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FLOYD COUNTY BOARD OF EDUCATION ISSUE PAPER

Date: December 4, 2019

Action Item: Consider/Approve: Commercial card agreement/Online channel access agreement/master treasury management agreement/account resolution agreement with Fifth Third Bank.

Applicable Statute or Regulation: BOE Policy 01.11 General Powers and duties of the board.

Budgetary Impact: Could produce potential revenue through a rebate program.

Background and Major Policy Implications: The 5/3rd Bank Commercial Card Program is designed to provide entities with an option to pay vendors with a commercial card/virtual card, which in turn generates rebates back to the district. This program can also be used as a procurement card system enabling the district to make online purchases, book and pay for hotel rooms, and other purchases requiring some form of credit card. The program is setup to have multiple safeguards and internal controls, ensuring that abuse does not take place.

Recommended Action: Approve as presented.

Contact Person: Tiffany Warrix Campbell, Director of Finance/Treasurer


Director


Superintendent



FIFTH THIRD BANK

Account Resolutions Certificate for Treasury Management Services (Government Entity)

To Fifth Third Bank:

I HEREBY CERTIFY THAT:

I am the duly elected or appointed and currently serving official, manager or trustee (the "Official") of the governing body or governmental entity identified below (the "Governmental Entity");

I am duly authorized to make the following certifications to you; and

The following resolutions ("Account Resolutions") were duly adopted by the governing body of the Governmental Entity in accordance with applicable law, are the binding resolutions and statements of the Governmental Entity, are in full force and effect, and have not been rescinded or modified:

RESOLVED, Fifth Third Bank is hereby designated as an authorized depository of this Governmental Entity and that one or more checking, savings or other deposit accounts ("Accounts") be opened and maintained with Fifth Third Bank in the name of the Governmental Entity;

RESOLVED FURTHER, that the opening and maintaining of the Accounts, all transactions in connection with the Accounts and all related services will be governed by written agreements provided by Fifth Third Bank, and by such rules, regulations and policies as Fifth Third Bank shall from time to time establish;

RESOLVED FURTHER, this Governmental Entity is authorized to obtain banking services from Fifth Third Bank including treasury management and corporate card services, and to enter into such agreement or agreements and documentation for such services as are required by Fifth Third Bank from time to time, including a Master Treasury Management Agreement, Terms and Conditions for various banking services, Signature Card, Commercial Card Agreement and Commercial Account Rules ("Banking Agreements") each of which, when accepted or signed by an Authorized Person described below is approved and authorized in all respects;

RESOLVED FURTHER, that the Governmental Entity is authorized to incur and repay indebtedness, grant or give security, and incur and perform related liabilities and obligations to Fifth Third Bank in connection with the banking services obtained by the Governmental Entity under the relevant Banking Agreements, including, without limiting the foregoing, with respect to: (a) transactions executed for the Governmental Entity by Fifth Third Bank, (b) credit card services under the Commercial Card Agreement, and (c) import and export services for letters of credit as provided in the Terms and Conditions for such import and export services and related reimbursement, financing and security or collateral arrangements;

RESOLVED FURTHER, that the Governmental Entity is authorized to enter into, execute and deliver to Fifth Third Bank applications, documents, notes and agreements reflecting or evidencing such indebtedness, security, liabilities and obligations including those related to letters of credit,



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confirmation and payment services, reimbursement arrangements and related loans, lines of credit or similar financing arrangements, and security and collateralization arrangements, and a note or notes, security, pledge or similar agreement evidencing or securing such arrangements ("*Banking Services Financing Agreements*") each of which, when submitted, accepted or signed by an Authorized Person is authorized and approved in all respects;

RESOLVED FURTHER: that (a) each of the individuals identified in the table entitled "Authorized Persons" appearing below and (b) any other person designated by any such individual whose identity and signature are provided to Fifth Third Bank (each, an "*Authorized Person*" and for purposes of certain Banking Agreements, an "*Authorized Agent*") is authorized on behalf of the Governmental Entity and in its name to do any of the following:

- **Accounts and Agreements.** Open or close any deposit or other Account and execute on behalf of the Governmental Entity signature cards (and designate persons with check signing authority), application forms, authorization, set-up and other documentation and agreements with Fifth Third Bank with respect to the Accounts and any services related to the Accounts including each of the Banking Agreements and Banking Services Financing Agreements;
- **Payment Instructions.** Issue, and designate persons with the authority to issue written, telephonic, electronic, internet-based or oral instructions and payment orders for the transfer or payment of funds of the Governmental Entity on deposit with Fifth Third Bank (or at any other financial institution) including by wire transfer, automated clearing house debit, book transfer and other physical and electronic means;
- **Implementation and Setup.** Select the services the Governmental Entity will obtain from Fifth Third Bank, and instruct Fifth Third Bank on service options and features desired by the Governmental Entity, and the set-up, implementation and security procedures relating to the services selected; and,
- **Authorization.** Designate, and advise Fifth Third Bank of the identity of persons (including officers and employees of this Governmental Entity or its service providers) who have some or all of the authority of an Authorized Person with respect to one or more Accounts of the Governmental Entity or services utilized by the Governmental Entity, and limitations on the scope of such authority, if any, including a person or persons who will serve as administrator or service administrator with respect to a service or services obtained by the Governmental Entity and will have authority to: manage the service on behalf of the Governmental Entity; select and administer security and operating procedures; designate persons as authorized users of a service; and, enable and administer user identification codes, passwords and other identification data.

RESOLVED FURTHER, that all actions of the Authorized Persons, and all agreements, applications, documents and authorizations executed and delivered by the Authorized Persons prior to the date of these resolutions and in connection with the transactions contemplated by these resolutions are ratified, confirmed and approved in all respects;



FIFTH THIRD BANK

RESOLVED FURTHER: Fifth Third Bank is authorized to rely on the full and unrestricted authority as provided in these resolutions of any one Authorized Person unless otherwise certified to Fifth Third Bank by the Official;

RESOLVED FURTHER, that the Official is authorized to deliver a certified copy of these Resolutions to Fifth Third Bank and certify to Fifth Third Bank the name, title and specimen signature of each Authorized Person.

I further certify that:

- these resolutions do not conflict with or contravene the laws, rules, regulations or ordinances creating, authorizing or empowering the Governmental Entity or governing the organization or management of the Governmental Entity or similar governing documents of, or any agreement, law or regulation applicable to the Governmental Entity; and
- each of the following persons has been designated by the Governing Entity as an Authorized Person with the authority specified in the foregoing resolutions, and the signatures indicated below are genuine signatures of the indicated persons:

AUTHORIZED PERSONS		
Name of Authorized Person:	Title of Authorized Person:	Specimen Signature of Authorized Person:
1.		
2.		
3.		
4.		
5.		
6.		

****EXECUTION PAGE FOLLOWS****



FIFTH THIRD BANK

IN WITNESS WHEREOF, I have subscribed my name to this Certificate on behalf of the following Governmental Entity:

Exact Name of Governmental Entity: _____

Acting under the laws of: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Note: a "Governmental Entity" includes any federal, state, county or municipal governing body or entity, or any of their respective branches, departments, agencies, or divisions.



FIFTH THIRD BANK

38 Fountain Square Plaza
Cincinnati, Ohio 45263

Master Treasury Management Agreement

This Master Treasury Management Agreement ("*MTMA*" or, in this document, this "*Agreement*") is by and between the undersigned "*Customer*" and Fifth Third Bank ("*Bank*") and is effective when and as of the later date executed by Bank as indicated on the Signature Page to this Agreement (the "*Effective Date*"). Unless defined in this Agreement, including in Section 26 below, capitalized terms shall have the meaning provided in the Online Channel Access Agreement or Commercial Account Rules, as applicable.

Master Treasury Management Agreement March 2018_v 0.1.2_Arial.docx
April 2018



SECTION 1. BANK SERVICES

Section 1.1. Service Terms. Customer desires to obtain, and Bank agrees to provide the Services as provided in this Agreement more specifically described and governed by the applicable Service Terms. In the event of a direct conflict between the Service Terms and this Agreement, the Service Terms will control. If there is a conflict between this Agreement and the Commercial Account Rules, the provisions of this Agreement prevail to the extent necessary to resolve the conflict. Customer acknowledges and agrees that Bank may arrange for certain or all of the aspects of the Services, including software and processing to be performed or provided by a Processor and that Customer shall have no rights or remedies against any such Processor for the Services, but only against Bank. Bank's Processors are obligated to comply with the confidentiality, privacy and security requirements of this Agreement. Bank is solely liable and responsible for the aspects of the Service provided by its Processors to the same extent if Bank has performed or failed to perform the Service, and Customer agrees not to bring any claim or cause of action against a Provider and only against Bank.

Section 1.2. Customer Use. Customer may request a Service by any means Bank approves ("Service Request"). By using the Service, Customer acknowledges and agrees it has received a copy of the Service Terms for that Service, the Service Terms apply to Customer's use of the Service and the Service Terms are incorporated into, and made a part of, this Agreement. Any reference to this Agreement shall be deemed to include the applicable Service Terms. Neither party is bound by or subject to the Service Terms for any Service Customer does not use. Bank provides the Services for the sole and exclusive benefit of Customer, and if Bank approves in writing, Customer's Affiliates. Any Vendor used by Customer is Customer's agent and not Bank's, and Customer is liable and solely responsible for: (a) any Vendor's failure to comply with this Agreement including any Security Procedures or operating requirements relating to the Services; and (b) all fees, costs and expenses owed to each Vendor for its services.

Section 1.3. Accounts. Customer shall at all times have and maintain with Bank one or more Accounts for use in connection with a Service and maintain in such Account a sufficient collected balance to pay for Customer's use of, and transactions in, such Accounts, including fees and expenses payable to Bank. The Commercial Account Rules apply to your use of the Account in connection with a Service and together with this Agreement govern the Services.

SECTION 2. ONLINE CHANNEL ACCESS AGREEMENT

Customer is required to enter into and maintain an Online Channel Access Agreement in effect between Customer and Bank in order to use and access the Services (the "OCA"). The OCA in effect from time to time governs the Access Channels and Channel Services (each as defined in the OCA) used to access the Services where applicable. The Channel Services available in connection with these Services include the ability to view and manage Account information, transmit Instructions, Payment Orders and other directions and decisions to us and other online features as described in this Agreement or the Service Terms.



SECTION 3. CUSTOMER INFORMATION

Section 3.1. Service Information; Implementation. Customer agrees to provide all information that Bank reasonably requires in order to set up and provide the Services to Customer. Customer (a) represents and warrants that all information provided or to be provided to Bank by Customer's representatives on the Implementation Forms or otherwise is true and correct, and (b) agrees to provide any additional information that Bank may be reasonably required to begin, or continue providing, the Services. Any changes by Customer to the information provided to Bank must be made in writing and will be effective after Bank has had a reasonable opportunity to act on the changed information.

Section 3.2. Personnel. Bank is entitled to rely upon the accuracy and authenticity of all Instructions, information and authorizations received from an officer or authorized employee or representative of Customer (an "Authorized Agent") and those purporting to be of an Authorized Agent. Customer agrees to notify Bank immediately of any change in the status of an Authorized Agent. Customer acknowledges that Bank may require a reasonable time period before Bank acts upon any such change. Customer agrees that Bank may refuse to comply with requests from any individual until Bank receives documentation reasonably satisfactory to Bank confirming the individual's authority.

SECTION 4. FEES AND TAXES

Customer agrees to pay Bank the fees and charges for Services as provided to Customer in writing and in effect from time to time as billed by Bank, and fees and charges for any requested or required special service or handling (collectively, the "Fees"). Customer is responsible for all taxes attributable to its use of the Services or this Agreement (excluding taxes based on Bank employees, property or net income). Bank may periodically amend its Fees, however, such changes will not be effective against Customer until thirty (30) days after Customer has been notified of such changes in writing. Unless other arrangements are made for payment of the Fees, Bank will automatically debit an Account in the amount thereof when due.

SECTION 5. INSTRUCTIONS

Each Instruction that is sent to Bank electronically in accordance with this Agreement including the applicable Service Terms shall be considered to be an original writing and to have been signed by an Authorized Agent. Customer is solely responsible for the accuracy and completeness of each Instruction or communication sent to Bank. Any communication Customer sends to Bank will not be effective until Bank actually receives it and has had a reasonable opportunity to act upon it.

SECTION 6. BANK REPRESENTATIONS AND WARRANTIES

Bank represents and warrants to Customer that: (a) Bank is duly organized, validly existing, and in good standing in the jurisdiction in which Bank is organized; (b) the execution, delivery and performance by us of this Agreement has been authorized by all necessary corporate and governmental action; (c) the persons signing this Agreement on Bank's behalf are duly authorized to do so; (d) this Agreement represents Bank's legal, valid and binding obligation; and (e) Bank's execution and performance of this



Agreement and Bank's provision of the Services do not and will not violate any Applicable Law, Bank's articles of association or bylaws or any material agreement by which Bank is bound. EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT OR IN THE APPLICABLE SERVICE TERMS, BANK MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO ANY SERVICE OR BANK'S PERFORMANCE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO DESCRIPTIONS OR SPECIFICATIONS CONSTITUTE REPRESENTATIONS OR WARRANTIES OF ANY KIND.

SECTION 7. CUSTOMER REPRESENTATIONS AND WARRANTIES

Customer represents and warrants to Bank that: (a) Customer is duly organized, validly existing, and in good standing in the jurisdiction in which Customer is organized, and is validly qualified in any other jurisdiction where Customer does business and is required to be qualified except where the failure to be so qualified would not have a material adverse effect on Customer; (b) the execution, delivery and performance by Customer of this Agreement, the Related Agreements and Implementation Forms and the use of the Services have been authorized by all necessary entity and governmental action; (c) the persons signing this Agreement, the Related Agreements and Implementation Forms on Customer's behalf are duly authorized to do so; (d) this Agreement represents Customer's legal, valid and binding obligation; (e) the execution and performance of this Agreement and the use of the Services do not and will not violate in any material respect any Applicable Law, Customer's entity governing documents, or any material agreement by which Customer is bound; (f) each Account Customer maintains with Bank, and all use of the Services, is maintained or used solely for a legitimate business or commercial purpose and not a personal, family or household purpose, and (g) the use of the Services does not and will not subject Bank, or Bank's Processors, to the privacy and security requirements of the Health Insurance Portability and Accountability Act, as a business associate (defined at 45 CFR 160.103) or otherwise. Customer reaffirms these representations and warranties each time it uses a Service and agrees to promptly notify Bank if any representation or warranty made by Customer is no longer true.

SECTION 8. SECURITY PROCEDURES; OPERATING PROCEDURES

Section 8.1. Establishment. Access to some Services requires the use of Security Procedures, including for Services obtained through an Access Channel and use of the applicable Credentials. The Security Procedures verify the origin and authenticity of Instructions and communications sent to Bank. Where permitted, Customer will select from the Security Procedures for a particular Service from those offered and recommended by Bank in the set-up process for that Service, and agrees to implement changes to the Security Procedures issued by Bank as needed. Customer agrees that such Security Procedures are commercially reasonable and suitable for Customer with respect to Customer's intended use of the applicable Services. The Security Procedures are not designed to detect errors in any Instruction to Bank.

Section 8.2. Verification. If Bank accepts and acts in good faith on a Payment Order issued to Bank in Customer's name and in accordance with the Security Procedures and any written agreement between Customer and Bank, the Payment Order is effective as Customer's Payment Order whether or not it is authorized, and Customer is bound by it in accordance with Applicable Law and the terms of this Agreement, including the applicable Service Terms. Any other Instruction communicated to Bank in



Customer's name in compliance with the Security Procedures and all access to and use of Services and Channel Services using the Security Procedures are considered authorized by Customer.

Section 8.3. Funds Transfers. In connection with the use of Bank's wire transfer, ACH and other electronic funds transfer Services, Bank recommends that Customer establish an approval protocol appropriate for Customer's particular circumstances (including the type, amount and frequency of such transactions) to prevent unauthorized transactions. If Customer does not establish and require adherence to an approval protocol for such funds transfers or if Customer selects a "*no approval*" option, Customer assumes the risks of all transactions that could have been prevented by requiring such protocol or approval. Funds transfers involving only internal electronic funds transfers between Accounts may not be subject to all of the Security Procedures required for external electronic funds transfers.

Section 8.4. Credentials. Access to some Services may require the use of certain Credentials. Proper use of the Credentials is part of the Security Procedures for these Services. The use of the Credentials is subject to any terms of use or license accompanying the Credentials as applicable, and may only be used as and where delivered to Customer and only for the purpose of accessing Services. The Credentials and the related technology, documentation and materials at all times remain the Bank's or its Processor's property.

Section 8.5. Authority. The Security Procedures are in addition to and do not limit, revoke or affect the authority of any person (whether by course of dealing or otherwise) to transmit Instructions in Customer's name. Bank may continue to rely upon such authority and Bank is authorized to act upon Instructions received from persons acting pursuant to such authority. Customer is bound by any authorized Payment Order or other Instruction, and by use of the Channel Services by authorized personnel.

Section 8.6. Other Applications. As part of to the Security Procedures, Bank applies software and other programs and processes ("*Additional Programs*") to select certain Instructions for further review and verification by Customer. The application of these Additional Programs may delay the processing of Instructions or other transactions until Bank obtains such verification. Bank will use reasonable efforts to obtain such verification, provided; that Customer understands and agrees that Bank has no obligation to use or comply with any such Additional Programs, and Customer agrees that these additional procedures are NOT a substitute for proper Account controls and management on its part.

Section 8.7. Bank is not responsible for its refusal to act upon or delay in processing any Instruction that does not comply with this Agreement or the applicable Service Terms, or as a result of its properly following the Security Procedures or applying Additional Programs.

