Party by a third party not under any confidentiality obligation related thereto, or (d) is independently developed without use of or reference to Bank Confidential Information or Company Confidential Information.

**Section 13.3** This Article shall not be deemed to prohibit disclosures: (a) required by applicable law, regulation, court order or subpoena, (b) to the auditors or attorneys of either Party, provided that such parties are obligated to maintain the confidentiality of the confidential information they receive, (c) to Bank's governmental regulators, (d) to the affiliates of the Parties, provided that each Party shall be responsible for assuring its affiliates' compliance with the terms of this Article, (e) by Bank to its service providers and consultants, provided they are subject to binding confidentiality obligations, (f) to the employees of a Party that have a need to know in connection with the Agreement, (g) of the Agreement and Company Confidential Information by Bank to banks, proposed investors and financing sources or to third parties in connection with effectuating a merger, assignment, sale or acquisition of the Agreement (and its related Account and Card Accounts) or Bank, or (h) by Bank to a Card Network.

**Section 13.4** All Bank Confidential Information and Company Confidential Information disclosed shall be returned to each respective Party upon request or destroyed upon termination or expiration of the Agreement, except as required to be retained by applicable law or Bank's policies and procedures. Notwithstanding the return or destruction of such information, each Party will continue to be bound by its obligations of confidentiality and other obligations hereunder.

**Section 13.5** Breach of this Article may give rise to irreparable injury, inadequately compensable in damages. A Party may seek injunctive relief against the breach or threatened breach by the other Party of this Article, in addition to such legal remedies as may be available, including the recovery of damages.

#### ARTICLE 14: ASSIGNMENT AND SUBCONTRACTS; AMENDMENTS

**Section 14.1** Without the express written consent of Bank, Company may not assign, transfer or delegate (a) the Agreement, or (b) any right, duty or obligation under the Agreement. Without Company's consent, Bank may assign, transfer or delegate (i) the Agreement; or (ii) any right, duty or obligation under the Agreement. The Agreement shall be binding upon and inure to the benefit of both Parties and, unless otherwise contemplated in the Agreement, their permitted representatives, successors and assigns. Any attempted assignment of rights or delegation of obligations contrary to the provisions of the Agreement shall be void.

**Section 14.2** Without Company's consent, Bank may subcontract with other entities for the provision of services under the Agreement. All entities entering into a subcontract with Bank shall be entitled to rely on and benefit from the provisions of the Agreement as if they were Bank (including the limitations on liability and indemnities).

**Section 14.3** The Agreement, including the Commercial Card Agreement, the Terms and Conditions and their respective schedules, exhibits and addenda, constitutes the entire understanding between the Parties and it supersedes all prior agreements and negotiations.

**Section 14.4** The Agreement may be executed in counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument. Signatures transmitted by facsimile or in digital or electronic format shall be deemed originals. The Parties agree that (a) Bank may electronically sign the Agreement, and (b) any electronic signature by Bank, whether digital or encrypted, by its respective signatory is intended to authenticate such signature and to give rise to a valid, enforceable, and fully effective agreement and shall have the same force and effect as the use of a manual signature.

**Section 14.5** The Agreement may be amended in writing signed by both Parties. Subject to applicable law, the Agreement and each Cardholder Agreement may also be modified and amended by Bank, in its discretion, by sending Company written notice of any such modifications or amendments. If Bank does modify or amend the Agreement, it will be effective as of the date Bank lists in the notice without further assent necessary from Company.

#### ARTICLE 15: NOTICES

**Section 15.1** Except as otherwise provided in the Agreement, any notice or other communication to be given under the Agreement shall be in writing and delivered by hand, overnight courier service or mailed, postage prepaid, to the address listed in the Commercial Card Agreement signed by the Parties, or at such other address as either Party may subsequently designate in writing to the other Party.

**Section 15.2** Notwithstanding the foregoing, Bank may rely on facsimile and electronic transmissions from Company to a facsimile number or electronic mail address designated by Bank regarding the Program.

#### ARTICLE 16: EFFECTIVE DATE AND TERMINATION

**Section 16.1** The Agreement shall remain in full force and effect for an initial term of one year from the Effective Date (the "Initial Term"). The Agreement shall be renewed automatically for successive renewal terms of one year each (each, a "Renewal Term"). Either Party may terminate the Agreement as of the end of the Initial Term or any Renewal Term by providing written notice of non-renewal to the other Party at least 90 calendar days prior to the end of any such Initial Term or Renewal Term.

