

DATE:

November 19, 2024

AGENDA ITEM (ACTION ITEM):

Consider/Approve: 2024 Commercial Card Service Agreement with Fifth Third Bank

APPLICABLE BOARD POLICY:

01.11 General Powers & Duties of the Board

HISTORY/BACKGROUND:

For several years the District has purchased materials and paid for travel using commercial procurement cards issued by Fifth Third Bank. The procurement cards offer an efficient payment method for travel, web based purchases and provide rebate revenue on a portion of the amounts processed. The average monthly spend on the Commercial Card is approximately \$ 100,000.00. The entire card balances are paid each month to avoid interest and fees. Fifth Third recently updated the language in the Commercial Card Service Agreement to reflect their current security and fraud alert functions, fee schedule, financial processes and systems. After a thorough review of the updated Commercial Card Service Agreement, we do not expect any significant changes in the use of the cards, payment process, fees or liability due to the updated language.

FISCAL/BUDGETARY IMPACT:

Annual \$17,000 Rebate Revenue

RECOMMENDATION:

Approval of the 2024 Commercial Card Agreement with Fifth Third Bank, pending review and approval by the district's attorney.


CONTACT PERSON:

Susan Bentle

Principal/Administrator



District Administrator



Superintendent

Fifth Third Bank
38 Fountain Square
MD1090QE
Cincinnati, OH 45263



FIFTH THIRD

Date: November 14, 2024



****SP-1357 T-17 P-25
KENTON CO SCHOOL DIST
SUSAN BENTLE
1055 EATON DR
FT WRIGHT, KY 41017-9655

Commercial Card Service Agreement Update

Dear Kenton Co School Dist:

We appreciate your business and are contacting you regarding recent updates to our Commercial Card Service Agreement.

What you need to know

- We have made some updates to our Commercial Card Service Agreement and have included the updated agreement here for your records.
- Updates made to the agreement include:
 - A modified fee schedule and verbiage that more accurately reflects how commercial card finance charges are assessed by Fifth Third (see Section 5.1).
 - Clarification on cash advance finance charge accrual effective dates (see Fee Schedule).
 - Updated ePay clauses to reflect the new auto-release features for both payment and vendor files (see Sections 18.5 and 18.6).
 - “SDg2” has been renamed “Smart Data” (see Section 17.6).
 - Clarification on fee schedule: “Online reporting SDg2” has been renamed “Online Reporting (Smart Data).” In addition, “\$.10 per transaction” has been renamed “\$.10 per transaction reconciled” (see Fee Schedule).
- This new agreement replaces your previous Commercial Card Service Agreement with Fifth Third.

What you need to do

- If your previous Commercial Card Service Agreement included any non-standard or revised language, please contact a member of your Fifth Third relationship team before **December 14, 2024** to discuss options.
- In all other cases, no action is required by you.

We're here to help

If you have any questions, please contact a member of your Fifth Third relationship team or call our Commercial Support Center at 866-475-0729, Monday through Friday, 7 a.m. to 10 p.m., ET.

Thank you for choosing Fifth Third.

Sincerely,

Fifth Third Bank



FIFTH THIRD

COMMERCIAL CARD SERVICE AGREEMENT

This Commercial Card Service Agreement ("**Agreement**") is entered into by and between Fifth Third Bank, National Association ("**Bank**", "**we**", or "**us**") 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

Section 1.1 Card Program. 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.

Section 1.2 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.

Section 1.3 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 electronically (as updated from time to time, "**User Guides**").

Section 1.4 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 after we have had a reasonable opportunity to act on the request. Until then, we may rely on the 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.

Section 1.5 **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 nevertheless be bound by the OCAA in the form provided or made available to Customer.

Section 1.6 **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

Section 2.1 **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 in Section 14.1 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 transactions 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.

Section 2.2 **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.

Section 2.3 **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 or accept 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.

Section 2.4 **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.

Section 2.5 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(es), 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

Section 3.1 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**").

Section 3.2 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 another 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

Section 4.1 **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.

Section 4.2 **Discrepancies.** Except for matters subject to Section 3.2, 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.