Section 8.8. Safeguarding the Security Procedures. In addition to Customer's use of the Bank's Security Procedures, Customer agrees to (a) maintain the complete security and confidentiality of the Security Procedures, and (b) institute and use prudent internal security procedures and practices to control access to the Services and use of the Security Procedures. Customer's failure to protect the confidentiality of the Security Procedures may enable an unauthorized person to use the Services and access Customer's Accounts and data. Customer must notify Bank immediately if there has been a breach of its security, or any Security Procedure has been lost, stolen, misused or compromised.



SECTION 9. COMPLIANCE

This Agreement and the use and provision of Services are subject to all Applicable Law, rules, regulations and other laws, including without limitation, the UCC, and Operating Rules. Both parties agree to be bound by the Operating Rules where applicable and to comply with Applicable Law in using or providing the Services, as the case may be.

SECTION 10. LIMITATION OF LIABILITY

CUSTOMER AGREES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THAT IN ADDITION TO ANY OTHER LIMITATION ON BANK'S LIABILITY IN THIS AGREEMENT OR THE OCAA, IN NO EVENT WILL BANK (OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, EMPLOYEES OR AGENTS) BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR SPECULATIVE LOSSES, EXPENSES, INJURY, COSTS OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REVENUE, SAVINGS, TIME, DATA, GOODWILL AND OPPORTUNITIES, ATTORNEYS' FEES, AND COURT AND OTHER DISPUTE RESOLUTION COSTS) THAT CUSTOMER OR ANY OTHER PERSON MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, COST OR DAMAGE AND REGARDLESS OF THE TYPE OF CLAIM.

Bank's liability to Customer arising from any Service or this Agreement will be limited to Customer's actual monetary damages that are the direct result of Bank's negligence or willful misconduct. Notwithstanding the foregoing, for Payment Orders which are governed and subject to UCC Article 4A, Bank is liable only for damages required to be paid under UCC Article 4A. In addition to the foregoing limitation, in the instance of any overbilling by Bank that is timely reported by Customer as required by this Agreement, Bank's liability shall not exceed the amount overbilled by and paid to Bank by Customer. In no instance shall Bank be responsible or liable for (a) any act or omission of Customer's officers, employees or agents, or of any third party (other than Bank's Processors), (b) any failure to act by Bank if Bank reasonably believed taking the omitted action would have violated Applicable Law, or (c) any interception of information relating to the Customer or its transactions as a result of Customer's use of the Internet or other Access Channel or the Channel Services that is not the result of Bank's gross negligence or willful misconduct.

SECTION 11. INDEMNIFICATION OBLIGATIONS

Section 11.1. Customer. To the fullest extent not prohibited by Applicable Law, Customer agrees to indemnify and hold Bank and its officers, directors, employees, affiliates, shareholders and agents harmless from and against any and all Losses resulting directly or indirectly from, or arising in connection with: (a) Customer's breach of any of Customer's agreements, representations, warranties or covenants in this Agreement, the Service Terms or any other Related Agreement; (b) Customer's violation of Applicable Law; or, (c) Customer's use of the Services and Bank complying with or carrying out any Instruction or other direction given to Bank in accordance with this Agreement. Customer is not, however, obligated to indemnify Bank for any Losses directly resulting from Bank's gross negligence, willful misconduct, or bad faith.



Section 11.2. Bank. To the fullest extent not prohibited by Applicable Law, Bank agrees to indemnify and defend at Bank's own expense or settle any action brought against Customer to the extent that it is based on a claim that Customer's use of a Service directly infringes a copyright, trademark or patent or constitutes misappropriation of a third-party trade secret, provided, however, that Customer: (a) promptly notifies Bank in writing of such claim; (b) has not made any admission of liability or agreed to any settlement or other material issue relating to such claim; (c) reasonably cooperates with Bank at Bank's expense in the defense or settlement; and (d) gives Bank sole control and authority over all aspects of the defense or settlement of such claim.

SECTION 12. BANK RECORDS.

Bank records as to this Agreement and Related Agreements, Services and transactions using the Services shall be controlling in the event of any conflict with Customer's records. Customer authorizes Bank (but Bank is not obligated) to record electronically and retain telephone conversations between Customer and Bank. Imaging and electronic records will be retained by Bank, and copies of such records will be available at Customer's request and expense, until such records are disposed of in accordance with Bank's then current policies and procedures.

SECTION 13. CONFIDENTIALITY, PRIVACY AND SECURITY

Section 13.1. Customer. Subject to Customer's duties under Applicable Law, Customer agrees to keep confidential and not disclose to any third party (other than its agents) Bank's fees and charges, Service Terms including User Guides, software, non-public Service features and other proprietary information and systems Bank and its Processors provide and disclose in connection with the Services. Customer acknowledges the exclusive ownership by Bank or its Processors of such information, and agrees to use such information solely for purposes of using the Services.

Section 13.2. Bank. Bank acknowledges that non-public information Bank obtains from Customer in connection with providing a Service to Customer may be confidential. Bank has implemented policies, procedures, and controls to safeguard Customer information in accordance with Applicable Law and regulatory guidelines.

SECTION 14. ACCOUNT MANAGEMENT

Section 14.1. Customer Information Review. Customer is responsible for monitoring its use of Bank's Services and all activity in its Accounts with Bank including individual transactions. Information regarding transactions with the Services is reported on Customer's periodic Account statement and is also available with one or more Services. Customer agrees to: (a) regularly review the Account information that Bank makes available to Customer; (b) promptly review the Account statements that Bank sends to Customer; and (c) notify Bank as soon as reasonably possible of any error, unauthorized transaction or other similar matter but, in any case, not more than thirty (30) calendar days after the information is so made available or sent to Customer (90 days in the case of information relating to Bank fees). If Customer fails to notify Bank of any such error or other similar manner within such 30 or 90-day period, as applicable, of the date on which such information is sent by Bank or otherwise made available to Customer, then Customer shall be precluded from asserting such error or discrepancy against the Bank.



Notwithstanding the forgoing, Bank reserves the right to, in its sole discretion, adjust transaction records for good cause after the expiration of such time periods.

Section 14.2. Loss Prevention. Bank offers a variety of Services and other tools designed to assist Customer in reducing or stopping the incidence of fraud and unauthorized activity in Customer's Accounts including positive pay, ACH transaction control, disbursement control, information reporting and Account Management Services. To the extent Customer chooses not to use one of these Services or features or implement Customer Measures, and the proper use of that Service or Customer Measure could reasonably have prevented a Loss due to the incidence of fraud, or unauthorized activity, Customer shall hold the bank harmless for the amount of such Losses that could have been reasonably prevented.

Section 14.3. Account Information. Depending upon the Service features that Customer selects, Customer will have access to Account and transaction information on a prior day or intraday basis, or both. Account information changes frequently and is subject to updating, verification and correction. Bank assumes no responsibility for Customer's reliance on any Account or Service information reported on an intraday or prior day basis subsequently updated, verified or corrected.

SECTION 15. OVERDRAFTS

Bank may delay or refuse to process any item, transaction or Instruction including applicable fees or charges that would result in an Overdraft (as defined in the Commercial Account Rules) in Customer's Account. Bank processes Items and other debits to Customer's Account in the order described in the Commercial Account Rules provided to Customer governing the Customer's Accounts with Bank. If Bank decides in its discretion to process an item, transaction or Instruction despite the Overdraft, Customer agrees to reimburse Bank immediately for: (a) the full amount of any Overdraft or shortfall created by that item, transaction or Instruction; (b) all Overdraft fees and charges; (c) interest on the amount of the Overdraft or shortfall for the day the Overdraft or shortfall was created and for each following day until the Overdraft or shortfall has been paid; and (d) all Losses Bank incurs in collecting from Customer the Overdraft, or any fees, charges or interest relating to it.

SECTION 16. TRANSACTION LIMITS

If Bank in good faith determines that: (a) providing any Service to Customer could reasonably be expected to result in a violation of any Applicable Law or a material loss to Bank, (b) Bank is entitled to terminate the applicable Service under the "Termination" section of this Agreement (with or without the lapse of time or notice), or (c) Customer is in default under this Agreement or any Related Agreement, Bank may limit Customer's transaction volume or dollar amounts, refuse to execute transactions, or terminate that Service to Customer. In addition, Bank may restrict or limit the types of Instructions Customer may send to Bank for processing or execution. Bank will, to the extent not restricted by Applicable Law, promptly communicate decisions regarding such restrictions to Customer. Bank reserves the right to limit transaction volume or dollar amounts in any other circumstances, provided Bank gives Customer prior notice of any material limitation or decrease in previously communicated limitations. Customer agrees to provide Bank, upon its request from time to time, with such financial information and statements and other documentation as Bank reasonably determines to be necessary or appropriate to enable Bank to evaluate its exposure or risk.



SECTION 17. BANK RIGHT OF SETOFF; SECURITY INTEREST

Bank has the right to obtain payment of any unpaid amount owed to Bank under this Agreement or any Related Agreement by setting off and debiting any of Customer's Accounts or accounts with any of Bank's affiliates at any time (excluding any Account expressly titled to clearly demonstrate that the Account is held by Customer in a fiduciary or representative capacity for a third party such as, for example, a custodial Account) for the amount owed. Bank's rights are limited to the extent of limitations and restrictions imposed by Applicable Law. Customer grants to Bank a first priority security interest in all Accounts held by Customer now or in the future with Bank or any of Bank's affiliates to secure payment of any and all obligations under the Agreement; provided that this security interest shall be subordinate to any security interest separately agreed to in writing by Bank.

SECTION 18. FORCE MAJEURE

Neither party shall be responsible, and neither shall incur any liability to the other, for any failure, error, malfunction or any delay in carrying out any of its obligations under this Agreement directly resulting from causes beyond such party's reasonable control, including without limitation, fire, casualty, lockout, strike, unavoidable accident, failure of networks, the Internet or telecommunications systems, act of God, act of terrorism, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents such party from operating normally; provided, however, that Customer shall not be relieved of its responsibility for timely performance of any of its payment obligations to Bank.

SECTION 19. TERM AND TERMINATION

Section 19.1.Term. This Agreement shall remain in full force and effect until terminated by either party as provided in this Agreement. Either party may terminate this Agreement or any Service at any time by giving thirty (30) days' prior written notice of termination to the other party.

Section 19.2.Bank. Bank may terminate this Agreement or terminate or suspend any Service immediately upon notice to Customer if: (a) Customer breaches a material obligation under this Agreement or Related Agreement, violated any Applicable Law or the Operating Rules in connection with the Services or any Related Agreement; (b) Customer becomes insolvent, is placed in receivership or is adjudicated bankrupt or Customer becomes subject to any voluntary or involuntary bankruptcy proceeding or any assignment for the benefit of its creditors; (c) Customer's financial condition has become materially impaired in Bank's good faith opinion that Customer is likely to be unable to perform its material obligations to Bank; (d) any person or group acting in concert that is not a controlling stockholder of Customer on the date of this Agreement acquires, directly or indirectly (whether by merger, stock purchase or issuance, recapitalization, reorganization or otherwise), a majority of Customer's outstanding equity interests; or (e) the continued provision of Services in accordance with the terms of this Agreement would, in Bank's good faith opinion, violate Applicable Law or any requirement of any regulatory authority or subject Bank to an unacceptable risk of loss or material security risk.

Section 19.3.Effect. Upon any termination of this Agreement, Customer shall: (a) promptly pay to Bank all sums due or to become due under this Agreement; (b) securely destroy or immediately return (if required by the Service Terms) to Bank at Customer's expense, the Security Procedures (if applicable),



and all related Implementation Materials, and all copies and reproductions thereof, whether written or in magnetic media and whether received from Bank or otherwise; and (c) have no further right to make use of the Services.

Section 19.4.Survival. Termination of a Service or this Agreement does not relieve or excuse Customer's payment obligations for any Services that Bank provides to Customer before or after the Service or this Agreement is terminated, nor does it release Customer or Bank from any of Bank's respective obligations that arose or became effective prior to such termination. In addition, all provisions of this Agreement relating to the parties' warranties, representations, confidentiality or non-disclosure obligations, proprietary rights, limitation of liability and indemnification shall survive the termination of a Service or this Agreement.

SECTION 20. ENTIRE AGREEMENT

This Agreement, together with any Related Agreements constitutes the complete and exclusive statement of the agreement between the parties with respect to the Services and supersedes any prior or contemporaneous agreements between the parties with respect to such Services. Nothing in this Agreement confers a right or benefit on any person or entity other than Bank and Customer.

SECTION 21. AMENDMENT

Section 21.1.Generally. This Agreement, including the Service Terms, may be modified by a written agreement executed and signed by the parties. Bank may, however, modify this Agreement, including the Service Terms, by giving Customer thirty (30) calendar days' prior written notice. If Customer continues to use any Service or the affected Service, as the case may be, after the expiration of the thirty-day period or a later effective date specified in such notice, Customer is bound by the Agreement or Service Terms as the case may be, as so modified.

Section 21.2.Regulatory. Notwithstanding the foregoing, if a modification to this Agreement or the Service Terms is required by or under Applicable Law or by a regulatory authority with jurisdiction over Bank, Bank may modify this Agreement or the Service Terms by giving Customer notice of the modification by any means permitted by Applicable Law, and the modification will be effective immediately upon Bank giving such notice.

SECTION 22. ASSIGNMENT

Customer may not sell, assign or transfer, or grant a security interest in any of its rights or obligations under this Agreement without Bank's prior written consent. Bank may assign its rights and obligations under this Agreement in whole or in part without Customer's consent (a) pursuant to, or in connection with any merger, consolidation or amalgamation involving Bank or its parent company, or the sale or transfer of all or substantially all of Bank's assets or stock, or (b) in connection with the sale or other disposition involving a line of Bank's business to which this Agreement relates. Bank will use reasonable efforts to notify Customer of any such assignment. Customer expressly reserves its right to terminate any or all Services in the event of any such transaction.



SECTION 23. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL

This Agreement and any claims or disputes relating to or arising out of this Agreement or the Service shall exclusively be governed by, and construed in accordance with, the laws of the State of Ohio, without regard to Ohio's conflict of law principles, and with applicable federal laws and regulations. Customer irrevocably submits to the nonexclusive jurisdiction of the courts of the state and federal courts located in Hamilton County, Ohio and agrees that any legal action or proceeding with respect to this Agreement may be commenced in such courts. EACH PARTY HERETO EXPRESSLY, IRREVOCABLY, KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

SECTION 24. MISCELLANEOUS

Section 24.1.No Extension of Credit. Except as expressly provided in the applicable Service Terms, nothing in this Agreement or any Related Agreement requires Bank to extend any credit of any type (including, but not limited to any Overdraft), even if Bank has done so in the past.

Section 24.2.Notices. Except as otherwise specifically provided in the Service Terms, including the Implementation Materials with respect to a particular Service, notices under this Agreement shall be provided in writing by nationally recognized overnight courier, hand delivery or email. The Bank also reserves the right to provide notice to Customer electronically via email or posting to the Bank's online platform, each of which Customer agrees will be considered "*in writing*." The address for notices to Customer will be the address the Bank has in its records with respect to this Agreement or the particular Service, as applicable. The address for notices to Bank will be as the Bank specifies to Customer in writing, including in the Implementation Materials. Notices shall be deemed effective: (i) when received, if sent by overnight courier or hand delivery; (ii) three (3) days after sending, if sent by U.S. Mail; or (iii) when sent or posted, if provided via email or posting to the Bank's online platform.

Notwithstanding any terms in this Section to the contrary, any addition, deletion or change to any Services or Service Terms requested by Customer (each, a "*Change Request*") must be submitted in a form acceptable to the Bank. No Change Request will become operative or effective until the Bank has had an opportunity to review and respond to such Change Request, which the Bank agrees to do within a reasonable period of time.

Section 24.3.Information and Audit. In order for Bank to comply with its obligations under Applicable Law and the Operating Rules, upon Bank's request Customer agrees to: (i) provide the records Customer maintains with respect to Customer's use of Services as required by Applicable Law, the Operating Rules, and this Agreement, (ii) provide internal and external audit reports relating to Customer's use of the Services and Customer's information technology infrastructure and operational processes and procedures, and (iii) permit the Bank (including its regulators and auditors) reasonable access during normal business hours to audit Customer's (including Customer's Vendors) compliance with the terms of this Agreement, Applicable Law and the Operating Rules.

Section 24.4.Counterparts. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument.



Section 24.5. Severability. If performance of Services in accordance with the terms of this Agreement would result in a violation of any Applicable Law, then this Agreement and any Related Agreement shall be deemed amended to the degree necessary to comply with such Applicable Law, and Bank shall incur no liability to Customer as a result of such violation or amendment. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be valid, legal and enforceable to the maximum extent permitted by such holding and the validity, legality, or enforceability of the other provisions of this Agreement will not be affected or impaired by such holding.

Section 24.6. Headings. Headings are for reference purposes only and are not part of this Agreement.

Section 24.7. Waiver. No party's failure or delay in exercising any right or remedy under this Agreement will operate as a waiver of such right or remedy, nor shall any waiver by either party of any breach of the other party's obligations under this Agreement operate as a waiver of any prior, current or subsequent breach. No waiver will be effective unless made in writing.