**Section 16.2** Upon termination of the Agreement, (a) Bank will promptly cancel the Account and all Cards and Card Accounts, (b) Company's right to receive incentive payments or benefits under the Pricing Schedule shall terminate, (c) Company shall collect and destroy each Card and cease use of the Account and each Card Account, (d) any Online Services license or other licenses granted to Company shall terminate, (e) Company shall promptly return to Bank all Program materials in its possession and control, (f) Bank shall have the right to demand immediate payment of the entire balance owed by Company and each Cardholder under the Account and all Card Accounts, and (g) Bank shall have the right to setoff any accounts Company maintains with Bank for any amounts owing to Bank under the Agreement, and Company waives any demands and notices that might otherwise be required to the extent permitted by applicable law.

**Section 16.3** In the event that either Party materially breaches the Agreement, the non-breaching Party may terminate the Agreement effective upon 30 days' advance written notice, unless such breach is cured within said 30-day period. Notwithstanding the foregoing, if Company (a) fails to make payments as required under the Agreement, (b) breaches any of its representations, warranties, covenants, or agreements in the Agreement, (c) has made any statement to Bank or provided Bank with any credit information that is false in any respect, (d) (or any guarantor of Company's obligations under the Agreement) is in default of any other obligation it may owe to Bank or any Bank Affiliate, or (e) becomes insolvent, subject to a receivership, or subject to a voluntary or involuntary bankruptcy or similar proceeding, or Bank, in good faith, determines that the financial condition of Company has become impaired, Bank may: (i) require immediate payment of the entire balance of Account and all amounts owing under the Agreement, (ii) immediately terminate the Agreement, (iii) cancel or suspend use of any Account, Card or Card Account, and/or (iv) without prior notice to Company, apply any deposit account balances of Company held by Bank or any Bank Affiliate to the Account balance or any other amount owing hereunder.

**Section 16.4** Company agrees to advise Bank promptly of any consolidation, merger, sale or conveyance of Company or any principal part of its assets, or the sale or conveyance of any controlling interest in Company, and upon any such happening Bank shall have the right to terminate the Agreement upon written notice to Company. Bank shall have the ability to terminate the Agreement without penalty upon the direction of any of its governing regulators and as necessary to comply with applicable law and the Operating Rules.

**Section 16.5** The following Articles and Sections shall survive the termination of the Agreement: Articles 5, 9, 10, 11, 12, 13, 17, 19 and 20; and Sections 3.2, 4.4, 6.1, 6.2, 7.3, 8.2, 8.3, 8.4, 16.3, and 16.5.



**ARTICLE 17: LIMITATION OF CLAIMS**

**Section 17.1** Company and Bank both agree, to the fullest extent allowed by law, that: (a) Claims will not under any circumstances be pursued in Class Proceedings, and (b) each Party waives the right to bring or to participate in Class Proceedings against the other Party. If some other person initiates a Class Proceeding against either Party, the other Party may not join that proceeding or participate as a member of that class.

**ARTICLE 18: ONLINE REPORTING; DATA FEEDS**

**Section 18.1** Bank may, from time to time and as agreed by Bank and Company, provide to Company online reporting capability in the form of Standard Reports and, as long as no development is required by Bank, certain customized reports ("**Online Reporting**"). Currently, there are ten (10) Standard Reports available. If Online Reporting is provided, the following provisions shall apply: (a) Company may use the Standard Reports and applicable customized reports to obtain additional detail about the use of the Account and Card Accounts; (b) Company shall comply with all Operating Rules, Card Network requirements, and Bank requirements, policies and procedures for Online Reporting including the execution of any additional forms or documents and, as applicable, the provisions of Article 19; (c) There will be no fee for the Standard Reports; (d) There will be no fee for any customized reports that do not require development by Bank and which Bank makes available for use by Company; and (e) Bank may discontinue Online Reporting at any time in its discretion.

**Section 18.2** Bank may, from time to time and as agreed by Bank and Company, provide to Company Data Feeds. If Data Feeds are provided, the following provisions shall apply: (a) Company shall only use Data Feeds for its own internal purposes; (b) Company shall comply with all Operating Rules, Card Network requirements, and Bank requirements, policies and procedures for Data Feeds including the execution of any additional forms or documents and, as applicable, the provisions of Article 19; (c) Company shall pay to Bank a one-time set up fee of \$300 prior to receiving the first Data Feed; and (d) Bank may discontinue providing Data Feeds at any time in its discretion.