Section 24.8. Electronic Execution and Consent. The parties agree that this Agreement, the Related Agreements and any Service Terms are entered into on an interstate basis and agree that the Agreement and Services are subject to the Electronic Signatures in Global and National Commerce Act and may be executed and delivered by facsimile, electronic mail in PDF or similar format or other electronic method and that the copies or counterpart signature pages so sent shall be treated and have the same force and effect as delivery of an original with a manual signature. Customer agrees and consents that Bank may, at its option, send to Customer any record, notice, disclosure, account statements and other information via electronic means (including through a Channel Service), including information that Bank is required by Applicable Law to provide to Customer in writing. Electronic communication methods include methods Bank employs that deliver visual text or images to be displayed on a computer or mobile device screen (such as e-mail, SMS or other mobile phone text, and posting through a Channel Service). Customer consents to receive account statements and other notices from Bank electronically. Bank may, however, require that Customer deliver an original of this Agreement and any Related Agreement with a manual original signature.

SECTION 25. AFFILIATES

Section 25.1. Joinder. By executing this Agreement, Customer, each "Affiliate" of Customer listed below (if any), and Bank agrees that each such Affiliate shall have all of the rights and obligations of, and shall for all purposes be a party under this Agreement as a "Customer." Additional Affiliates can be added through an addendum to this Agreement in the form required by Bank and executed by Customer and Bank.

Section 25.2. Affiliate Representation, Warranty and Covenant. An "Affiliate" of Customer is any entity that is directly or indirectly controlled by the Customer indicated on the Signature Page (for purposes of this Section, the "Initial Customer") through ownership of at least a majority of the equity interests of, or holding voting control over, such entity. Initial Customer represents, warrants and covenants to Bank that (a) each entity signing this Agreement as an Affiliate meets the definition of Affiliate and shall continue to meet such definition as long as the entity receives or uses the Services, (b) the individual signing on behalf of the Initial Customer is duly authorized to execute this Agreement on behalf



of each Affiliate, and (c) that each Affiliate hereby agrees to be bound by the terms of this Agreement for the use of the Services.

Section 25.3. Role of Initial Customer; Responsibility. Each Affiliate hereby authorizes Initial Customer, and Bank may rely on Initial Customer's authority, to act as agent for such Affiliate in connection with any and all matters relating to the Agreement, including, without limitation, administering the Services and originating transactions (i.e., ACH, wire or check), executing Implementation Materials, terminating the Agreement, agreeing to modifications and amendments to the Agreement, adding new Affiliates, and receiving notices under the Agreement (which will be effective against the Customer, even if such notices and communications are sent only to Initial Customer); any and all such actions by the Initial Customer shall be binding on the Affiliates. Each Affiliate agrees that it is responsible for the payment of fees or maintenance of required balances for the Services that it receives from Bank, and for all obligations and liabilities it incurs.

Section 25.4. Single Channel Access. Initial Customer and any Affiliate acknowledge and agree that the Security Procedures provided by Bank to the Initial Customer shall be used to use the Services. As such, each Customer acknowledges and agrees that (a) Bank may rely on and act on any and all communications and Instructions it receives through a Access Channel using the Security Procedures assigned to the Initial Customer and Bank's reliance shall not constitute negligence or willful misconduct or bad faith, (b) each Customer shall be bound by such use of the Services and any Instructions (including funds transfers) and liable for any transactions debiting the Account of the Affiliate, and (c) Bank shall have no liability or responsibility for notifying any Affiliate with which Initial Customer shares its Security Procedures. Each Affiliate and Initial Customer understands and agrees that use of the Services and any transactions affecting each Affiliate's Accounts may be reflected on the records of Bank as initiated by the Initial Customer.

Section 25.5. Guarantee. Initial Customer unconditionally and irrevocably guarantees to Bank the full and prompt payment and performance by each Affiliate of all obligations they or any of them may incur under this Agreement, including obligation for fees and charges, indemnification obligations, in any case that any payment to Bank by an Affiliate is set aside, rescinded or otherwise required to be returned in any bankruptcy or similar proceeding. Initial Customer agrees to pay any and all such amounts upon demand by Bank.

SECTION 26. DEFINITIONS

"Account" or "Accounts" means one or more commercial demand deposit accounts at Bank that is maintained or controlled by Customer.

"Affiliate" means any entity that is directly or indirectly controlled by Customer through ownership of at least a majority of the equity interests of, or holding voting control over such entity.

"Applicable Law" means all applicable federal and state laws, rules and regulations as in effect from time to time governing or relating to the Agreement or the Services, including, without limitation, the Operating Rules and the rules of any funds transfer system, and the rules of, and regulations administered by, the Office of Foreign Assets Control of the U.S. Treasury Department.



"Business Day" means any day other than a Saturday, Sunday, holiday or other day on which the Bank is not required or permitted to be closed.

"Commercial Account Rules" means the agreement provided to Customer and governing Customer's Accounts.

"Credentials" means the user name, personal identification numbers, identification codes, passwords and other identifying and authentication inputs, security token or authentication device, equipment or software that the Customer uses to access the Services.

"Cutoff Time" means the time on any Business Day when Bank will no longer accept Instructions or process transactions (including Payment Orders) for that Business day and any such Instructions received after such time, if accepted, and transactions processed on that day will be processed as of the next Business Day.

"Implementation Materials" means any documents that facilitate the use of a service, specifications, set-up and sign-up forms provided by Bank, and those completed and submitted by Customer, including electronically.

"Instruction" means a Payment Order, other wire transfer instruction, ACH Entry, (as defined in the Operating Rules), file, batch release and other message or instruction or direction to Bank.

"Losses" means any and all claims, actions, demands, losses, damages, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) and all costs of settlement of claims.

"Operating Rules" means the rules, regulations and operating guidelines of the National Automated Clearinghouse Association and those of any regional clearinghouse, payment card association (e.g., MasterCard Incorporated.), or payment network (e.g., ECCHO) in effect from time to time used by Bank to provide the Services.

"Payment Order" has the meaning ascribed thereto in Article 4A of the UCC.

"Processors" means any third-party processors engaged by Bank to provide any part of the Services.

"Related Agreements" means the Service Terms, Service Requests, Account Rules, Account fees and charges, the OCAA, and any resolution or other document establishing Customer's authority to engage in the Services and open Accounts with Bank and appoint individuals as Authorized Representatives.

"Security Procedures" means the Credentials, call-back protocols, and other systems or procedures provided by Bank or its Processors for authenticating Instructions, transactions and use of the Services.



“Service Terms” means the terms and conditions for the Services provided by Bank to Customer under this Agreement, including the Treasury Management Services Terms & Conditions Book available at 53.com/tm-tc and any Implementation Materials or otherwise incorporated herein.

“Services” means the treasury management services described in this Agreement, the OCAA and the Service Terms or otherwise incorporated herein.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code, as enacted in the State of Ohio.

“Vendor” means any third-party service provider used by Customer in connection with the Services or to whom Customer give access to any Service, including through an Access Channel or the Channel Services.

[Signature Page Immediately Follows]

In Witness, Whereof, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

CUSTOMER NAME:

FIFTH THIRD BANK:

Tax ID: _____

Print name: _____

By: _____

Print title: _____

Print name: _____

Date: _____

Print title: _____

NOTE: If required by resolution, second officer of Customer must sign below:

By: _____

Print name: _____

Print title: _____

Signing as a duly authorized officer or agent of each of the Affiliates listed below:

By: _____

Print name: _____

Print title: _____

This Agreement includes the following Affiliates:

Affiliate Name:

Tax ID No.:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



FIFTH THIRD BANK

**38 Fountain Square Plaza
Cincinnati, Ohio 45263**

Online Channel Access Agreement

This Online Channel Access Agreement ("*Agreement*") is between the undersigned "*Customer*" and Fifth Third Bank ("*Bank*") and is effective as of the later date executed by Bank and set forth on the Signature Page (the "*Effective Date*"). Capitalized terms shall have the meaning provided in this Agreement, including Section 16 below, or if not defined in this Agreement, the meaning provided in the Commercial Account Rules or the Master Treasury Management Agreement ("*MTMA*"), as applicable.




SECTION 1. CHANNEL SERVICES.

Section 1.1. Description. Channel Services enable access to, and electronic management of, the Services and Related Accounts that Bank provides. Bank reserves the right to add Channel Services, enhance the functionality and features of the Channel Services and extend the application of the Channel Services to other Services at any time without notice. Information provided through the Channel Services about a Related Account is provided “as is,” changes frequently and is subject to updating, verification and correction. Information Customer obtains through a Channel Service is not the official record of the Related Account or any transaction unless otherwise specified. Bank assumes no responsibility for Customer’s reliance on any Related Account or Service information subsequently updated, verified or corrected.

Section 1.2. Services and Implementation. Each of the Services is governed by the applicable Bank Agreements including this Agreement and as elected by Customer in the Implementation Materials. Nothing in this Agreement expands, changes, limits or restricts any of the respective obligations or rights of the parties under the applicable Bank Agreements. It is the intention of the parties that this Agreement and each Bank Agreement be construed and interpreted to give effect to the respective provision of each to the greatest extent practical. To the extent of any conflict between this Agreement and the Bank Agreements with respect to the Channel Services the terms of this Agreement shall control. If Bank is not a party to the Bank Agreement, Customer acknowledges and agrees that Bank is providing the Channel Services in conjunction with the provider of the Services under that Bank Agreement and consents to all access to the Services provided through this Agreement. Customer acknowledges and agrees that Bank may arrange for certain or all of the aspects of the Services, including software and processing to be performed or provided, by Processors engaged by Bank and that Customer shall have no rights or remedies against any such Processor for the Services, but only against Bank. Bank’s Processors are obligated to comply with the confidentiality, privacy and security requirements of this Agreement. Bank is liable and solely responsible for the aspects of the Service provided by its Processors.

Section 1.3. Intellectual Property. Bank and its Processors or other third parties involved in providing the Channel Services (if any) own and exclusively retain any and all patent, trademark, copyright or trade secret rights (collectively referred to as “*Intellectual Property Rights*”) and any related rights associated with the Channel Services and the software, design, functionality, processes, procedures, systems, know-how, inventions, sales materials, technical materials, Channel Documentation and other materials provided in connection with the Channel Services as well as the content and other works of authorship provided, displayed or published in connection with the Channel Services. Customer further acknowledges and agrees that Bank or its Processors or such other third parties, as the case may be, shall exclusively own all Intellectual Property Rights in and to any and all improvements, enhancements, derivative works, modifications, or developments made to or resulting from any of the foregoing, including those developed, worked on, learned, or conceived by Bank or its Processors in connection with providing the Channel Services to Customer, and Customer assigns any such rights to Bank or its designee. Customer’s sole right is to use the Channel Services as provided in this Agreement.

Section 1.4. Availability. While Bank will use commercially reasonable efforts to have its Channel Services available at all times, one or more of the Channel Services may be



temporarily unavailable due to routine or unscheduled maintenance or upgrades, or the occurrence of unauthorized activity or other events or circumstances beyond Bank's control including economic and political events, periods of high volume, and system attacks and Bank's response to such events or circumstances. Customer agrees that Bank shall not be liable if a Channel Service is not available for use at any time.

Section 1.5. Third Party Software and Linked Sites. The Channel Services may provide the opportunity to use or access software or services that are not part of the Channel Services or Services ("*Third-Party Software*") and links to the websites of third parties ("*Linked Sites*") but are each provided by a third party other than a Processor ("*Third-Party Provider*"). Use of Third-Party Software and Linked Sites through links or otherwise is solely at Customer's election, risk and expense. Customer is responsible for obtaining and complying with the Third-Party Provider's license or terms of use. Except where we explicitly provided otherwise in a Bank Agreement or this Agreement, Bank does not endorse or assume any responsibility for any such Third-Party Software, Linked Site or for any obligation of the Third-Party Provider to Customer. Customer agrees that the Third-Party Provider (and not Bank) is solely liable and responsible to Customer for any content, services, any problems or claims with respect to the Third-Party Software or Linked Site including any security or data breach.

Section 1.6. Mobile Apps. Bank's Mobile Apps enable access to certain Channel Services through the use of a supported electronic wireless device, such as a smartphone or tablet device ("*Mobile Device*"). The Mobile App for Fifth Third Direct is available to Users that have been granted User Rights, some of which may only be enabled in the set-up and implementation process. Customer agrees that, where required, the acceptance by Users of software and terms of use associated with the acquisition of a Mobile App is authorized by Customer, and shall be binding upon Customer and each User. In addition to any fees disclosed by Bank to Customer for use of the underlying Channel Services or Services accessed through Mobile Apps, Customer and may incur charges from its telecommunications carrier for use of the Mobile App. Bank is not responsible for any such charges that Customer or Users may incur. The use of Mobile Apps presents unique risks in addition to those associated with the use of the Internet generally. Those risks include the potential loss or compromise of a Mobile Device with a Mobile App, the increased exposure to potential unauthorized access to communications and to malware and similar invasive software. Customer assumes all risks of using the Mobile Apps for the Channel Services any Services by all of its Users, and are responsible for managing the use and security of the Mobile Devices to combat these and other risks associated with mobile banking.

Section 1.7. Risks of Internet Use. Since the Internet is inherently unsecure and since there is a risk that data communications and transfers through the Channel Services may be subject to interruption, interception, failure, unavailability, delay or unauthorized access or dissemination ("*Failure Events*"), Bank agrees to take commercially reasonable steps to maintain the security of such data communications and transfers, including using encryption and other industry standard security features. Except where Bank fails to take such commercially reasonable steps, Bank shall not be liable for any Failure Events that occur, including any loss of privacy or data, or use by others of such data communications or transfers. Under no circumstances, shall Bank be liable for any Failure Events that occur prior to Customer or the User establishing a secure connection to Bank's authorized portal or after properly terminating that connection.




SECTION 2. PROCESS.

Section 2.1. Set Up and Implementation. Customer may elect to enable Channel Services for one or more Services through the corresponding Bank Agreement or this Agreement. In the set up process for a new or added Channel Service, Bank requires that Customer provide Bank with information necessary to establish the Channel Service and establish the User Rights of the Customer's Users, including those executing this Agreement and any Channel Service Schedule, and providing set up information to Bank. Bank may rely on the information provided to Bank by Customer in this process in establishing and providing the Channel Services to Customer. Any changes by Customer to the information provided to Bank must be made in writing and will not be effective until received by Bank has had a reasonable opportunity to act or such changes.

Section 2.2. Limited Use. Bank grants Customer, for Customer's internal business purposes solely in connection with a Service, a non-exclusive, non-transferable, limited and revocable right to use and access the Channel Services. Customer agrees to use the Channel Services only in connection with the Services for legitimate business purposes and only in accordance and in compliance with Applicable Law. Bank provides the Channel Services for the sole and exclusive benefit of Customer and Customer's Affiliates who become a party to this Agreement. Customer agrees not to access, or allow Users to access, the Channel Services from any country where such use or access is prohibited by United States sanctions regulations, Applicable Law or local law. If access to any software is provided through the Channel Services, Customer agrees not to download the software outside the United States. Any Vendor used by Customer in connection with the Channel Services or to whom Customer gives access to any Service including through the Channel Services is Customer's agent and not Bank's, and Customer is liable and solely responsible for: (a) any Vendor's failure to comply with this Agreement and manage Related Account information, transmit Instructions and other directions and decisions to us and other online features as described in this Agreement or the Bank Agreement including any Security Procedures or operating requirements relating to the Channel Services; and (b) all fees, costs and expenses owed to each Vendor for its services.

Section 2.3 Fees; Setoff. Fees associated with the Channel Services, if any, are specified in the applicable Channel Service Schedule, or as separately agreed by the parties in writing. In addition, Customer is subject to fees, interest and other charges as required under the applicable Bank Agreement. Customer and Users shall be responsible for any internet access or telecommunications charges they incur in connection with the use of the Channel Services including use of a Mobile Device. Customer agrees that, in the event Customer fails to pay the amount of fees due and owing under this Agreement, Bank may set off against an Account held by Customer at Bank to pay the amount of such fees, interest or charges (excluding any Account expressly titled to clearly demonstrate that the Account is held by Customer in a fiduciary or representative capacity for a third party such as, for example, a custodial Account).

Section 2.4. Restrictions. Customer agrees that it will not, and will not allow its employees, contractors, agents or Vendors to, directly or indirectly: (a) decompile, reverse engineer, disassemble or otherwise attempt to derive source code or trade secrets relating to the Channel Services; (b) copy (except in the case of normal backups and archival copies), reproduce, or incorporate any portion of the Channel Services, or seek to circumvent any restrictions or measures controlling access to the Channel Services; (c) license, lease, encumber, distribute, resell, or otherwise transfer, co-brand, frame, or link any portion of the Channel



Services; or (d) adapt, modify, transform or create derivative works of, any aspect of the Channel Services (including the removal or alteration of any copyright, trademark or proprietary rights notice).

SECTION 3. CHANNEL ADMINISTRATION.

Section 3.1. Channel Administrator. The administrative features for the management of the Channel Services are controlled and managed by Customer's Channel Administrator(s). The Channel Administrator has broad authority to manage the Channel Services including the authority and responsibility to appoint additional Channel Administrators with the authority for one or more Services, which includes the authority to:

- select and configure features and Channel Services for Customer's specific requirements;
- designate and delete Users, and assign and administer User Rights (except where Bank specifically reserves this right to itself in a Channel Service Schedule or Bank Agreement);
- select and administer Security Procedures and User controls related to the Channel Services;
- enable use of Mobile Apps for Users for certain Services;
- accept and act on all communications from Bank regarding the Channel Services; and,
- designate itself as a User with rights to the Channel Services for some or all of the linked Services.

Customer understands that Customer may, at its option, enable multiple or separate Channel Administrators for each Service. If Customer has included Affiliates under this Agreement, Customer may designate separate Channel Administrators for each Affiliate and the Affiliate's Services or may have a common Channel Administrator for one or more Affiliates. The Channel Administrators (set up by Bank on Customer's instruction in the implementation process) may also have authority for Channel Services over all Affiliates.

Section 3.2. Designation and Authority. (a) Customer will appoint a person or persons to serve as the Channel Administrator or Channel Administrators in writing on a form or forms Bank requires in the implementation process or if Customer does not then have an acting Channel Administrator. Customer agrees to not permit the sharing of Credentials or the use of any Credentials except by the person authorized by Customer or the Channel Administrator.

(b) The Channel Administrator has complete authority to manage Customer's use of the Channel Services including enabling User Rights. As part of the set up and implementation process, Bank will provide the Channel Administrator designated by Customer with its initial sign-on credentials and establish the Services to which he or she shall have access. The Channel Administrator must then establish its own password. Customer is solely responsible for maintaining the privacy and security of the Credentials once established and for any use of the Channel Services and Services associated with those Credentials.



(c) The Channel Services may allow the Channel Administrator to set transaction limitations, establish controls, develop templates, manage Credentials (other than User IDs provided by Bank) and utilize security features for the Channel Services. Failure to properly implement and manage limitations, controls, and security features increases the risks of, and Customer's exposure to, unauthorized transactions.


(d) Customer may have the option to require "*Dual Control Administration*," meaning that the approval of a second Channel Administrator is required to verify the designation and authorization of a User. Bank recommends that Customer elect to require Dual Control Administration. Bank will rely on the authority of the Channel Administrator and Users designated by the Channel Administrator until Bank receives written notice of a change from an authorized representative of Customer that Customer will be using Dual Control Administration and Bank has had a reasonable opportunity to act on and approve the notice.

SECTION 4. SECURITY AND SECURITY PROCEDURES.

Section 4.1. Effect. Access to Channel Services is subject to Security Procedures that Bank establishes with Customer. All use of the Channel Services through the Security Procedures will be deemed to have been authorized by Customer. Each direction, message or other instruction sent to Bank through the Channel Services by a User using the User's Credentials and applicable Security Procedures will be treated by Bank as authorized and shall bind Customer. Customer is responsible for the accuracy, completeness and timeliness of all such instructions sent through the Channel Services. The Security Procedures are not designed to detect errors in any communications to Bank or other use of the Channel Services. Use of the Services by Users themselves may be subject to the same or additional Security Procedures as required by the Bank Agreement or this Agreement. Bank may update its requirements with respect to Credentials by giving Customer notice through the applicable Users and Channel Administrator.

Section 4.2. Safeguarding the Security Procedures. Customer agrees to maintain the security and confidentiality of the Security Procedures and Implementation Materials. Customer's failure to protect the confidentiality and integrity of the Security Procedures may enable an unauthorized person to use the Channel Services and access Customer's Related Accounts and data, and transfer funds from Related Accounts. Customer must notify Bank as soon as reasonably possible if there has been a breach of its security, or any Security Procedure have been lost, stolen, misused or compromised. Customer should contact its relationship manager, Bank's customer support services or contact person indicated in the Channel Documentation. If a User is no longer authorized, Customer is responsible for terminating that User's User Rights. Bank may suspend the Channel Services if Bank believes the security of the Channel Services has been compromised.

Section 4.3 Customer Responsibilities. In addition to using and protecting the Security Procedures, it is Customer's responsibility to: (a) institute and use current and reasonable measures to mitigate the risks associated with the access to and use of the Channel Services and Services; (b) institute and enforce effective policies and procedures to control the use of the Channel Services, and ensure that its personnel use the Channel Services only as authorized and within the limits of their permission or authority; and (c) carefully monitor the activities of the Users using the Channel Services for compliance with this Agreement and Customer's internal control policies and require Users to maintain the safety and confidentiality of their Credentials



including by regularly changing their passwords. In addition to taking these measures, Customer acknowledges that Bank offers certain tools designed to assist Customer in controlling the incidence of unauthorized use of the Channel Services. If Customer chooses not to implement Customer Measures, and the proper use of that Service or Customer Measure could reasonably have prevented a Loss due to the incidence of fraud, or unauthorized activity Customer shall hold the Bank harmless for such Losses that could have reasonably been prevented.

Section 4.4. Customer Systems. Customer is responsible for having and maintaining functioning hardware, software, infrastructure, mobile and other communication devices, Internet access and service and information technology systems including reasonable and current security features and protections (collectively “*Customer Systems*”) necessary for use with the Access Channels and for meeting the technical specifications set forth in the Channel Documentation. Customer is responsible for any malfunction, compromise, security breach or other misuse or problems with the Customer Systems and for the information transmitted and received through the Customer Systems.


Section 4.5. Additional Authentication. Bank has no duty to monitor Customer’s use of the Channel Services. Bank may, however, in its discretion, apply a variety of techniques and programs that may trigger a requirement for a User to respond to an email or message from Bank to provide additional authentication before permitting certain actions of the User including a change in User’s profile and certain transactions. Users will not be able to complete the desired actions until additional authentication is provided. Customer is not entitled to rely on these programs or techniques as a substitute for its own internal control of the activities of its Users.

SECTION 5. ELECTRONIC COMMUNICATIONS; CONSENT.

The parties agree that this Agreement and the Bank Agreements are entered into on an interstate basis and agree that those Agreements and Services and Channel Services are subject to the Electronic Signatures in Global and National Commerce Act and may be executed and delivered by facsimile, electronic mail in PDF or similar format or other electronic method. Customer agrees and consents that Bank may, at its option, send to Customer any record, notice, disclosure, account statements and other information including information that Bank is required by Applicable Law to provide to Customer in writing via electronic means (including through a Channel Service.) Electronic communications include commercially reasonable electronic communications methods Bank employs that deliver visual text or images to be displayed on a computer or mobile device screen (such as e-mail, SMS or other mobile phone text, and posting through a Channel Service). This is Customer’s consent to receive account statements and other notices from Bank electronically. Bank’s records as to the executed Agreement shall be controlling. Bank may, however, require that Customer deliver an original of this Agreement with a manual original signature.

SECTION 6. NOTIFICATIONS.

Section 6.1. Establishment. Users are required to accept certain administrative emails and text notifications and may elect to receive certain other email or text notifications relating to an activity, status or action relating to their Channel Services and any Services including for additional authentication Bank may require (all such emails and texts, “*Notifications*”). The Notification feature is set up by each User and depends on the User specifying a valid and current



email address or phone number. Customer consents to the sending of email and text notifications to Users, including to any Mobile Devices and through any Mobile App, and understands that such messages could result in charges to the Users or Customer for such messages from the carriers of such messages.

Section 6.2. Informational Use. Notifications are provided for Customer's and User's information and convenience only. Notifications do not constitute a Bank record and are not intended as a substitute for proper account management or regular use of Bank's account management or other information related Services.


Section 6.3. Delivery Risks. Notifications may be delayed or prevented by a variety of circumstances beyond Bank's control. Bank does not guarantee the delivery of any Notifications. Notifications are sent via the Internet or wireless networks without being encrypted or otherwise coded in any way. Bank will not be liable in any way for non-delivery, delayed or wrong delivery of Notifications, the content in Notifications, or Customer's use of, or reliance on, the absence of any Notification for any purpose. Replies to a Notification are not permitted and will not be read or acted upon.

SECTION 7. BANK REPRESENTATIONS AND WARRANTIES.

Bank represents and warrants to Customer that: (a) Bank's duly organized, validly existing, and in good standing in the jurisdiction in which Bank is organized; (b) the execution, delivery and performance by Bank of this Agreement has been authorized by all necessary corporate and governmental action; (c) the person(s) signing this Agreement is duly authorized to do so; (d) this Agreement represents Bank's legal, valid and binding obligation; and (e) execution and performance of this Agreement and provision of the Channel Services does not violate any Applicable Law, Bank's bylaws or any material agreement by which Bank is bound. No descriptions or specifications constitute representations or warranties of any kind. Bank is acting as an independent contractor in providing the Channel Service and not as Customer's agent or as a fiduciary. EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT, BANK MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO ANY ACCESS CHANNELS OR CHANNEL SERVICES OR OUR PERFORMANCE OF ANY SERVICES OR THE CHANNEL SERVICES, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO DESCRIPTIONS OR SPECIFICATIONS CONSTITUTE REPRESENTATIONS OR WARRANTIES OF ANY KIND.

SECTION 8. CUSTOMER REPRESENTATIONS AND WARRANTIES.

Customer represents and warrants to us that: (a) Customer is duly organized, validly existing, and in good standing in the jurisdiction in which Customer is organized, and is validly qualified in any other jurisdiction where Customer does business and is required to be qualified except where the failure to be so qualified would not have a material adverse effect on Customer; (b) the execution, delivery and performance by Customer of this Agreement including each Channel Service Schedule and the Implementation Materials has been authorized by all necessary entity and governmental action; (c) the person or persons signing this Agreement including each Channel Service Schedule and the Implementation Materials on Customer's behalf is (are) duly authorized to do so; (d) this Agreement including each Channel Service Schedule represents Customer's legal, valid and binding obligation; (e) the execution and performance of



this Agreement including each Channel Service Schedule, and the use of the Channel Services do not and will not violate in any material respect any Applicable Law, Customer's entity governing documents, or any material agreement by which Customer is bound; and (f) each transaction Customer conducts, and each account Customer has with Bank is conducted or maintained for a business or commercial purpose and not a personal, family or household purpose. Customer reaffirms these representations and warranties each time it executes a Channel Service Schedule and each time it uses a Channel Service and agrees to promptly notify Bank if any representation or warranty made by Customer is no longer true.

SECTION 9. COMPLIANCE

This Agreement and the use and provision of the Channel Services are subject to all Applicable Law. Each party agrees to comply with Applicable Law in using or providing the Channel Services, as the case may be. Customer agrees to comply with the requirements of the Channel Documentation provided for the Channel Services.

SECTION 10. LIMITATION OF LIABILITY.

CUSTOMER AGREES TO THE MAXIMUM EXTENT PERMITTED BY LAW THAT IN ADDITION TO ANY OTHER LIMITATION ON BANK'S LIABILITY IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CHANNEL SERVICE SCHEDULE OR BANK AGREEMENT, IN NO EVENT WILL BANK (OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, EMPLOYEES OR AGENTS) BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR SPECULATIVE LOSSES, EXPENSES, INJURY, COSTS OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REVENUE, SAVINGS, TIME, DATA, GOODWILL AND OPPORTUNITIES, ATTORNEYS' FEES, AND COURT AND OTHER DISPUTE RESOLUTION COSTS) THAT CUSTOMER OR ANY OTHER PERSON MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT OR ANY CHANNEL SERVICE PROVIDED BY BANK, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, COST OR DAMAGE AND REGARDLESS OF THE TYPE OF CLAIM. IN THE CASE OF ANY CONFLICT BETWEEN ANY LIMITATIONS OF LIABILITY IN THIS AGREEMENT INCLUDING A CHANNEL SERVICE SCHEDULE, OR A BANK AGREEMENT, THE BROADER LIMITATION SHALL CONTROL TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Customer further agrees, to the maximum extent permitted by law, that Bank's liability to Customer arising from any Channel Service will be limited to actual monetary damages that are the direct result of Bank's negligence or willful misconduct. Notwithstanding the forgoing, for any Instructions that are Payment Orders which are governed and subject to UCC Article 4A, Bank is liable only for damages required to be paid under UCC Article 4A. In addition to the forgoing limitation, in the instance of any overbilling by Bank that is timely reported by Customer as required by this Agreement, Bank's liability shall not exceed the amount overbilled by and paid to Bank by Customer. In no instance shall Bank be responsible or liable for (a) any act or omission of Customer's officers, employees or agents, or of any third party (other than Bank's Processors), (b) any failure to act by Bank if Bank reasonably believed taking the omitted action would have violated Applicable Law, or (c) any interception of information relating to the Customer or its transactions as a result of Customer's use of the Internet or other Access Channel that is not the result of Bank's gross negligence or willful misconduct. Customer is also subject to any further limitations of liability set forth in an applicable Channel Service Schedule or Bank Agreement.

SECTION 11. INDEMNIFICATION OBLIGATIONS


Section 11.1. Customer. To the fullest extent not prohibited by Applicable Law, Customer agrees to indemnify and hold Bank and its officers, directors, employees, affiliates, shareholders and agents harmless from and against any and all losses, liabilities, damages, actions, claims, demands and expenses including court costs and reasonable attorneys' fees and expenses ("Losses") resulting directly or indirectly from, or arising in connection with: (a) Customer's breach of any of Customer's agreements, representations, warranties or covenants in this Agreement or any Channel Service Schedule; (b) Customer's violation of Applicable Law in connection with any Channel Service or this Agreement; (c) Customer's use of the Channel Services and Bank's complying with or carrying out any instruction or other direction given to Bank in accordance with this Agreement or a Channel Service Schedule; or (d) a claim or action of a third party Provider or Vendor. Customer is not, however, obligated to indemnify Bank or hold Bank harmless for any Loss directly resulting from Bank's gross negligence or willful misconduct.

Section 11.2. Bank. To the fullest extent not prohibited by Applicable Law, Bank agrees to indemnify and defend or settle at its expense any action brought against Customer to the extent that it is based on a claim that a Channel Service as used by Customer in accordance with this Agreement directly infringes a U.S. copyright, trademark or patent or constitutes misappropriation of a third-party trade secret, provided, however, that Customer: (a) promptly notifies Bank in writing of such claim; (b) has not made any admission of liability or agreed to any settlement or other material issue relating to such claim; (c) reasonably cooperates with Bank at Customer's expense in the defense or settlement; and (d) at Bank's request, gives Bank sole control and authority over all aspects of the defense or settlement of such claim.

SECTION 12. TERM AND TERMINATION.

Section 12.1. Term. This Agreement is effective as of the Effective Date and shall remain in effect until terminated by either party as provided in this Agreement; provided, that in the event any Bank Agreement or Service is terminated then the Corresponding Access Channel or Channel Service Schedule will also be terminated, but without terminating this Agreement. This Agreement or any Channel Service Schedule may be terminated by either party at any time by giving thirty (30) days' prior written notice of termination to the other party.

Section 12.2. Bank Termination. Bank may terminate this Agreement or terminate or suspend any or all of the Channel Services immediately if (a) Customer breaches a material obligation under this Agreement or violated any Applicable Law in connection with the Channel Services or any other material agreement with Bank; (b) Customer becomes insolvent, is placed in receivership or is adjudicated bankrupt or Customer becomes subject to any voluntary or involuntary bankruptcy proceeding or any assignment for the benefit of its creditors; (c) Customer's financial condition has become materially impaired in Bank's good faith opinion based on reasonable evidence such that Bank believes Customer is likely to be unable to perform its material obligations to Bank; (d) any person or group acting in concert that is not a controlling stockholder of Customer on the date of this Agreement acquires, directly or indirectly (whether by merger, stock purchase or issuance, recapitalization, reorganization or otherwise), a majority of Customer's outstanding equity interests; or (e) the continued provision of any of the Channel Services in accordance with the terms of this Agreement would, in Bank's good faith opinion, cause Bank to violate Applicable Law or any requirement, policy or directive of any regulatory authority, or would subject us to an unacceptable risk of loss or material security risk.



Section 12.3. Effect. Upon any termination of this Agreement, Customer shall: (a) promptly pay to Bank all sums due or to become due under this Agreement, (b) securely destroy (or return to Bank if requested by Bank) at Customer's expense all Channel Documentation, Security Procedures, and related Implementation Materials, and all copies and reproductions thereof, whether written or in magnetic media and whether received from Bank or otherwise; and (c) have no further right to make use of the Channel Services.

Section 12.4. Survival. Termination of the Channel Service or this Agreement does not relieve or release Customer's payment obligations for any Channel Service or Service Bank provides before and after the Channel Service or this Agreement is terminated, nor does it release Customer or Bank from any of our respective obligations that arose or became effective prior to such termination. In addition, all provisions of this Agreement relating to the parties' warranties, representations, confidentiality or non-disclosure obligations, proprietary rights, limitation of liability and indemnification shall survive the termination of the Channel Services or this Agreement.

SECTION 13. FORCE MAJEURE.

Neither party shall be responsible, and neither shall incur any liability to the other, for any failure, error, malfunction or any delay in carrying out any of its obligations under this Agreement directly resulting from causes beyond such party's reasonable control, including without limitation, fire, casualty, lockout, strike, unavoidable accident, failure of the internet or telecommunications systems, act of God, act of terrorism, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents such party from operating normally.

SECTION 14. MISCELLANEOUS.

Section 14.1. Entire Agreement. This Agreement together with the applicable Channel Service Schedule and Channel Services provisions of the Bank Agreements (if any), applicable terms of use of any Mobile Apps (if any) constitutes the complete and exclusive statement of the agreement between the parties with respect to the Channel Services and supersedes any prior or contemporaneous agreements between the parties with respect to such Channel Services. If there is a conflict between this Agreement and a Bank Agreement, the terms of this Agreement shall control to the extent necessary to resolve the conflict. Nothing in this Agreement confers a right or benefit on any person or entity other than Bank and Customer, except for any Processors.

Section 14.2. Amendment. This Agreement including any Channel Service Schedule may be modified by a written agreement executed and signed by the parties. Bank may, however, modify this Agreement including any Channel Service Schedule by giving Customer written notice. If Customer or a User uses or accesses the applicable Channel Services after the expiration of thirty (30) days of the giving or posting of such notice (or a later effective date specified in such notice or posting), Customer is bound by this Agreement including Channel Service Schedule as so modified. Notwithstanding the foregoing, if a modification to this Agreement or any Channel Service Schedule is required by or under Applicable Law or by a regulatory authority with jurisdiction over Bank or is, in Bank's sole good faith opinion, necessary to preserve or enhance the security of the Channel Services or update the functionality (including if required by a Processor), Bank may modify this Agreement including any Channel Service



Schedule by giving Customer notice of the modification by any means permitted by Applicable Law, and the modification will be effective immediately upon Bank giving such notice.