**ARTICLE 19: ONLINE SERVICES**

**Section 19.1** As specified in the Set-Up Forms, Bank may make available the following services to Company through one or more Online Services Systems, all as more specifically described in the User Guide (the "**Online Services**"): (a) Online Account Information, and (b) Online Services System access in connection with the maintenance of Card Accounts and Program Instructions.

**Section 19.2** The communication of Program Instructions through the Online Services System will (a) constitute written notice of such Program Instructions in accordance with the Agreement, and (b) satisfy any requirement for written documentation, including any completed Application requirement for a Card Account (except for the Account or first Card Account requested).

**Section 19.3** As applicable, Bank grants to Company an Online Services Software License subject to the terms of this Article. This Online Services Software License shall be effective while any such Online Services Software is in use by Company on the Online Services System. Company acknowledges and agrees that:

- (a) Company will not have any ownership or other proprietary rights in the Online Services Software, the User Guide, and any other Online Services Materials;
- (b) the Online Services Software and Online Services Materials are protected by the copyright laws of the United States, are confidential and proprietary trade secrets and of substantial value to the owner, and their use and disclosure must be carefully and continuously controlled by Company and its Program Administrator and Employees;
- (c) the Online Services Materials must include all copyright, trade secret and any other proprietary notices and legends;
- (d) Company will not (i) remove, alter or obscure any trademark, trade names, logos, copyright or other notice contained or included in any of the Online Services Software or Online Services Materials, (ii) transfer or license any portion of the Online Services Software, (iii) modify the Online Services Software or its source code, (iv) create derivative works from the Online Services Software or Online Services Materials, (v) reverse engineer or attempt to reverse engineer the Online Services Software, or (vi) attempt to discern the source code residing on the server of the Online Services Software;
- (e) the Online Services Software will only be used by Company and not used for or on behalf of others;
- (f) Company will not disclose, publish, release, transfer or otherwise make the Online Services Software or Online Services Materials available to any other person or entity; and
- (g) Company will not directly or indirectly copy, duplicate, or furnish to others any version of the Online Services Software or Online Services Materials or permit others to do so.

**Section 19.4** Bank will, as applicable, provide Company with Devices required for access to the Online Services System, as further described in the User Guide and Security Procedures. Company agrees that the Security Procedures provide it with a commercially reasonable level of security for use of the Online Services and access to the Online Services System. Company and each user must safeguard the Devices and keep them confidential and secure from unauthorized use. Company must promptly report any breach of security to Bank. Company acknowledges and agrees that Bank may rely on, and Company will be bound by, any and all requests for Online Account Information and any and all Program Instructions when accompanied by the applicable Devices and received in good faith by Bank. Bank has no duty or responsibility to discover, audit, or report to Company any breach of security, but Bank will use reasonable efforts to notify a Program Administrator if it learns about any such breach. Bank will not incur any liability to Company for any failure or delay by Bank in providing Company with any such notice.

**Section 19.5** Company must use a Browser that complies with specifications set forth in the User Guide. Company agrees to use the Online Services in compliance with all applicable laws and regulations. Company acknowledges and agrees that the Online Services do not include any recommendation, guaranty, representation or warranty. Bank shall not be responsible for errors in Online Account Information.

**Section 19.6** Company shall have appropriate security measures for Internet use, including, a proxy server and/or firewalls to control and protect Internet access. Bank shall not be responsible for (a) inability to contact the Online Services through the Internet resulting from a problem with an Internet service provider or online service provider, or (b) unknown hazards of Internet use. If Company fails or is unable to access the Online Services, Bank's sole responsibility shall be to use its commercially reasonable efforts to correct the problem and Bank shall not suffer or incur any other liability in connection therewith.

**Section 19.7** Bank will not be responsible for any data that is lost or destroyed in connection with the use of the Online Services. In addition, Bank will not be responsible for Company's inability to use the Online Services due to a mechanical hard drive failure or other system failure.

**Section 19.8** In no event will Bank have any liability whatsoever in connection with (a) any application errors in or security breaches of any Browser, (b) Company's inability to use the Online Services or access the Online Services System due to any Internet or Browser problem or any other cause beyond Bank's control, or (c) any interception of any Online Account Information as a result of the use of the Internet.

**Section 19.9** Bank hereby reserves the right to suspend the Online Services without notice to Company. Bank may terminate the Online Services upon notice to Company.

**Section 19.10** Any separate online business banking services agreement between Company and Bank shall supplement the Agreement with respect to the Online Services. If a provision of the Agreement conflicts or is inconsistent with any provision of the online business banking services agreement, then the provision which is more protective of or beneficial to Bank shall control.

#### ARTICLE 20: MISCELLANEOUS

**Section 20.1** The Agreement is governed in all respects by the laws of the State of Nebraska and the United States of America, but does not include any conflict of law rule that might direct or refer determination of any such matter to the laws of any other jurisdiction. The Parties hereby consent to the exclusive jurisdiction and venue of any local, state, or federal court located within the County of Douglas, State of Nebraska, for any action or proceeding arising out of the Agreement.

**Section 20.2** If any provision of the Agreement is held invalid, illegal, or unenforceable for any reason by a court of competent jurisdiction, the Parties agree that all other provisions of the Agreement shall remain unimpaired and enforceable.

**Section 20.3** The Parties agree that any waiver of a breach of a term or condition of the Agreement shall not be construed to be a waiver of any other breach of the same, or other terms and conditions. A Party's failure to enforce any breach of the Agreement, shall not be construed as a waiver of such breach.

**Section 20.4** The article and section titles in the Agreement are included as a matter of convenience, for reference purposes only, and in no way define, limit, expand, or describe the scope or intent of any provision of the Agreement. The Agreement shall not be presumptively interpreted for or against either Party by reason of that Party having drafted or negotiated, or failed to draft or negotiate, all or any portion of the Agreement.

**Section 20.5** The Parties agree that a separate guaranty may be required as indicated in the Agreement or as subsequently requested by Bank to guarantee Company's indebtedness, obligations, and liabilities under the Agreement. In the event that a guaranty is required by the Agreement or Bank subsequently requires a guaranty, Company shall timely provide such guaranty to Bank which must be (a) executed by a person or entity acceptable to Bank, and (b) in the form provided by Bank. Notwithstanding any other provision of the Agreement, if a guaranty is required in the Agreement at the beginning of the Initial Term, the Agreement shall not be effective until Bank has received such duly executed guaranty.

**Section 20.6** Bank may, at anytime, require Company to execute and deliver to Bank a security agreement in the form provided by Bank as security for Company's indebtedness, obligations and liabilities under the Agreement. In the event Bank requires such a security agreement, Company agrees that it shall timely (a) deliver to Bank the duly executed security agreement, (b) open any deposit account outlined in the security agreement, and (c) deposit funds into the deposit account in the amount as may be indicated in the security agreement. Notwithstanding any other provision of the Agreement, if a security agreement is required at the beginning of the Initial Term, the Agreement shall not be effective until Bank has received such duly executed security agreement, the deposit account has been established and the funds have been deposited by Company.