Section 14.3. Assignment. Customer may not sell, assign or transfer any of its rights or obligations under this Agreement without Bank's prior written consent. Bank may assign its rights and obligations under this Agreement in whole or in part without Customer's consent (a) pursuant to, or in connection with any merger, consolidation or amalgamation involving Bank or its parent company, or the sale or transfer of all or substantially all of Bank's assets or stock, or (b) in connection with the sale or other disposition involving a line of business to which this Agreement relates. Bank will use reasonable efforts to notify Customer of any such assignment. Customer expressly reserves its right to terminate any or all Services in the event of any such transaction.


Section 14.4. Governing Law; Venue; Waiver of Jury Trial. This Agreement and any claims or disputes relating to or arising out of this Agreement or the Channel Services shall exclusively be governed by, and construed in accordance with, the laws of the State of Ohio, without regard to Ohio's conflict of law principles, and with applicable federal laws and regulations. Customer irrevocably submits to the nonexclusive jurisdiction of the state and federal courts in Ohio and agrees that any legal action or proceeding with respect to this Agreement may be commenced in such courts. EACH PARTY EXPRESSLY, IRREVOCABLY, KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

Section 14.5. Notices. Except as otherwise specifically provided in the Service Terms, Channel Service Schedule, Channel Documentation or the Implementation Materials with respect to a particular Channel Service, notices under this Agreement shall be provided in writing by nationally recognized overnight courier, hand delivery or email. The Bank also reserves the right to provide notice to Customer electronically via email or posting to the Bank's online platform or Access Channel, each of which Customer agrees will be considered "in writing." The address for notices to Customer will be the address the Bank has in its records with respect to this Agreement or the particular Service, as applicable. The address for notices to Bank will be as the Bank specifies to Customer in writing, including in the Implementation Materials. Notices shall be deemed effective: (i) when received, if sent by overnight courier or hand delivery; (ii) three (3) days after sending, if sent by U.S. Mail; or (iii) when sent or posted, if provided via email or posting to the Bank's online platform.

Notwithstanding any terms in this Section to the contrary, any addition, deletion or change to any Services or Service Terms requested by Customer (each, a "Change Request") must be submitted in a form acceptable to the Bank. No Change Request will become operative or effective until the Bank has had an opportunity to review and respond to such Change Request, which the Bank agrees to do within a reasonable period of time.

Section 14.6. Counterparts. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument.

Section 14.7. Severability. If performance of the Channel Services in accordance with the terms of this Agreement would result in a violation of any Applicable Law to which Bank is subject, then this Agreement shall be deemed amended to the degree necessary to comply with such Applicable Law, and Bank shall incur no liability to Customer as a result of such violation or amendment. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such



provision shall be valid, legal and enforceable to the maximum extent permitted by such holding and the validity, legality, or enforceability of the other provisions of this Agreement will not be affected or impaired by such holding.

Section 14.8. Headings. Headings are for reference purposes only and are not part of this Agreement.

Section 14.9. Waiver. No party's failure or delay in exercising any right or remedy under this Agreement will operate as a waiver of such right or remedy, nor shall any waiver by either party of any breach of the other party's obligations under this Agreement operate as a waiver of any prior, current or subsequent breach. No waiver will be effective unless made in writing.

SECTION 15. AFFILIATES.

Section 15.1. Joinder. By executing this Agreement, Customer (as indicated on the Signature Page and for purposes of this Section the "Initial Customer"), each Affiliate of Customer listed below on the Signature Page (if any), and Bank agrees that each such Affiliate shall have all of the rights and obligations of, and shall for all purposes be a party under this Agreement as, "Customer." Additional Affiliates can be added through an addendum to this Agreement in the form required by Bank and executed by Customer, that Affiliate and Bank.

Section 15.2. Representation. Initial Customer represents, warrants and covenants to Bank that (a) each entity signing this Agreement as an Affiliate meets the definition of Affiliate and shall continue to meet such definition as long as the entity receives or uses the Services, (b) and the individual signing on behalf of the Initial Customer is duly authorized to execute this Agreement on behalf of each Affiliate, and (c) that each Affiliate hereby agrees to be bound by the terms of this Agreement for the use of the Services.

Section 15.3. Role of Initial Customer; Responsibility. Each Affiliate agrees that it is responsible for the payment of fees or maintenance of required balances for the Services that it receives from Bank, and for all obligations and liabilities it incurs. Each Affiliate hereby authorizes Initial Customer, and Bank may rely on Initial Customer's authority, to act as agent for such Affiliate in connection with any and all matters relating to the Agreement, including, without limitation, administering the Services and originating transactions (i.e., ACH, wire or check), executing Implementation Materials, terminating the Agreement, agreeing to modifications and amendments to the Agreement, adding new Affiliates, and receiving notices under the Agreement (which will be effective against the Customers, even if such notices and communications are sent only to Initial Customer); any and all such actions by the Initial Customer shall be binding on the Affiliates.

Section 15.4. Single Channel Access. Initial Customer and any Affiliate acknowledge and agree that the Security Procedures and Credentials provided by Bank to the Initial Customer shall be used to use the Services. As such, each Affiliate acknowledges and agrees that (i) Bank may rely on and act on any and all communications and Instructions it receives through Channel Services using the Security Procedures and Credentials assigned to the Initial Customer and Bank's reliance shall not constitute negligence or willful misconduct or bad faith, (ii) each Customer shall be bound by such use of the Services and any Instructions (including funds transfers) and liable for any transactions debiting the Account of the Affiliate, and (iii) Bank shall have no liability or responsibility for notifying any Affiliate with which Initial Customer shares its



Security Procedures. Each Affiliate and Initial Customer understands and agrees that use of the Services and any transactions affecting each Affiliate's Accounts may be reflected on the records of Bank as initiated by the Initial Customer.

Section 15.5. Guarantee. Initial Customer unconditionally and irrevocably guarantees to Bank the full and prompt payment and performance by each Affiliate of all obligations they or any of them may incur under this Agreement, including obligations for fees and charges, indemnification obligations, in any case that any payment to Bank by an Affiliate is set aside, rescinded or otherwise required to be returned in any bankruptcy or similar proceeding. Initial Customer agrees to pay any and all such amounts upon demand by Bank.

SECTION 16. DEFINITIONS.

"Access Channels" means Fifth Third Direct, the Mobile Apps and other websites or portals, and direct access that Bank makes available to its commercial, business and financial institution customers. Bank's Access Channels do not include portals or other means of access that may be provided by or available through a third party and clearly marked as such.

"Account" or "Accounts" means one or more commercial demand deposit accounts at Bank that is maintained or controlled by Customer.

"Affiliate" means any entity that is directly or indirectly controlled by the Customer through ownership of at least a majority of the equity interests of, or holding voting control over, such entity.

"Agreement" includes the Online Channel Access Agreement, the applicable Channel Service Schedule and all Channel Documentation.

"Applicable Law" means all applicable federal and state laws, rules and regulations as in effect from time to time governing or relating to the Agreement or the Services, including, without limitation, the Operating Rules and the rules of any funds transfer system, and the rules of, and regulations administered by, the Office of Foreign Assets Control of the U.S. Treasury Department.

"Bank Agreements" means each of the separate written agreements (including the MTMA), account documentation, notes, related agreements and other documents and instruments in effect between Customer and Bank and which govern the applicable Service. Customer may be required to enter into an agreement with a third party service provider that enables Bank to provide Channel Services to Customer.

"Business Day" means any other day other than a Saturday, Sunday, holiday or other day on which the Bank is required or permitted to be closed.

"Channel Administrator" means each individual appointed by Customer as the Customer administrator for Channel Services on the Implementation Materials or other written instruction.



“Channel Documentation” means the online or text manual and user guides Bank provides to Customer that contain technical specifications, instructions and guides for using a Channel Service.

“Channel Service Schedule” means a schedule or addendum executed by Bank and Customer that expressly refers to or incorporates this Agreement (including the applicable Bank Agreements) and sets forth the features, functionality and other aspects of the Channel Service available to Customer for a particular Service.

“Channel Services” means, collectively, the Access Channels and the services, functionality, content and features available for use with or through the Access Channels as more particularly set forth in this Agreement and the applicable Channel Service Schedule or Bank Agreement (but not including the Services themselves).

“Credentials” means the user name, personal identification numbers, identification codes, passwords and other identifying and authentication inputs, security token or authentication device, equipment or software, that the Channel Administrator and Users use or apply in order to access the Channel Services.

“Customer Measures” means those commercially reasonable procedures to prevent fraud, misuse and unauthorized use of Related Accounts that are implemented, maintained and enforced by Customer.

“Cutoff Time” means the time on any Business Day when Bank will no longer accept Instructions or process transactions (including Payment Orders) for that Business day and any such Instructions received after such time, if accepted, and transactions processed on that day will be processed as of the next Business Day.

“Designated Account” means a demand deposit, savings, lease, loan, commercial card, transaction or investment account with Fifth Third Bank or other provider of the applicable Service in Customer's name or to which Customer or any of its Affiliates has been granted access by express authority of the account owner that has been authorized by Customer for access through a Channel Service.

“Implementation Materials” means any documents that facilitate the use of a service, specifications, set-up and sign-up forms provided by Bank, and those completed and submitted by Customer, including electronically.

“Instruction” means a Payment Order or other instruction for a wire transfer, electronic funds transfer, ACH Entry (as defined in the Operating Rules), file, batch release or other message, instruction or direction to Bank.

“Losses” means any and all claims, actions, demands, losses, damages, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) and all costs of settlement of claims.

“Mobile Apps” means the applications or “apps” Bank makes available and authorize for downloading by Customer and Users on Mobile Devices.



“Operating Rules” means the Operating Rules and Operating Guidelines of the National Automated Clearinghouse Association, the Electronic Check Clearing House Organization Rules, and the rules of any other national or regional clearinghouse, payment card association (e.g., MasterCard Incorporated), or payment network in effect from time to time and in which Bank participates and uses to provide Services.

“Payment Order” has the meaning ascribed thereto in Article 4A of the UCC.

“Processors” means any third-party processors engaged by Bank to provide any part of the Services.

“Security Procedures” means the Credentials, call back protocols, and other systems or procedures provided by Bank or its Processors for authenticating Instructions, transactions and the use of a Channel Service.

“Services” has the meaning set forth in the applicable Bank Agreement.

“Service Terms” means the terms and conditions for the Services provided by Bank to Customer under this Agreement, including any Implementation Materials or otherwise incorporated herein.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code, as enacted in the State of Ohio.

“User Rights” means the entitlements and other rights provisioned by the Channel Administrator or Bank to a User, subject to any restrictions imposed by the Channel Administrator or Bank (including rights to certain types of Channel Services, dollar amount, account and transaction type limitations, Channel Services and approval processes) with respect to some, all or a defined set of the Channel Services.

“Users” means personnel, or sets or types of personnel including the Channel Administrator, whose User Rights have been established in accordance with this Agreement.

“Vendor” means any third party service provider used by Customer in connection with the Services or to whom Customer give access to any Service, including through an Access Channel or the Channel Services.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

CUSTOMER NAME:

FIFTH THIRD BANK

By: _____

Tax ID: _____

Print Name: _____

By: _____

Print Title: _____

Print Name: _____

Date: _____

Print Title: _____

Note: If required by resolution, second officer of Customer must sign below

By: _____

Print Name: _____

Print Title: _____

Signing as a duly authorized officer or agent of each of the Affiliates listed below

By: _____

Print Name: _____

Print Title: _____

This Agreement includes the following Affiliates:

Affiliate Name:

Tax ID No.:

Authorization Certificate for Commercial Card Service Agreement

To Fifth Third Bank:

I HEREBY CERTIFY that:

I am duly authorized by the company, entity or public body identified below (the "*Company*") in my official capacity with the Company ("*Certifying Person*") to certify to the matters set forth below for purposes of establishing the authority of the Company and certain persons as described in this Certificate; and

The following resolutions ("*Account Resolutions*") were duly and properly adopted by the board of directors, trustees or managers, or the members, partners, shareholders or other governing body ("*Governing Body*") of the Company, have not been rescinded or modified and remain in full force and effect:

RESOLVED, this Company is authorized to obtain from Fifth Third Bank (the "*Service*") the right to use credit or purchasing cards and accounts on the credit of the Company and thereby incur indebtedness and pay fees and finance charges on behalf of the Company, and to enter into such agreement or agreements for the Service as are required by Fifth Third Bank from time to time, including a Commercial Card Services Agreement or similar agreement, and related agreements ("*Card Agreements*") each of which, when accepted or signed by an Authorized Person described below, is authorized, approved and adopted by this Company;

RESOLVED FURTHER: that (a) each of the individuals identified in the table entitled "Authorized Persons") appearing below, (b) each person serving as an executive or senior finance officer or official of the Company (such as the Chief Executive Officer, President, Chief Financial Officer, Controller and Vice President-Finance or person with similar title or authority (each, an "*Executive Person*") from time to time, and (c) any other person designated by any such individual whose identity and signature are provided to Fifth Third Bank (each, an "*Authorized Person*") is authorized on behalf of the Company and in its name to do any of the following:

- Execute and deliver any and all of the Card Agreements and any amendments to the Card Agreements;
- Designate those employees, agents, and other representatives, groups or divisions and other persons who will be authorized to receive and use cards and other rights to incur indebtedness in connection with the Service;
- Designate, and advise Fifth Third Bank of the identity of a person or persons who will serve as administrator with respect to the Service and have authority to, among other powers specified in the Card Agreements: manage the service on behalf of the Company; select and administer security and operating procedures; designate persons as authorized users of a service; and, enable and administer user identification codes, passwords and other identification data.

RESOLVED FURTHER: Fifth Third Bank is authorized to rely on the full and unrestricted authority as provided in these resolutions of any one Authorized Person unless otherwise certified to Fifth Third Bank by the Certifying Person;

September 2016

RESOLVED FURTHER: that the Certifying Person is authorized to deliver a certified copy of these Resolutions to Fifth Third Bank and certify to Fifth Third Bank the name, title and specimen signature of each Authorized Person.

I further certify that:

- these resolutions do not conflict with or contravene the certificate or articles of incorporation or organization, the bylaws, operating agreement, empowering law or similar governing documents or law of, or any agreement, law or regulation applicable to the Company; and
- each of the following persons has been designated by the Governing Body or an Executive Person as an Authorized Person with the authority specified in the foregoing resolutions, and the signatures indicated below are genuine signatures of the indicated persons:

AUTHORIZED PERSONS

<u>Name of Authorized Person</u>	<u>Title of Authorized Person</u>	<u>Specimen Signature of Authorized Person</u>
1.		
2.		
3.		
4.		
5.		

IN WITNESS WHEREOF, I have subscribed my name to this Certificate on behalf of the following Company:

Exact Name of Company: _____

Duly organized under the laws of the State of _____

Taxpayer Identification Number: _____

Signature: _____

Printed Name: _____

Title: _____

Dated: _____

TM Legal 09 2016 977099

September 2016



FIFTH THIRD BANK

COMMERCIAL CARD SERVICE AGREEMENT

This Commercial Card Service Agreement ("**Agreement**") is entered into by and between Fifth Third Bank, an Ohio banking corporation ("**Bank**" or "**we**") and the undersigned Customer ("**Customer**" or "**you**") effective as of the date accepted by Bank as written on the signature page to this Agreement under its signature.

1. **Introduction**

Card Programs. The Fifth Third Commercial Card is designed to handle all of an organization's purchasing, travel, and fleet spending needs through a single card platform. Our Card programs offer a wide array of features and control options including merchant category and velocity controls that limit your Cardholders to or from a particular category of spend. Certain features of our Card programs including Fifth Third ePay may be accessed pursuant to the Access Channels described below.

The Card Service. At your request, we have agreed to provide to you our Commercial Card Service on the terms and subject to the conditions set forth in this Agreement (the "**Card Service**"). The Card Service consists of the Account, the Cards and the related services described in this Agreement. The Card Service may only be used for business or commercial purposes and not for personal, family, household or other consumer purposes. This Agreement is not binding on us until one of our authorized officers has executed it and delivered the signed copy to you.

Information. Before we can make the Card Service available to you, you are required to complete a set up and implementation process and complete related forms. This process includes the selection of important features and options available with the Card Service and the designation of persons with authority to act for you ("**Authorized Persons**"). Some of this information will be entered into forms by one of our representatives. In addition, we may require information or the execution of documents at various times throughout the duration of this Agreement. You agree to provide any information and to execute documents that we reasonably require in connection with the Card Service. Additional information about, and requirements for the Card Service and various features of the Card Service may be included in reference guides and other information we provide to you in the set up process and throughout your use of the Card Service in hard copy or online (as updated from time to time, "**User Guides**").

Representatives. We rely on the information provided to us by an Authorized Person or agents, officers, employees and representatives of you or your subsidiaries ("**Representatives**") in providing the Card Service to you. Any changes in Representatives or to the information you provide us must be promptly communicated to us and given or promptly confirmed in writing although we may, in our sole discretion, act on oral requests for changes. A change shall be effective only after we receive the proper request for such change and we have had a reasonable opportunity to act on the request. Until then, we may rely on status of your Representatives as previously given to us, and on information that purports to have been authorized by individuals you previously authorized. You agree that we may refuse to comply with requests from any person until we receive documentation reasonably satisfactory to us confirming the person's authority.