**SCHEDULE A - DEFINITIONS**

- "Account"** means the master account Bank establishes in Company's name, associated with Cards Bank issues to Company, Employees and Cardholders, and reflecting all Transactions made with Card Accounts of Employees and Cardholders.
- "Agreement"** means the Commercial Card Agreement between the Parties, the Terms and Conditions, and their respective schedules, exhibits, and addenda.
- "Application"** means an application submitted to Bank requesting Bank open an Account or issue a Card and open a related Card Account for a Cardholder.
- "Bank Affiliate"** means all entities that are Controlling, Controlled by or under common Control with Bank, its parent First National of Nebraska, Inc., the Lauritzen Corporation or any financial services entities controlled by the Lauritzen family.
- "Bank Confidential Information"** means (a) the Agreement and its terms, (b) the Program Fees and Charges, (c) Program materials and processes, (d) security procedures for the Program, Account, Cards and Card Accounts, (e) Online Services, Online Services System, Online Services Software and related materials (including the User Guide, Devices and Online Services Materials), and (f) any other proprietary materials of Bank that Bank designates and labels as confidential.
- "Billing Statement"** means a periodic statement Bank prepares to disclose a summary of the applicable balances due under all Card Account Statements for applicable Card Accounts as well as an aggregate amount owed by Company for the Account.
- "Browser"** means an Internet browser that complies with the User Guide specifications.
- "Card"** means any plastic card that Bank issues to Company, an Employee or a Cardholder under the Program. Any reference to use of a Card in the Agreement shall also mean use of its related Card Account.
- "Card Account"** means each sub-account Bank establishes for Cardholders under the Account, including those associated with use of a particular Card, those for which Bank has not issued a Card, and Guaranteed Accounts.
- "Card Account Statement"** means an individual periodic statement Bank prepares to disclose the applicable balances, Transactions, and Program Fees and Charges for a Card Account at the end of each billing cycle.
- "Card Network"** means a network organization that processes transactions made with credit cards, charge cards, and other payment cards, including but not limited to Cards that Bank may issue for commercial use by Employees and Cardholders.
- "Cardholder"** means an Employee who is authorized to use a Card and Card Account, including any person using an Unassigned Card for any reason from time to time.
- "Cardholder Agreement"** means any agreement between Bank and a Cardholder that governs a Cardholder's use of a Card and Card Account, as amended from time to time.
- "Cash Advance"** means the use of a Card or Card Account or any check, instrument, certificate, device or method Bank permits for access to the Card Account, when used to obtain a cash advance or a Cash Equivalent Transaction or to initiate any Transaction other than one designated as a Purchase or Special Offer by Bank. Any such Cash Advance can result from transactions made through Bank, participating financial institutions, ATMs, point of sale terminals, or otherwise, regardless of whether a Card was presented, the Cardholder's signature was obtained, or a personal identification number was assigned to or used by a Cardholder.
- "Cash Equivalent Transaction"** means a Cash Advance obtained through a merchant or service provider that the Card Network has identified as a seller of travelers checks, foreign currency, money orders, wire transfers, lottery tickets, funds used for wagers or gambling, or similar products or services.
- "Charge Limit"** applies to both the Account and each related Card Account, and means the maximum aggregate unpaid balance of all Transactions and Program Fees and Charges that may be outstanding on the Account or a Card Account at any time, as determined by Bank.
- "Claim"** means any pre-existing, present or future claim, dispute or controversy that arises from or in any way relates to (a) the Program, or (b) the acts or omissions of any Party, Bank Affiliate, Company Affiliate, Cardholder and Employee if those acts or omissions affect or relate to the Program, the Agreement, the Account, any Card Account, any Card or any benefits, rewards or other products or services related thereto. Such Claims include, without limitation, claims based on contract and tort (including intentional torts), claims made in law or in equity, claims based on constitutional, statutory, regulatory and common law rights, and claims for damages, penalties and injunctive, declaratory or equitable relief.
- "Class Proceeding"** means any Claim or Claims brought by or on behalf of a class, brought in a representative capacity or otherwise on a class basis, or brought in the form of a private attorney general action, regardless of whether they are commenced in court or in arbitration.
- "Company Affiliate"** means all entities that are Controlling, Controlled by or under common Control with Company.
- "Company Confidential Information"** means (a) non-public financial information about Company that Bank receives from Company, and (b) any other proprietary materials of Company that Company designates and labels as confidential.
- "Company Marks"** means the trademarks, service marks, trade names, names, logos, copyrights and other proprietary materials and information owned by Company or a Company Affiliate which are provided to Bank for use in connection with the Program.
- "Control"** means possessing, directly or indirectly, the power to direct or cause the direction of the management policies or operations of any entity, whether through ownership of voting securities, by contract, or otherwise.
- "Data Feeds"** means detailed Account and Card Account information that Bank provides to Company through a standard file transfer protocol which includes additional information about Transactions, debit and credit adjustments, and additional transaction-level data available through addenda records and hierarchy records.
- "Devices"** mean the security codes, passwords, and other security materials required for access to the Online Services System, as further described in the User Guide.
- "Effective Date"** means the effective date of the Agreement established by the Commercial Card Agreement signed by the Parties.
- "Employee"** means an employee, agent, contractor, director, or officer of Company or a Company Affiliate.
- "Guarantee"** shall have the meaning assigned in Section 6.2.

**"Guaranteed Account"** means a Card Account, regardless if it is affiliated with a Card, which is established for a Cardholder who is an employee, agent, contractor, director or officer of a Company Affiliate. "Initial Term" shall have the meaning assigned in Section 16.1.

**"Initial Term"** shall have the meaning assigned in Section 16.1.

**"Liability Program"** means liability protection insurance coverage that a Card Network or third party insurer may separately agree to provide Company related to Unauthorized Transactions.

**"Merchant Category Code"** means a code that a Card Network has assigned to identify the principal business of a vendor, merchant or other third party that accepts payments from customers made with Cards and Card Accounts.

**"Online Account Information"** means information about the Program, Account, and Card Accounts which Bank makes available to Company in connection with the Online Services System.

**"Online Reporting"** shall have the meaning assigned in Section 18.1.

**"Online Services"** shall have the meaning assigned in Section 19.1.

**"Online Services Materials"** means the User Guide and all other documents Bank makes available to Company in connection with its use of the Online Services, the Online Services Software, and the Online Services System.

**"Online Services Software"** means any software accessible to Company through the Online Services System.

**"Online Services Software License"** means the personal, nonexclusive and nontransferable license Bank grants to Company to use software accessible to Company through the Online Services System.

**"Online Services System"** means one or more operating systems, applications, and platforms through which Bank makes available Online Services to Company, as described more specifically through the User Guide.

**"Operating Rules"** mean the operating rules and regulations of a Card Network, Bank, or both, as amended from time to time.

**"Payment Due Date"** means the date after each Statement Date for the Account and each Card Account by which payment to Bank is due from Company and its Cardholders.

**"Pricing Schedule"** means the terms, conditions, and limitations set forth in Schedule B which is fully incorporated herein by reference, as amended by Bank from time to time in accordance with the Agreement, including all Program Fees and Charges that Company or Cardholders must pay Bank and for any benefits and related services Bank provides to Company.

**"Program"** means the commercial card program Bank establishes for Company on terms and conditions set forth in the Agreement, through which Bank opens the Account and permits use of Cards and Card Accounts.

**"Program Administrator"** means each individual Company designates as a Program representative, in the form and manner required by and acceptable to Bank, each of whom is individually authorized to take any action specified by the Agreement in connection with the Program.

**"Program Fees and Charges"** means the fees, charges, interest, and interest rates for the Account and the Card Accounts established by the Pricing Schedule and payable to Bank by Company and Cardholders.

**"Program Instructions"** means the features Company and its Program Administrator have requested or selected in connection with the Program, Account, Card Accounts, and Online Services (through Set-up Forms).

**"Purchase"** means use of a Card or Card Account or any check, instrument, certificate, device or method Bank permits for access to a Card Account, when used to pay for goods or services sold, leased, or otherwise provided by any person, entity, or financial institution or initiate any transaction other than one designated as a Cash Advance or Special Offer by Bank, regardless of whether a Card was presented or a Cardholder's signature was obtained by any such person, entity, or financial institution.

**"Renewal Term"** shall have the meaning assigned in Section 16.1.

**"Security Procedures"** means the security procedures for using Devices required for access to the Online Services System, as described in the User Guide.

**"Set-up Forms"** means the forms Company provides to Bank to request Online Services.

**"Special Offer"** means use of a Card or any check, instrument, certificate, device or method Bank permits for access to the Card Account, to take advantage of special, introductory or promotional offers Bank may identify from time to time or initiate any transaction other than one designated as an Cash Advance or Purchase by Bank, regardless of whether a Card was presented or a Cardholder's signature was obtained by any such person, entity, or financial institution.

**"Standard Reports"** mean online reports that Bank routinely prepares and makes available to commercial card customers in a form and format determined by Bank and its service providers.

**"Statement Date"** shall mean the closing date of the periodic billing cycle for the Account and for each Card Account, assigned by Bank and disclosed on Billing Statements and Card Account Statements.

**"Term"** shall mean the Initial Term or any Renewal Term, as applicable.

**"Transaction"** means any Purchase, Cash Advance, or Special Offer.

**"Transaction Limit"** means parameters Program Administrator and Bank establish for a Card Account including, but not limited to, limits on (a) the number of Transactions permitted during a specified time period for a Card Account, (b) the dollar amount of Transactions permitted during a specified time period for a Card Account, (c) the Merchant Category Codes for which a Card Account may be used, and (d) such other parameters as may be agreed by Bank and Program Administrator.

**"Unassigned Cards"** are Cards Bank issues in the name of Company at its request, without designating on the Card a specific Cardholder authorized to use the Card and which may not have an associated personal identification number, and which Bank may restrict Cardholders from using to obtain Cash Advances.

**"Unauthorized Transaction"** means any Transaction not for the purpose of carrying on Company's business and from which Company obtains no direct or indirect benefit.

**"User Guide"** means the user manuals and other user materials that Bank furnishes or makes available to Company in connection with the Online Services System, and any related Online Services.

**SCHEDULE B – PRICING SCHEDULE**

**Bank Benefits to Company**

Cards may be eligible for the benefits and rewards available under the General Terms and Conditions established from time to time in connection with the rewards program as indicated in the Agreement.