OCAA. This Agreement is one of the Bank Agreements referred to in the Online Channel Access Agreement in effect between Customer and us (as it may be amended from time to time, the "**OCAA**"). The Card Services provided under this Agreement are "Bank Services" for purposes of the OCAA and this Agreement. The OCAA governs the Access Channel and Channel Services (each as defined in the OCAA) used to access the Card Services and together with this Agreement govern the Card Services provided to Customer contemplated by this Agreement. If Customer uses the Channel Services without having executed an OCAA, Customer will be nevertheless be bound by the OCAA in the form provided or made available to Customer.

Channel Services. The Channel Services available in connection with the Card Services include the Admin Applications described in Section 17 of this Agreement.

2. Establishment of Account and Issuance of Cards

The Account. Upon completion of the set up process, we will establish for you a commercial credit account ("**Account**") subject to the credit limit we impose, and issue one or more cards (or similar devices) and account numbers associated with your Account ("**Card**" or "**Cards**") to your Representatives as designated by you from time to time ("**Cardholders**") in accordance with this Agreement and our Card Service procedures. At your request, Cards may be issued in the name of a group or department, or as a Nameless Card (as described below), and we can enable you to effect transactions solely with a Card or Account number without a physical card or device. All use of such Cards or Account number and transaction are considered as effected by a Card on the Account for purposes of this Agreement. We will issue each Card for the original term indicated on the Card. Unless and until a Card has been properly cancelled, the Card is valid and may be used for transactions, and a renewal or replacement Card will be issued for it. Once issued as requested by you and subject to the provisions of this Agreement, you are solely responsible for the use of the Card and for imposing and enforcing any limits or restraints you wish to impose on a Cardholder's use of the Card.

Cardholders. As part of your responsibility for your Cardholders, you agree to: (a) limit use of all Cards to business or commercial purposes on your behalf; (b) review, or cause each Cardholder to review, the Cards upon receipt to confirm that all information relating to you or the Cardholder on the Card is correct, and to notify us immediately if the information is not correct; (c) impose internal controls and procedures to prevent fraud and unauthorized use of a Card; and, (d) timely review and reconcile all Account activity and transactions as further described below.

Transactions. Cards and the Account may be used to effect the purchase or reservation of goods or services and cash advances by all generally recognized means unless otherwise restricted by us including swipe, virtual card numbers (if you select this feature of the Card Service), signed seller drafts, telephone, internet entry, use of an account number or otherwise. We are not responsible for the failure or refusal of anyone to honor a Card. Subject to the express limitations set forth in this Agreement, you are responsible for all uses of a Card and Card number regardless of the means by which the transaction is effected and regardless of whether it is authorized by you or violates your internal policies, controls or restrictions. Merchant category and velocity controls, when properly implemented and used by you and reported by the merchant, can be effective in controlling transaction activity.

Card Administrator. In the set up process for the Card Service, you will appoint an individual to serve as your administrator ("**Card Administrator**") with the authority to administer and manage the use of the Card Service on your behalf as further described in this Agreement and the User Guide including the authority to issue, impose limits on and cancel Cards and accept and act on communications from us regarding the Card Service.

Customer Identification Program. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person or business entity that establishes an Account. When you establish an Account with us, you must provide us with your business entity name, principal and local (if different) address, date of establishment, employer identification number and other information. We may also seek additional information or documents. You agree that we may seek information about you from third parties to confirm your identity and for other Account related purposes. We are required to follow these procedures even if you are already a customer of ours.

3. *Promise to Pay*

Obligation. You promise to pay us all Obligations without deduction or set-off in accordance with this Agreement. Subject to the limitation under "**Fifth Third Use Liability Policy**" in the following paragraph, you are required to pay us whether or not the use of the Account, Card, account numbers or other incurrence of indebtedness was authorized by you. Cancellation of a Card or termination of the Account does not in any way excuse your obligation to pay for all purchases or other charges incurred against or in connection with the Account or with any Card or account number through the effective time of the cancellation or termination. As used in this Agreement, the term "**Obligations**" means: (a) the aggregate outstanding principal amount of, and all interest, fees and charges on advances made by us on or in connection with the Account, through the use of a Card, an account number or otherwise (including any interest accruing after the commencement of any proceeding by or against you under the federal or state bankruptcy, insolvency or other similar laws, and any other interest that would have accrued but for the commencement of such proceeding); (b) all of your obligations and liabilities for the indemnification of us under this Agreement; and (c) all fees, costs, charges, expenses, reimbursements and other similar obligations from time to time owing to us under this Agreement. Payment of the Account balance is due in full on the due date specified by us in the set up process unless otherwise expressly agreed by you and us in the set up process as evidenced by our implementation records ("**Payment Due Date**").

Fifth Third Use Liability Policy. If you believe that a transaction on your Account was unauthorized, you must notify us as soon as possible but not more than sixty (60) days after the transaction in question appears on your Account Statement (as defined below). You will be required to provide us with reasonable information about the transaction to enable us to investigate the matter, and to reasonably cooperate with us in any investigation. If you do that, and the following conditions are met, you will not be responsible for the unauthorized transaction: (a) the transaction was not effected by a current or former employee or other Cardholder designated by you; (b) there are no past due obligations on the Account; and, (c) you have exercised reasonable care in safeguarding your Cards and Account from unauthorized use including that you did not provide, directly, by implication or otherwise, the right to use a Card or the Account to the person effecting the transaction, or receive any tangible benefit from the transaction. If the conditions in this paragraph are satisfied, we will credit your Account for the amount of the transaction in question and any fees and interest that may have been applied or accrued as a result of that transaction. In addition, MasterCard or other payment network associated with the Cards, if any (a "**Payment Network**") may offer a liability protection program; contact the Payment Network for additional information. We will provide a copy of the Payment Network's program literature upon request. If we have issued fewer than ten Cards in connection with the Account, your liability for a series of unauthorized uses cannot exceed either \$50 or the value obtained through the unauthorized use before the card issuer is notified, whichever is less. The term "unauthorized use" means the use of a credit card by a person, other than the Cardholder, who does not have actual, implied, or apparent authority for such use, and from which the Cardholder and you receive no benefit.

4. *Periodic Account Statements*

Effect. After the close of each billing cycle, we will mail or transmit to you an Account Statement, with transactions on each Card or Account number during the billing cycle itemized separately as subaccounts on the main Account ("**Account Statement**"). You may also request in writing that we mail or transmit individual statement memos to each Cardholder at a specified address. The Account Statement will show transactions that have been posted to the Account in connection with any Card since the last Account Statement, any payments and adjustments to the Account, any fees charged to any Card or the Account, any finance charges, the outstanding balances on each Card and on the Account and the Payment Due Date.

Discrepancies. Except for matters subject to Section 3, if there is a discrepancy between your records and the information shown on any Account Statement or other confirmation, or you discover any other error in an Account Statement or confirmation, you must notify us within thirty (30) calendar days after you receive such Account Statement or confirmation, or within such greater amount of time as may be required by applicable law. You must also follow the procedures described in the User Guide. If you fail to notify us within such 30-day period or fail to follow the prescribed procedures, you may be precluded from asserting the discrepancy against us and you will be obligated to us as provided on the applicable Account Statement. All entries in our books, records and accounts shall constitute conclusive evidence of transactions unless you furnish proof of manifest error.

Foreign Currency Transactions. To convert transactions made in foreign currencies into U.S. dollars, the relevant Payment Network will use its then-current currency conversion rates and the procedures established by such Payment Network in its sole discretion. Currently, the currency conversion rate used to determine the transaction amount in U.S. dollars is generally either a wholesale market rate or a government-mandated rate in effect on the date of the conversion, increased by the applicable conversion charge determined by the Payment Network, if any. The currency conversion rate used on the conversion date may differ from the rate in effect on the date the transaction occurred.

5. Making Payments

Payment Due Date. Payment of the full amount of the Account as shown on the Account Statement is always due on or before the Payment Due Date shown on the Account Statement. The Card Service is a full pay Account - you must pay in full the amount specified on the Account Statement. Any amount of the Account balance not timely paid is subject to a finance charge as calculated by us based on the finance charge specified in the Fee Schedule.

Payments. Payments must be made in U.S. dollars. Except for payments made by Auto Debit as described below, you are responsible for timely making payments in the form we accept for receipt at the destination we specify to you on or before the date due. Payments not delivered or transmitted in that form to that destination will not be treated as timely received. Payments received after 3:00 p.m., Eastern Time, on any business day or on a day which is not a business day will be credited on the next business day. Credit to any Card or the Account may be delayed for up to five days if the payment is not: (a) made in U.S. dollars drawn on or from a U.S. financial institution located in the U.S. or by money order; or (b) accompanied by the proper account number and if not made electronically, not accompanied by the top portion of the Account Statement. Delayed crediting may cause you to incur additional fees and finance charges.

Debit Authorization. Unless you and we have agreed in writing to payment by another method, all payments on the Account may be made by direct automated clearinghouse (ACH) debits to your banking account with us or another financial institution ("**Auto Debit**"). You agree to complete an authorization form required by us and you authorize us to initiate debit entries to the account with the financial institution you designate for the amount due on the Account Statement until you have properly revoked the authorization. You agree to be bound by the NACHA Operating Rules with respect to these ACH transactions. We agree to timely initiate Auto Debits for payments on the Account subject to access to and availability of funds in your bank account.

Application. We reserve the right to apply payments and other credits to the Account in any manner that we may choose in our sole discretion. All credits for payments to the Account are subject to final payment or settlement by the institution on which the item of payment was drawn or from which the electronic payment was made. Although we may post payments as of the date we receive them, the available credit limit associated with the Account may not be restored for up to five days after we receive the payment.

Credit Balances. Credit balances will be applied to the next Account Statement unless you and we expressly agree otherwise.

6. Fee Schedule

Except as we may expressly agree in a written agreement executed by our authorized representative and delivered to you by us, you agree to pay all fees, interest and charges associated with the Account including those set forth in the Account Fees Schedule (the "**Fee Schedule**") attached to, or accompanying the executed version of this Agreement which is incorporated into this Agreement by this reference; if a Fee Schedule is not so attached or accompanying the executed version of this Agreement, you agree to pay our standard account fees, interest, penalties and charges. The Fee Schedule may be revised by us as provided in Section 19 of this Agreement. If there is any conflict between this Agreement and the Fee Schedule, this Agreement shall govern, but only to the extent reasonably necessary to resolve the conflict. Any finance charges, fees and other amounts, including penalties, assessed against the Account will be posted as direct charges to the Account and will count against the applicable credit limit until paid.

7. Account Controls

Monitoring Obligation. You are responsible for monitoring the use of the Cards, account numbers and the Account, and detecting unauthorized or improper use. We offer online account management tools through the Channel Services to assist you in carrying out this responsibility, including access to transaction information and the means to cancel a Card or impose limits on the use of a Card.

Lost or Stolen Cards; Unauthorized Use. You are responsible for cancelling any lost, misused or stolen Cards, Cards or the Account that you suspect may have been the subject of fraud, unauthorized use or misuse, and the Card (and associated authorization) of any Cardholder no longer authorized by you to use a Card, whether as a result of termination of employment or otherwise. You are responsible for retrieving the cancelled Card and destroying it to prevent further use. You may also cancel a Card or terminate a Cardholder's use of a Card by calling our customer service center. **All telephone communications by you to us must be made by calling our customer service center at 1-800-375-1747 as soon as the need arises.** You understand that we will require a reasonable amount of time to act on any request made by telephone. You will not be liable for unauthorized use that occurs after you notify us of the loss, theft, or possible unauthorized use in writing at Madisonville Operations Center, Issuer Disputes Dept., Mail Drop 1MO2G, Cincinnati, Ohio 45263 or by telephone at the number given above.

Our Programs. We may (but are not obligated to) apply software programs and other techniques to detect patterns and other indications of potential fraud and unauthorized use of the Account. These programs and techniques are not a substitute for proper Account management and the implementation and enforcement of Card controls by you, and cannot be relied upon to prevent fraud or unauthorized use. Our techniques may, however, result in the denial of a transaction, reduction of limits or other actions by us as indicated by such programs and techniques.

8. Credit Limit

Establishment. We will establish an aggregate credit limit for the Account and communicate the limit to you prior to or during the set up process. You are responsible for specifying a credit limit for each individual Card or class of Cards you request for Cardholders. You understand that you can impose and change Card limits through the Channel Services. We may refuse to authorize any transaction against a Card that would bring the total amount outstanding against the Card or against the Account as a whole to a level that would exceed the relevant credit limit.

Over-limit Transactions. If we determine in our sole discretion to authorize or accept a transaction on the Account or a Card that would exceed the credit limit for the Account or that Card, we shall not be liable for doing so. If we authorize or accept a transaction which exceeds the relevant credit limit, you shall, at our request immediately pay in full the entire amount of the excess, together with any applicable over-limit charges and related fees.

Changes. We may from time to time and in our sole discretion: (a) change the Account's or any Card's credit limit(s); (b) reduce the Account or Card credit limit to \$0; (c) cancel one or more Cards or close the Account; or (d) limit the number and amount of transactions on the Card or the Account. We will notify you promptly in the event we decide to take such action on the Account or a Card. While we expressly reserve the discretion described in this paragraph, except for cases of known or suspected fraud, changes resulting from regulatory requirements or where we believe there exists a risk of loss to us, we will use commercially reasonable efforts to consult with you in advance prior to reducing credit limits for the Account or any Card.

9. Representations, Warranties and Undertakings

Ours. We represent and warrant to you that: (a) we have the legal right to execute and perform our obligations under this Agreement; (b) we are duly organized, validly existing and in good standing under the laws of Ohio; (c) the execution and delivery by us of this Agreement has been authorized by all necessary corporate and required governmental action; (d) the person signing this Agreement on our behalf is duly authorized to do so; and, (e) our execution, delivery and performance of this Agreement do not violate any laws, rules or regulations affecting us or the provision of the Card Service, our articles of association or bylaws, or any material agreement that is binding on us.

Yours. You represent and warrant to us that: (a) the financial statements you have delivered or made available to us at any time have been prepared in accordance with US Generally Accepted Accounting Principles, and fully and fairly

present your financial condition as of the dates of the statements and results of operations for the periods covered by the statements; all other financial information you have provided is true and correct; you have not suffered or incurred a material adverse change in your business, financial condition or operating results since the date of the most recent financial statements you provided to us; and, you are not subject to any material undisclosed liability; (b) you have the legal right to execute and perform your obligations under this Agreement; (c) you are duly organized, validly existing and in good standing in the jurisdiction in which you were organized; (d) the execution and delivery by you of this Agreement and the incurrence of the Obligations have been authorized by all necessary corporate and required governmental action; (e) each person signing this Agreement on your behalf is an Authorized Person and is duly authorized to do so; and, (f) your execution, delivery and performance of this Agreement do not violate any laws, rules or regulations affecting you or your use of the Card Service, your articles of incorporation, bylaws or similar governing documents, or any material agreement that is binding on you.

Regulation GG. You agree not to use the Account in connection with any business of placing, receiving or otherwise knowingly transmitting bets or wagers by any means which involves the use, at least in part, of the Internet, or for any other transaction which is prohibited by Federal Reserve Regulation GG - Unlawful Internet Gambling Enforcement Act of 2006.

Financial Statements. Except to the extent your current financial statements are timely filed with, and publicly available from the Securities and Exchange Commission, you agree to furnish us upon request with your current financial statements and other information pertaining to your business or financial condition, and operating results.

10. Confidentiality, Security and Privacy

Your Obligations. You represent that you have in place, and covenant that you will maintain in effect and enforce reasonable policies and measures to reduce the incidence of fraud and other unauthorized use of, and access to Cards and your Account and to preserve the confidentiality of your Account numbers and account access procedures. In addition, you agree to safeguard, keep confidential and not disclose to any third party the payment, pricing terms or fees for the Card Service and any Security Procedures, and to limit the internal disclosure and distribution of such information to your Representatives who have a need to know such information. You must notify us immediately if there has been a breach of your security, or any Security Procedures have been lost, stolen, compromised or misused. Notwithstanding the foregoing, the confidentiality obligations set forth in this Section 10 do not apply to the extent you are subject to freedom of information, open government or similar laws or regulations requiring you to disclose any such information.

Our Obligations. We acknowledge that all non-public information we obtain from you in providing the Card Service may be confidential. We will maintain the confidentiality of such information in accordance with our normal procedures for safeguarding customer information. We may, however, share your information in accordance with the Fifth Third Privacy Notice for Commercial Customers ("Privacy Policy") which is available on our website at www.53.com

System Security. We have implemented policies, procedures, and controls to safeguard Customer information in accordance with applicable law including the Interagency Guidelines Establishing Standards for Safeguarding Customer Information which address standards for security, confidentiality and integrity of customer information. We are subject to periodic reviews by our federal banking regulators.

Breach Incidents. We will notify Customer of security breach incidents involving Customer's information as required by and in accordance with applicable law.

11. Disclaimer of Warranties

We disclaim all warranties expressed or implied in connection with the Card Service, and any such warranties are hereby expressly excluded. We do not warrant that the Card Service shall be error free or that the use of the Card Service shall be uninterrupted. **YOU WAIVE ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

12. Limitation of Liability

YOU AGREE TO THE MAXIMUM EXTENT PERMITTED BY LAW THAT: IN NO EVENT WILL WE BE LIABLE UNDER ANY THEORY AT LAW OR IN EQUITY FOR ANY DAMAGES THAT YOU OR ANY OTHER PERSON MAY INCUR OR SUFFER IN CONNECTION WITH THE CARD SERVICE OR THIS AGREEMENT THAT ARE NOT DIRECT, ACTUAL DAMAGES RESULTING FROM OUR BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PROVIDING THE CARD SERVICE; AND, WE WILL NOT IN ANY EVENT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR SPECULATIVE LOSSES OR DAMAGES (INCLUDING LOST PROFITS, GOOD WILL AND OPPORTUNITIES) EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES AND REGARDLESS OF THE TYPE OF CLAIM. Except for our subcontractors, we shall not in any event be liable for (a) any loss, damage or injury caused by any act or omission of any third party, whether or not such third party was chosen by us, (b) any charges imposed by any third party, or (c) any loss, damage or injury caused by any failure of the hardware or software used by a third party to provide the Card Service to you. In addition, we shall not be responsible for, or incur any liability to you for any failure or delay in carrying out any of our obligations under this Agreement, if such failure or delay was caused by any third party.