**Account/Card Account Fees & Charges**

Minimum Finance Charge	A minimum finance charge of \$1.75 will be added to the applicable Purchase and/or Cash Advance balance of the Account or a Card Account if the finance charge earned in any billing cycle is less than that amount.
Cash Advance Transaction Fee	The greater of \$15.00 or 5% of each Cash Advance will be added to the Cash Advance balance of the Account or Card Account for each Cash Advance transaction.
Cash Advance Transaction Fee for Cash Equivalent Transactions	The greater of \$15.00 or 5% of each Cash Equivalent advance will be added to the Cash Advance balance of the Account or Card Account for each Cash Advance transaction.
Late Fee	If Bank does not receive the required full payment of an amount due for a Card Account by its applicable Payment Due Date as detailed on a Card Account Statement, Bank will add the following late fee to the Purchase balance of a Card Account: \$35.00, if the New Balance is less than \$500; and \$39.00, if the New Balance is equal to or greater than \$500.
Overlimit Fee	An overlimit fee of \$39.00 will be added to the Purchase balance if the outstanding balance of an Account or Card Account, including finance charges and fees, exceeds the Credit Limit or Transaction Limit at any time during a billing cycle.
Payment Dishonored Fee	A fee of \$35.00 will be added to the Purchase balance if any payment in any form on the Account or a Card Account is dishonored or returned unpaid to Bank for any reason.
Stop Payment Fee	A fee of \$35.00 will be added to the Purchase balance for any stop payment request made by Company or any Cardholder.
Document Copy Fee	A fee of \$5.00 will be added to the Purchase balance for each sales draft copy requested by Company or a Cardholder (unless related to an actual billing error).
Statement Copy Fee	A fee of \$3.00 will be added to the Purchase balance for each duplicate copy of a Billing Statement or Card Account Statement requested by Company or a Cardholder.
Foreign Transaction Fee	A fee equal to 3% of each foreign transaction, after conversion to U.S. Dollars, will be assessed on all transactions made in currencies other than U.S. Dollars. Fees for foreign Cash Advances will be added to the Cash Advance balance of the Account or Card Account. Fees for foreign Purchases will be added to the Purchase balance of the Account or Card Account.
Expedited Payment Fee	A fee of \$15.00 will be added to the Purchase balance of the Account or a Card Account each time Company or a Cardholder has Bank initiate an expedited payment by telephone.
Expedited Delivery Fee	A fee of \$15.00 will be added to the Purchase balance of the Account or a Card Account each time Company or Cardholder requires expedited delivery by Bank of additional or replacement Cards.

**Periodic Rates**

**ACCRUAL OF FINANCE CHARGES:** Except as provided in "Grace Period" below, Bank will accrue periodic rate finance charges on Purchases, Cash Advances and Special Offers from the date of each transaction or the first day of the billing cycle in which the transaction is added to the Account and/or Card Account, whichever is more recent.

**GRACE PERIOD:** If (1) Company or Cardholder pays the entire New Balance (including all balances, Transactions and Account Fees and Charges), as shown on Company's current Billing Statement and/or Card Account Statement(s) by the Payment Due Date and (2) Bank receives payment in full of Company's New Balance (including all balances, Transactions and Account Fees and Charges) indicated on the previous Billing Statement and/or Card Account Statement(s) by the Payment Due Date or that New Balance was zero or a credit; periodic rate finance charges will not be assessed on Purchases shown on the next billing statement. The grace period applies only to Purchases and, if notified, Special Offers. It does not apply to Cash Advances.

**PERIODIC RATE FINANCE CHARGES:** Periodic rate finance charges will be calculated using daily periodic rates, which correspond to certain Annual Percentage Rates. These rates may be different for Purchases, Cash Advances and Special Offers. These rates may be variable. A variable Annual Percentage Rate is determined by adding the applicable margin to the applicable Index. The daily periodic rate is 1/365th (1/366th during leap years) of the Annual Percentage Rate. The Index is the highest U.S. Prime Rate as published in The Wall Street Journal during the 90 days immediately preceding the last day of each calendar month (the determination date). The Index will be effective for the entire billing cycle that ends in the second month after the determination date. For example, if the applicable Statement Date ends in July, Bank will use the Index determined on May 31st. An increase in the Index will increase the applicable Annual Percentage Rate and daily periodic rate, which may increase the payment due on the Account and/or Card Account. The Commercial Card Agreement signed by the Parties details the Annual Percentage Rates applicable.

**SPECIAL OFFER RATES:** Any Special Offer rate may terminate and increase to the Purchase, Cash Advance or penalty rate if:

- (1) a payment is missed to Bank (a) more than twice in the last 6 months or more than 3 times in the last 12 months, (b) that has remained unpaid 30 days or more at any time in the last 6 months or if this has occurred more than once in the last 12 months, or (c) that has remained unpaid 60 days or more at any time in the last 12 months; or
- (2) a payment made to Bank is dishonored for any reason.

Factors considered in determining whether or not the Special Offer rate will terminate may include how the Account or Card Account has been handled with Bank and current and historical information regarding the Cardholder's or Company's credit in general.

**PENALTY RATES:** The Annual Percentage Rates, (including preferred rates or Special Offer rates) for all Transactions may increase if one of these "Triggering Events" has occurred:

- (1) a payment is missed to Bank (a) more than twice in the last 6 months or more than 3 times in the last 12 months, (b) that has remained unpaid 30 days or more at any time in the last 6 months or if this has occurred more than once in the last 12 months, or (c) that has remained unpaid 60 days or more at any time in the last 12 months; or
- (2) a payment made to Bank is dishonored for any reason.

In such circumstances, Bank may increase the Annual Percentage Rates on all Transactions to higher penalty rates equal to those identified herein. Factors considered in determining the higher rates may include how the Account or Card Account has been handled with Bank and current and historical information regarding Company's or Cardholder's credit in general. Bank may at some future time lower the daily periodic rate and corresponding Annual Percentage Rate in its sole discretion. If the daily periodic rate and Annual Percentage Rate are lowered, the lowered rates will not necessarily be as low as the Purchase or Cash Advance rates previously disclosed and will not necessarily apply to the balance of the Account or Card Account which is already outstanding as of the date the rates are lowered. A Card Account or Account that is closed while subject to penalty rates will not be restored to preferred rates after it is closed, regardless of the reason it is closed and regardless of account performance. Bank is not obligated to give notice that the Annual Percentage Rate is changing to a penalty rate. Even though Bank gives notice on one or more occasions, Bank may discontinue providing a notice at any time. Penalty rates will apply as provided above, regardless of whether, when or how notice is received.

**FINANCE CHARGES AND BALANCE CALCULATIONS:** The Account and/or Card Account will generally have monthly billing cycles, but the first billing cycles may be more or less than one month. Bank uses the Average Daily Balance (including new purchases) method to compute a portion of the Finance Charges on the Account and/or Card Account. Bank calculates periodic rate finance charges separately for each Transaction Category.

(A) To compute Billed Periodic Rate Finance Charges:

- (1) For each Transaction Category, Bank multiplies the Daily Balance (see below) by the applicable daily periodic rate for each day of the billing cycle; then
- (2) Bank adds together all of the products calculated in (1) above.

(B) To compute the Daily Balance for each Transaction Category:

- (1) Bank takes the Beginning Balance of each day;
- (2) Adds any new Transactions (such as Purchases, Cash Advances and related Transaction fees, other Account Fees and Charges and debit adjustments)\*\*\*;
- (3) Subtracts any applicable payments, credits, or credit adjustments; and
- (4) Bank treats a credit balance as a balance of zero.

\*\*\* For Card Accounts where Cardholders are required by their Company to make payments, the annual fee, credit life fee, other program fees and, in certain circumstances, the overlimit fee, are not included in the Daily Balance calculation until the first day of the next billing cycle. For Card Accounts where Cardholders are not required by their Company to make payments, the annual fee, credit life fee, other program fees and, in certain circumstances, the overlimit fee are included in the Daily Balance calculation on the first day of the billing cycle in which they post to the applicable Account and/or Card Account.

Bank adds the amount calculated in accordance with (A)(1) above to the Daily Balance and this amount becomes the Beginning Balance for the next day. On the Billing Statement and/or Card Account Statement, Bank will calculate an Average Daily Balance for each Transaction Category by adding all the Daily Balances for that Transaction Category and dividing that amount by the number of days in the billing cycle. If you multiply the Average Daily Balance for a Transaction Category by its daily periodic rate and multiply the result by the number of days in the billing cycle, the total will equal the Billed Periodic Rate Finance Charges for that Transaction Category, except for minor variations due to rounding.

Cash Advance and foreign Transaction fee finance charges, if any, are added to the Billed Periodic Rate Finance Charges for all Transaction Categories and may be shown on the Billing Statement and/or Card Account Statement as Total Billed Finance Charges. The Annual Percentage Rate shown on the front of the Billing Statement and/or Card Account Statement may be based on the Total Billed Finance Charges. The Agreement provides for daily compounding of finance charges and fees.

**MINIMUM FINANCE CHARGE:** If periodic rate finance charges are billed in any billing cycle, the minimum Billed Periodic Rate Finance Charge will be as shown above in the Account and Card Account Fees portion of this Schedule. Bank may allocate the minimum Billed Periodic Rate Finance Charge among the various Transaction Categories in the manner that Bank selects from time to time.