13. Your Indemnification Obligations

Except to the extent prohibited by applicable law, you agree to indemnify and hold us and our officers, directors, employees, shareholders and agents harmless from and against any and all losses, liabilities, actions, claims, judgments, settlements, damages, costs and expenses, including reasonable fees, expenses and costs of outside and in-house legal counsel (collectively, "**Losses**") resulting directly or indirectly from, or arising in connection with (a) our providing the Account or Cards, extending credit to you or otherwise providing the Card Service to you (other than Losses that result from our bad faith, gross negligence or willful misconduct), (b) your violation of any of your representations, warranties or covenants under this Agreement and (c) Individual Billing or the issuance by us, or use by you, of Nameless Cards (each as defined below) other than Losses that result from our bad faith, gross negligence or willful misconduct.

14. Special Situations

Nameless Cards. If you request that we issue Cards without the individual Cardholder's name embossed or otherwise noted on the Card (a "**Nameless Card**"), you acknowledge that we strongly recommend against the use of Nameless Cards. Nameless Cards present, among other risks, the increased risk of loss to you from fraud and unauthorized or improper use. If you nevertheless request that we issue Nameless Cards, you assume all known and unforeseeable risks associated with the use of a Nameless Card and release us and our Representatives from any and all liability for issuing and the use of a Nameless Card.

Individual Billing. If you request that we bill any Cardholder individually (a practice sometimes referred to as "**Individual Billing**"), you acknowledge that we recommend against the practice. If you nevertheless request, and we agree to send individual Account Statements to one or more individual Cardholders, you acknowledge that you are in no way relieved of any of your Obligations under this Agreement whatsoever including the obligation to timely pay the full amount due for that Card and all other Cards by the applicable Payment Due Date, as well as all applicable fees, interest and charges. You assume all known and unforeseeable risks associated with Individual Billing and release us and our Representatives from any and all liability for Individual Billing.

License of Your Marks. For some of our Card programs, we offer you the ability to affix a Mark (as defined below) to a physical Card. If you wish to use this feature of our Card Service, you grant to us a non-transferable, non-sub-licensable, non-exclusive, royalty-free, worldwide license to use the trademark, trade name or service mark and related design or logo that you specify (collectively, "**Marks**") for the sole purposes of affixing it to Cards issued under this Agreement. The use and display of the Mark on a Card is subject to our requirements and approval, and the approval of the Payment Network. You represent and warrant to us that you have the right to use and license to us the Mark as contemplated by this Agreement and that the Mark, your license of the Mark and the use of the Mark on a Card do not infringe or violate the intellectual property or other rights of any third party. We agree that we will use the Marks only in the manner you authorize, and that you retain all rights in and to the Marks not expressly granted under this Agreement. Once you approve the model of the Mark for impression on a Card, you may be responsible for the costs we have incurred in producing the Card and Mark design should you not use that model.

15. Default

Events. Subject to applicable law, you shall be in default under this Agreement upon the occurrence of any one of the following: (a) you fail to make any payment of any Obligation when due in accordance with provisions of this Agreement; (b) you become generally unable to pay your debts as they become due; (c) any other creditor tries by legal process to take or foreclose upon any of your assets; (d) you or any guarantor of the Obligations: becomes insolvent, is placed in receivership, is adjudicated bankrupt, or is subject to any voluntary or involuntary bankruptcy or insolvency proceeding or any assignment for the benefit of your creditors; (e) you provide us with any false or misleading material information; (f) any representation or warranty made by you in this Agreement is untrue or incorrect in any material respect or you breach in any material respect any covenant or undertaking under this Agreement; (g) you are in default of any other credit, loan, leasing or similar agreement for the extension of credit you have with us or any of our affiliates; (h) you violate any applicable law in connection with the Account or use of the Cards; (i) any guarantor or other third party that has guaranteed or assumed any responsibility for the Obligations is in default of any guaranty or similar agreement with us; or (j) we believe in good faith that your ability to pay or perform the Obligations under this Agreement has been materially impaired. You may incur fees or other charges in connection with a default. The payment of any fee or other charge will not cure the default that triggered the fee or charge.

Remedies. If you are in default under this Agreement, we may in our sole discretion, subject to applicable law take any one or more of the following actions: (i) declare all or any portion of the Obligations to be immediately due and payable; (ii) allow you to repay the Obligations according to the terms of this Agreement; (iii) immediately terminate this Agreement, the Account and any and all Cards and authorizations relating to the Account; (iv) revoke or suspend the use of the Account, reduce the Account credit limit or otherwise limit your ability to use any Cards; (v) enforce any applicable guaranty of the Obligation, (vi) liquidate any collateral securing the Obligations or any guaranty; and (vii) commence an action against you to collect all amounts owed in connection with this Agreement. You are liable for any court costs and reasonable attorneys' fees incurred by us in the collection of the Obligations.

16. Term and Termination

Term. The term of this Agreement commences on the date it is accepted and executed by us and continues until terminated by us under this Section 16 or by us or you upon thirty (30) days' written notice to the other party.

Termination Rights. We may terminate this Agreement or terminate or suspend the Card Service if: (a) you are in default as provided in Section 15; (b) any person or group acting in concert that does not on the date of this Agreement control a majority of your outstanding stock acquires, directly or indirectly (whether by merger, stock purchase or issuance, recapitalization, reorganization or otherwise), a majority of your outstanding stock; or (c) the continued provision of the Card Service in accordance with the terms of this Agreement would, in the good faith opinion of our legal counsel, violate federal, state or local law or any regulation applicable to our business. We will provide notice of the exercise of our termination rights as soon as practical.

Your Actions. Upon any termination of the Card Service or this Agreement, you shall: (a) promptly pay to us all sums due or to become due under this Agreement; (b) have no further right to make use of the Card Service, Account or any Card; and (c) surrender to us or destroy all Cards that have been issued to you or to any Cardholder.

Effect. Termination of this Agreement, the Account or any Card does not release you or us from any of our respective obligations that arose or became effective prior to such termination; you remain fully obligated to repay all amounts owed to us under this Agreement or in connection with the Account, the use of the Cards or account numbers or otherwise. In addition, all provisions of this Agreement relating to the parties' respective warranties, representations, limitation of liability, confidentiality, proprietary rights, and indemnification shall survive the termination of the Card Service, the Account and this Agreement.

17. Channel Services

Options. We offer several management and administrative applications ("**Admin Applications**") as part of the Channel Services associated with our Card Service. Some or all of these applications may be hosted or provided by the Payment Network or another third party and may be subject to the terms of use posted through that application. You may, at your option and where available, access the Admin Applications with a single sign on from Fifth Third Direct, without additional log in requirements for that Channel Service. Updates to, and new features of, the Admin Applications and other Channel Services may be described in updates to the User Guide, and any related terms of use will be posted through the applicable Admin Applications. Updates and features offered by us, and the related terms of use will become part of the Card Service and this Agreement upon first use by you.

Administration. Use of any Admin Application is optional on your part. The Card Administrator has full authority to use all of the Admin Applications. Users are provisioned for the Admin Applications by the Channel Administrator or Card Administrator. For the sake of clarity, the term User as used in this Agreement does not include a Cardholder except as expressly noted to the contrary.

Card Management. Card Management is your general Admin Application for the overall administration of your Card program. The Card Administrator and authorized Users have the ability to: designate persons who will be issued Cards and become Cardholders and establish their individual Card credit limit and spending controls; cancel a Card and change the credit limit associated with a Card; issue replacement Cards for damaged or lost Cards or to effect a name change on an existing Card; select, create and maintain templates through the Channel Services that implement available spending controls; and, obtain information and reports about, and monitor Account and Card use.

Payment Platform. The Payment Platform enables the Channel Administrator and authorized Users to make payments on the Account and enables Cardholders to make payment of their respective Card balances. Payments are effected through ACH transactions authorized through the platform. Each payer making a payment through the Payment Platform is responsible for the accuracy, timeliness and completeness of the data they input into the platform and for the availability of funds in the payment account.

Cardholder Portal. The Cardholder Portal gives your Cardholders who register to use this application the ability to access and manage information about their Card usage. The Cardholder Portal can also be accessed through the Commercial Card Mobile App which is available for download by any Cardholder on a recognized, enabled mobile device through an approved app location. Each Cardholder is responsible for establishing and safeguarding its Credentials to access the app.

Smart Data. Smart Data (or SDG2) is an Admin Application provided by MasterCard that facilitates the reporting and management of account activity for Users and Cardholders (including their managers).

Security Procedures. Access to the Channel Services for the Card Service is subject to "**Security Procedures**" as further described in the OCAA. You understand that all access to, and use of the Channel Services using such Security Procedures will be considered by us and the providers of the Channel Services for all purposes and without further investigation to be authorized by you and your Users and Cardholders, as the case may be, and that we and the other providers may act and rely upon all instructions or data transmitted to us or them using the Security Procedures.

Additions and Changes. We may in the future add or change features of these Admin Applications, add new or withdraw existing Admin Applications at any time. We will provide notice of the addition or change together with any change to this Agreement related to the addition or change, through the applicable Admin Application, update to the User Guide or notice to your Channel or Card Administrator. Your first use of the Admin Application after notice of the addition or change constitutes your acceptance of the addition or change.

18. Fifth Third ePay

The Solution. Fifth Third ePay is an Admin Application that provides you the ability to pay your vendors through an integrated preapproval process and virtual card numbers, and includes features to integrate transaction data into your existing accounting and reporting infrastructure. Fifth Third ePay includes two solutions: "Fifth Third ePay Online" and "Fifth Third ePay Batch." These solutions are described in greater detail in the Fifth Third ePay User Guide. The use of virtual card numbers in connection with Fifth Third ePay is considered for all purposes of this Agreement to be the authorized use of a Card and the Account.

MasterCard inControl™. Fifth Third ePay is based upon a license from MasterCard International of the MasterCard inControl™ platform and is accessed through an Access Channel. MasterCard also offers a direct interface to the inControl™ Platform that is not part of our Card Service; we may, however, upon request, assist in enabling a direct connection through an API-based solution to the inControl™ Platform. Any such connection may be subject to additional agreements between you and MasterCard. The inControl trademark is owned by MasterCard International.

Online. Fifth Third ePay Online enables you to make payments using the Account to vendors and others to whom you wish to make payment ("***Vendors***") on an individual basis. Fifth Third ePay Online generates authorized, virtual card numbers through the platform that you give to your Vendor to enable them to authorize a payment to their account.

Batch. Fifth Third ePay Batch enables you to manage your accounts payable by enrolling one or more Vendors in an automated platform to receive payment information from you. When you desire to make a payment to an enrolled Vendor, you will transmit to us a payment file that includes the name of each Vendor you wish to pay by Card and the payment amount. You can communicate payment, vendor and confirmation information to us through an Access Channel or direct transmission as established with us in the set up process. Based on the payment and Vendor information and your confirmation, we create a payment data sheet (encrypted for virtual card transactions) that we send by email to the email account for the Vendor contact person you specify in the set up process. The payment data sheet includes a fixed or variable (at your option) virtual card number against which the Vendor can process your payment through MasterCard as with any other Card payment. You are responsible for obtaining proper authorization from your Vendor to participate in this payment process and for the accuracy of the Vendor data, billing and payment information you send to us. We are not responsible if the payment or account information you provide us is not accurate or timely, or if a Vendor fails to receive or act upon the email and payment data sheet we send to the email account you give us.

Card Administrator. If you elect to use Fifth Third ePay, your Card Administrator will have the authority to manage this Admin Application on your behalf. In addition to any other authority they may have, the Card Administrator will be able to: (a) provision Users with the authority to request and generate virtual account numbers for making payments as part of the Card Service and establish the limits, if any on the authority of such persons; and (b) provision Users with the authority to designate and enroll vendors to whom payments may be made through Fifth Third ePay and provide us with Vendor and payment information.

Additions and Changes. We may in the future add or change features of these Admin Applications, add new or withdraw existing Admin Applications at any time. We will provide notice of the addition or change together with any change to this Agreement related to the addition or change, through the applicable Admin Application, update to the User Guide or notice to your Channel or Card Administrator. Your first use of the Admin Application after notice of the addition or change constitutes your acceptance of the addition or change.

19. General Provisions

Merchants. We have no liability or responsibility for: (a) goods or services purchased with a Card or the Account or for any dispute you may have with a merchant or Vendor over goods or services you purchase, a merchant's or Vendor's use of a Card or Account number you give to them; (b) a merchant's or supplier's failure to accept the Card or the Account; or, (c) any failure of a merchant to seek authorization before honoring a Card. You are in all events responsible for the purchases you make with the Card or Account.

Vantiv. If you are using the merchant processing services of Vantiv, LLC ("***Vantiv***"), you understand that Vantiv is a separate, independent legal entity. We are not responsible for the actions or obligations of Vantiv, or any agent or vendor engaged or used by Vantiv with respect to merchant processing services.

Banking Agreements. If you are a party to our Master Treasury Management Agreement, you and we agree that the Card Services provided under this Agreement are not subject to or part of the Master Treasury Management Agreement.

Amendments. We may amend, supplement or change (a "***revision***") the terms of this Agreement including the Fee Schedule at any time and from time to time as follows: by a written instrument signed by both parties; or, we may give you at least thirty (30) calendar days' prior written or electronic notice (including through website posting) of a revision and if you do not give us written notice of your termination of this Agreement before the expiration of the thirty (30) day period or the later effective date specified in such notice, you are deemed to have accepted the revision. If, however, a revision to this Agreement is, in our good faith opinion, required by law or a regulatory authority with jurisdiction over us, we will provide you notice of such revision and the revision will be effective immediately upon us giving you notice. Subject to applicable law, any revision shall apply to the outstanding balance on the Account on the effective date of the revision and to any future balances created after that date. No revision to this Agreement or Fee Schedule shall affect in any manner your obligation to pay in full all Obligations under this Agreement.

Delay in Enforcement. We may at any time and in our sole discretion delay or waive enforcing any of our rights or remedies under this Agreement or under applicable law without losing any of such rights or any other rights or remedies. Even if we do not enforce our rights or remedies at any specific time, we may enforce them at a later date. For example, we may accept late payments or payments that are marked "payment in full" or with other restrictive endorsements without losing any of our rights under this Agreement or applicable law.

Notice. Any written notice from you to us shall be effective once we have received the notice and had a reasonable opportunity to act on it. Any written notice from us to you shall be effective and deemed delivered when mailed to you at your address as it appears on our records.

Force Majeure. We shall not be responsible for, nor shall we incur any liability to you for any failure, error, malfunction or any delay in carrying out any of our obligations under this Agreement if any such failure, error, malfunction or delay results from causes beyond our reasonable control, including without limitation, fire, casualty, breakdown in equipment or failure of telecommunications or third party data processing services, internet disruptions, lockout, strike, accident, act of God, act of terrorism, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents us from operating normally.

Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns. You may not sell, assign or transfer the Account or any of your rights or obligations under this Agreement. We may sell, assign or transfer the Account, or any balance due thereon, and our rights and obligations under this Agreement without prior notice to, or consent from you, which notice and consent are knowingly waived by you.

Set-off. You agree that we may set-off any and all funds in any bank account you have with us or any of our affiliates (excluding any account expressly titled to clearly demonstrate that the account is held by you in a fiduciary or representative capacity for a third party) against or to pay any Obligation you have to us under this Agreement. We may exercise our right of set-off by debit or other means without recourse to other rights or collateral, if any, we may have and regardless of the effect on your bank account. You waive notice of the exercise of these rights to the extent permitted by applicable law. Our right of set-off is limited only to the extent expressly limited by applicable law.

Entire Agreement. This Agreement, together with the Fee Schedule, User Guide and any separate pricing, rebate or other similar agreement or amendment executed by the parties that specifically refers to this Agreement constitutes the complete and exclusive statement of the agreement between the parties with respect to the Card Service and the Account, and supersedes any prior or contemporaneous proposal, understandings, discussions or agreements between the parties with respect to the Card Service and the Account. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. No person or entity other than the parties, their permitted assigns, indemnified persons, our subcontractors and contractors, and the Payment Network shall have any rights under this Agreement.

Electronic Copies. The parties agree that this Agreement may be executed and delivered by facsimile or electronic mail in PDF or similar format and that the copies or counterpart signature pages so sent shall be treated and have the same force and effect as delivery of an original with a manual signature. Our records as to the executed Agreement shall be controlling. We may, however, require that Customer deliver an original of this Agreement with a manual original signature.

Severability. If performance of the Card Service in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which we are subject, and that governs or affects the Card Service or any transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the degree necessary to comply with such statute, regulation or policy, and we shall incur no liability to you as a result of such violation or amendment. If any provision of this Agreement is deemed to be illegal, invalid, void or unenforceable by a court of competent jurisdiction, or by any governmental agency with jurisdiction in such matter, such provision shall continue enforceable to the extent permitted by that court or agency, and the remainder shall be deemed stricken from this Agreement. All other provisions shall remain in full force and effect.

Compliance with Law. We and you each agree to comply with, and be responsible for all applicable state, local and federal statutes, rules, regulations, orders, directives, policies and other laws, and the rules and regulations of any applicable Payment Networks or payment clearing system. Without limiting the generality of your obligations, you agree to comply with programs and regulations administered by the Office of Foreign Assets Control ("**OFAC**") and the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("**FinCen**") including screening each Cardholder to insure such Cardholder is not on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC and implementing measures to prevent use of the Account in violation of such programs and regulations.

Governing Law; Venue. This Agreement and any claims or disputes relating to or arising out of this Agreement or the Card Service shall exclusively be governed by, and construed in accordance with, the laws of the State of Ohio, without regard to Ohio's conflict of law principles, and with applicable federal laws and regulations. You irrevocably submit to the nonexclusive jurisdiction of the courts of the state and federal courts in Ohio and agree that any legal action or proceeding with respect to this Agreement or the Card Service may be commenced by us in such courts.

Waiver of Jury Trial. You agree that any suit, action or proceeding, whether as part of a claim or counterclaim, brought or instituted by you on or with respect to this Agreement or any event, transaction or occurrence arising out of or in any way connected with this Agreement shall be tried only by a court and not by a jury. **YOU EXPRESSLY, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.** You acknowledge that we would not have extended credit under this Agreement if this waiver of jury trial were not part this Agreement.

Headings. The Section headings used in this Agreement are for convenience only, and do not in any way limit or define your or our rights or obligations under this Agreement.

*******Signature Page Follows*******

Signature Page to Commercial Card Service Agreement

Witness, the parties have caused this Amendment to be executed by their duly authorized representative.

(CUSTOMER'S LEGAL NAME)

FIFTH THIRD BANK

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[Second Signature (if required by Customer's resolutions)]

[Second Bank Representative Signature]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

DATED: _____, 20__

Fee Schedule

Card Fees

Emergency Replacement Card Delivery (Overnight)	\$25.00 per card
Card Design Fees	
Standard (Recommended)	No charge
Graphic Design (one color for client log or name)	\$500.00
Custom Card (multiple colors and/or images allowed)	Varies based on requirements

Transaction Fees

Online Reporting (SDg2)	\$0.10 per transaction <i>TPS 11/2/2019</i>
Foreign Currency Conversion Fee	2%
Cash Advance Fee	3% of total advanced (\$3.00 min.)
Cash Advance* Finance Charge	19.8% per annum

*For this purpose, a Cash Advance is a transaction in which you use your Card or the Account to (a) purchase or obtain cash or cash-like equivalents (for example, money orders, traveler's checks or similar instruments) from an ATM or other company or source; (b) conduct balance transfers (where we offer this feature); (c) conduct gaming transactions (if permitted by us); or (d) conduct similar quasi-cash transactions as specified by the Payment Network.

Account Fees

Annual Program Fee	\$250.00
(waived if >\$350,00 spend in calendar year)	
Online Card Administration (CCM)	No charge
Finance Charge Rate on Past Due Balances	19.8% per annum
Late Payment Fee	\$29.00 per month per account
Excess Credit Limit Charge	\$35.00 per occurrence
Returned Check Fee	\$35.00 per check returned
Standard File Feed (optional service)	\$1500 for setup; \$150 per month
Custom File Feed (optional service)	\$3000 for setup; \$150 per month
MasterCard® Fifth Third ePay API (optional service)	\$18,000 on-time up front
Custom Work Request & Special Project Fee	\$125/hour



COMMERCIAL CARD
MEMBER REBATE AMENDMENT
KENTUCKY EDUCATION CO-OP REBATE PROGRAM

This Commercial Card Rebate Amendment ("*Amendment*") supplements the Commercial Card Service Agreement (as amended from time to time, the "*Card Agreement*") currently in effect between the "Customer" identified on the Signature Page ("*you*") and Fifth Third Bank ("*we*" or "*us*"). Capitalized Terms used but not defined in this document have the meaning assigned to them in the Card Agreement.

1. **Acknowledgement.** You acknowledge that you are a member of the *Kentucky Education Co-op* and that the Kentucky Education Co-op has negotiated for its members the opportunity to earn a rebate as described in this Amendment ("*Rebate Program*"). You agree that in lieu of any rebate that we would otherwise be willing to pay to you (which may have been higher or lower than the payment you would otherwise receive from us), we will pay to you a rebate based on a rebate percentage determined by reference to the Aggregate Qualified Volume (as defined below) of the Kentucky Education Co-op members including you who participate in the Rebate Program and who remain eligible to receive a rebate under the terms of their Rebate Amendment for the applicable Calendar Year ("*Participating Members*").

2. **Definitions.** As used in this Agreement, the following terms have the indicated meanings:

"**Aggregate Qualified Volume**" means the sum of the combined Qualified Volume (including Large Ticket Transactions, Payment Gateway Transactions and Discount Transactions) of all Participating Members including you who have satisfied the Rebate Conditions for them in a particular Calendar Year or portion of a Calendar Year, as applicable. "Aggregate Qualified Volume" is also referred to as "Rebate Spend" in the attached Rebate Table.

"**Card Losses**" means the amount of charge-offs and other losses we incur in connection with your Account as a result of your failure to pay any amount owing on the Account as principal, interest or fees or other charges, but not including amounts not chargeable to you under the Card Agreement as a result of the Fifth Third Use Liability Policy.

"**Discount Transactions**" means transactions (excluding Payment Gateway Transactions) that are subject to discount interchange rates that are less than large ticket interchange rates as established and designated by MasterCard International, Inc. ("*MasterCard*").

"**Effective Date**" means, if the Execution Date is the first calendar day of a month, that date; otherwise, the first day of the first full calendar month after the Execution Date.

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“Large Ticket Transactions” or “LTI” mean transactions that qualify for reduced interchange rates as established and designated by the respective association (MasterCard or Visa).

“Payment Gateway Transactions” mean transactions that are initiated and processed through the Payment Gateway feature described in the Card Agreement.

“Qualified Volume” means the US dollar amount of transactions for the purchase of goods and services by you attributable to a MasterCard Card issued under the Card Agreement during the period of calculation excluding: (a) the principal amount of any balance transfer, cash advances or checks, credits and returns, account fees, finance charges, transaction fees, delinquency fees, over-the-limit fees, and any other fees imposed by us, MasterCard or another entity; (b) Card Losses; and (c) any other amounts not chargeable to you under the terms of the Card Agreement including by virtue of the Fifth Third Use Liability Policy or similar protection plan provided by MasterCard or otherwise. “Qualified Volume does not include any volume transaction subject to any rebate, bonus or similar payment not provided under the Rebate Program.

3. Member Rebate.

Determination. Subject to the fulfillment of the Rebate Conditions (as defined below), we will pay to you for each Calendar Year during the Rebate Term which your Qualified Volume is \$250,000 or greater a rebate (“*Rebate*”) equal to the sum of the following products:

(a) your individual Qualified Volume for such Calendar Year (excluding Large Ticket Transactions, Payment Gateway Transactions and Discount Transactions) multiplied by the applicable payment percentage (“*Rebate Percentage*”) in the row corresponding to the Aggregate Qualified Volume for such Calendar Year as set forth in the Rebate Table included on Exhibit A plus

(b) your Qualified Volume of Large Ticket Transactions in such Calendar Year multiplied by the lower of (i) the Rebate Percentage for Large Ticket Transactions specified on Exhibit A and (ii) the Rebate Percentage applied under clause (a) above to your Qualified Volume; plus

(c) your Qualified Volume of Discount Transactions in such Calendar Year multiplied by the lower of (i) the Rebate Percentage for Discount Transactions specified as Exhibit A and (ii) the Rebate Percentage applied under clause (a) above to your Qualified Volume; plus

(d) [if applicable] your Qualified Volume of Payment Gateway Transactions in such Calendar Year multiplied by the Rebate Percentage for Payment Gateway Transactions specified on Exhibit A.

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If for any Calendar Year your Qualified Volume is less than \$250,000, you are not a Participating Member and will not receive a Rebate although your Qualified Volume will be included in Aggregate Qualified Volume. Subject to the terms of the paragraph entitled "Rebate Conditions" below, for any Calendar Year for which a Rebate is payable that is less than twelve months, your actual Qualified Volume for such period will be annualized for purposes of determining Aggregate Qualified Volume for such period and your actual Qualified Volume will be multiplied by the Rebate Percentage in the applicable tier so determined. If you do not meet the minimum Qualified Volume level specified in the Rebate Table for a Calendar Year, no Rebate will be payable for that Calendar Year. ***This Rebate Amendment is not valid unless Exhibit A including a Rebate Table is attached or deemed attached to this Rebate Amendment at the time of signing this Rebate Amendment.***

Card Losses. There will be deducted from each Rebate otherwise payable to you the amount of all Card Losses attributable to the Calendar Year in which the Rebate was earned or any subsequent period.

Rebate Conditions. To be eligible for the Rebate for a Calendar Year, you must: (a) maintain the Account in good standing throughout such Calendar Year by timely paying all amounts due on the Account each month in accordance with the Card Agreement and otherwise being in compliance with, and not in default under the Card Agreement; and (b) not have reduced your Qualified Volume due to use of, or transition to, a competing card or service, during the 90 days following the end of the Calendar Year (other than following expiration or termination of the Rebate Term) (the "Rebate Conditions"). In addition, if this Amendment or the Card Agreement is terminated by you for any reason or is terminated by us as a result of a Rebate Default (as defined in Section 5), you will be deemed to have failed to meet the Rebate Conditions for the Calendar Year in which such termination occurs. If the Rebate Conditions are not satisfied in or with respect to any Calendar Year, you are not entitled to a Rebate for that Calendar Year.

Adjustment Events. Your Rebate terms have been established based in part on certain assumptions relating to a number of external conditions including interest rate and market conditions, your financial condition, and current regulatory requirements (including interchange rates and restrictions). Should a significant change in such conditions or requirements occur, we reserve the right to adjust your Rebate terms to reflect the effect of such change on us as determined by us in good faith. We will give you not less than ninety (90) days' notice of the implementation of any such adjustment.

4. Determinations.

(a) Calculation. We will determine the Qualified Volume, Aggregate Qualified Volume and your Rebate for each Calendar Year based on the Qualified Volume and related data reported to us by MasterCard for that Calendar Year. You consent to the reporting of your Qualified Volume and related information to Kentucky Education Co-op and release us from any liability or obligation with respect to that information once reported to Kentucky Education Co-op. Any claim that an error has been made in determining the Rebate must be made by you within 90 days receipt of the Rebate.

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(b) **Reports and Information.** We will provide the calculations and supporting summary-level Qualified Volume and Aggregate Qualified Volume documentation reasonably available to us upon request. You agree to provide validation and documentation reasonably satisfactory to us of any transaction or other information should we require support to verify the Qualified Volume or other matters relating to the determination of Qualified Volume for any period.

(c) **Payment.** We will pay the Rebate due to you, if any, not later than 120 days after the end of the Calendar Year.

5. **Term.** Unless terminated sooner as provided in this Amendment, the term of this Amendment ("*Term*") shall commence on the date of execution of this Amendment and expire on **December 31, 2020** and may be extended beyond that date only by mutual written agreement of both parties. This Amendment and the Term terminate automatically upon the termination of the Rebate Program by Kentucky Education Co-op or us, and upon termination of the Card Agreement by you or us. We may terminate this Amendment by giving you written notice at any time (a) upon the occurrence of any default under the Card Agreement or (b) upon any default by you in connection with any loan or advance we or any of our affiliates have made to you, or under any other indebtedness, obligation or liability you owe to us or any of our affiliates, whether now existing or arising in the future (any such event in clause (a) or (b), a "*Rebate Default*"). Either party may terminate this Amendment upon 90 days written notice to the other party.

6. **Confidentiality.** During the Term and for two (2) years after the Term you and we agree to keep confidential all information relating to this Amendment including the existence, terms and conditions of this Amendment, and to not disclose such information except to those individuals within our respective organizations with a reasonable need to know such information (provided such individuals agree to be bound by the confidentiality obligations contained in this Section 6). Each of us acknowledges that, in the event of a breach of this Section 6, the non-breaching party will likely suffer irreparable damage that cannot be fully remedied by monetary damages. Accordingly, in addition to any remedy that the non-breaching party may possess pursuant to applicable law, the non-breaching party retains the right to seek and obtain injunctive relief against any such breach in any court of competent jurisdiction. The provisions of this Section 6 shall survive the termination of this Amendment and the Card Agreement.

7. **Effect.** This Amendment amends the Card Agreement solely for purposes of establishing a rebate opportunity for you during the Term. All provisions of the Card Agreement not inconsistent with this Amendment shall remain unchanged and in full force and effect, and are ratified and confirmed. In the case of any conflict between and among the various provisions in the Card Agreement and this Amendment, the provisions of this Amendment shall prevail.

8. **Miscellaneous.** We represent and warrant to each other that this Amendment has been authorized by all necessary corporate or other entity action, and that the person signing this Amendment on our behalf is duly authorized to do so. The captions in this Amendment are included for convenience only and shall not affect the meaning or interpretation of this Amendment. This Amendment evidences the entire agreement and understanding between us respect to the subject matter of this Amendment and supersedes all prior agreements and discussions between us with respect to that subject matter.

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COMMERCIAL CARD
MEMBER REBATE AMENDMENT
KENTUCKY EDUCATION CO-OP REBATE PROGRAM

EXECUTED THIS _____, 201__.

FIFTH THIRD BANK

[MEMBER]

By: _____

By: _____

Print name: _____

Print name: _____

Print title: _____

Print title: _____

FIFTH THIRD BANK

By: _____

Print name: _____

Print title: _____

Fifth Third and *Fifth Third Bank* are registered service marks of Fifth Third Bancorp.
Member FDIC.

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EXHIBIT A

REBATE SCHEDULE

KENTUCKY EDUCATION CO-OP

REBATE SPEND LEVELS		PAYMENT TERMS					Discount
		30/25	30/15	14/07	07/05	LTI	TXN
\$10,000,000	\$19,999,999.99	1.10%	1.15%	1.20%	1.25%	0.50%	0.20%
\$20,000,000	\$29,999,999.99	1.20%	1.25%	1.30%	1.35%	0.50%	0.20%
\$30,000,000	\$39,999,999.99	1.30%	1.35%	1.40%	1.45%	0.50%	0.20%
\$40,000,000	\$49,999,999.99	1.35%	1.40%	1.45%	1.50%	0.50%	0.20%
\$50,000,000	\$59,999,999.99	1.40%	1.45%	1.50%	1.55%	0.50%	0.20%
\$60,000,000	and greater	1.45%	1.50%	1.55%	1.60%	0.50%	0.20%

Rebate Requirements

Rebate is assigned to tier based on qualifying, cumulative card spend of all Kentucky Education Co-op Programs.

Individual rebates for Kentucky Education Co-op Participants are payable on an annual basis and based on meeting a qualifying individual threshold of \$250,000 in annualized net qualifying spend. If an individual program does not achieve the qualifying individual threshold of \$250,000 in annual program spend or the Kentucky Education Co-op itself does not achieve minimum \$10,000,000 in annual cumulative program spend, a rebate will not be issued.

Auto Debit of balance due is required for payment terms less than 30/25.

All terms and conditions are subject to the Commercial Card Rebate Agreement.



FIFTH THIRD BANK

Global Addendum to Commercial Card Service Agreement

This Addendum is entered into among _____ ("you"), Fifth Third Bank ("we" or "us") and each of your Affiliates listed below as an Addendum to the Commercial Card Service Agreement dated _____, _____, between you and us ("*Master Agreement*"). Terms used but not defined in this Addendum have the meanings given in the Master Agreement.

1. **Acceptance of Master Agreement.** By executing this Addendum each Affiliate listed below, you and we agree that such Affiliate shall have all of the rights and obligations of, and shall for all purposes be a party under the Master Agreement as "Customer" as that term is used in the Master Agreement. Without limiting the generality of the foregoing, each Affiliate will be deemed to make to us all representations and warranties of "Customer" under the Master Agreement and will be subject to all obligations as "Customer" under the Master Agreement and the Terms and Conditions (collectively, the "*Card Program Agreements*"). The Affiliates are listed on the signature page to this Addendum.
2. **Additional Representations.** You represent and warrant to us that you (or another Affiliate) own a majority of the outstanding shares or equity interests of each Affiliate. Each Affiliate represents and warrants to us that this Addendum has been authorized by all necessary corporate or other organizational action and represents the valid, legal, and binding obligation of such Affiliate enforceable against it in accordance with its terms.
3. **Fees and Other Obligations.** Each Affiliate acknowledges and agrees that it is responsible for the payment of fees for the services which it receives from us, or for the maintenance of balances with us as provided in the Card Program Agreements.
4. **Guarantee.** You unconditionally guarantee to us the full and prompt payment and performance by the Affiliates of all obligations they or any of them may incur under the Card Program Agreements, now or in the future. You further agree that unless and until the full amount owing to us by the Affiliates under the Card Program Agreements have been paid in full, that you will not exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to you against such Affiliate. If any Affiliate's payment applied by us to such Affiliate's obligations under the Card Program Agreements is set aside, recovered, rescinded, or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency, or reorganization of such Affiliate), then your obligations and liabilities under this Addendum will be enforceable as fully as if such application had never been made.

CUSTOMER NAME: _____

CUSTOMER TAX ID: _____

*NOTE: If required by resolution, second officer must sign below

Signed _____

By _____
(PRINT)

Its _____
(TITLE)

*Signed _____

By _____
(PRINT)

Its _____
(TITLE)

Signing as a duly authorized officer or agent of each of the Listed Affiliates:

Signed _____
By _____
(PRINT)
Its _____
(TITLE)

*Signed _____
By _____
(PRINT)
Its _____
(TITLE)

ACCEPTED BY: FIFTH
THIRD BANK

By _____
Its _____
Dated _____, _____

This Addendum is for the following Affiliates:

Affiliate Name

Tax ID No.