Section 4.3 **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

Section 5.1 **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 not timely paid is subject to a finance charge, as calculated by us, using the average daily balance method and the Finance Charge Rate specified in the Fee Schedule.

Section 5.2 **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 on a day which is not a business day, or after 3:00 p.m. Eastern Time on any 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.

Section 5.3 **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.

Section 5.4 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.

Section 5.5 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 Fee Schedule 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 20.4 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

Section 7.1 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.

Section 7.2 Lost or Stolen Cards; Unauthorized Use. You are responsible for cancelling any lost, misused, or stolen Cards, or the Account, that you suspect may have been the subject of fraud, unauthorized use, or misuse. You are also responsible for cancelling 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.

Section 7.3 2-Way Fraud Alerts; Our Programs. Your Commercial Card program will be enrolled in 2-Way Fraud Alerts, a fraud monitoring tool that enables Cardholders to receive real-time notifications via text message and/or email regarding suspicious transactions. Cardholders with mobile phone numbers and email addresses on file will receive free SMS alerts and emails if suspicious activity occurs on their Card account. Mobile service with Verizon, AT&T, Sprint, or T-Mobile is required in order to enroll in and receive free fraud text messages. Customers and Cardholders on other mobile service carriers and international phone numbers are not eligible. Bank, and any third party retained by Bank, is not responsible for any charges that may apply outside of the United States. We may (but are not obligated to) apply additional software programs and other techniques to detect patterns and other indications of potential fraud and unauthorized use of the Account. 2-Way Fraud Alerts and 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

Section 8.1 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.

Section 8.2 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.

Section 8.3 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 any 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, it is agreed that no prior notice is required 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

Section 9.1 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 the United States; (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.

Section 9.2 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 U.S. 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; (b) all other financial information you have provided is true and correct; (c) 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; (d) you are not subject to any material undisclosed liability; (e) you have the legal right to execute and perform your obligations under this Agreement; (f) you are duly organized, validly existing and in good standing in the jurisdiction in which you were organized; (g) 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; (h) each person signing this Agreement on your behalf is an Authorized Person and is duly authorized to do so; and, (i) 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.

Section 9.3 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.

Section 9.4 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

Section 10.1 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 you have reason to believe 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.

Section 10.2 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.

Section 10.3 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.

Section 10.4 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 in Section 14 below), other than Losses that result from our bad faith, gross negligence, or willful misconduct.

14. SPECIAL SITUATIONS

Section 14.1 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 the issuance of, and the use of, a Nameless Card.*

Section 14.2 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 this 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.*

Section 14.3 **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, “**Mark**”) 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. In the event you revoke the license to use the Mark granted in this Section 14.3, you agree that we will be given a reasonable opportunity to act on such revocation, including but not limited to re-issuing Cards that do not incorporate the Mark, which reissuance may be at your expense.

15. DEFAULT

Section 15.1 **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.

Section 15.2 **Remedies.** If you are in default under this Agreement, we may in our sole discretion and subject to applicable law, take any one or more of the following actions: (a) declare all or any portion of the Obligations to be immediately due and payable; (b) allow you to repay the Obligations according to the terms of this Agreement; (c) immediately terminate this Agreement, the Account and any and all Cards and authorizations relating to the Account; (d) revoke or suspend the use of the Account, or otherwise limit your ability to use any Cards; (e) reduce the Account credit limit, including to \$0; (f) enforce any applicable guaranty of the Obligation; (g) liquidate any collateral securing the Obligations or any guaranty; or, (h) 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

Section 16.1 Term. The term of this Agreement commences on the date it is accepted and executed by us and continues until it is either terminated by us under this Section 16, or by us or you upon thirty (30) days' written notice to the other party.

Section 16.2 Termination Rights. We may terminate this Agreement or terminate or suspend the Card Service if: (a) you are in default as provided in Section 15.1; (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.

Section 16.3 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.

Section 16.4 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

Section 17.1 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 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.

Section 17.2 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.

Section 17.3 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; 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.

Section 17.4 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 affected 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.

Section 17.5 Cardholder Portal. The Cardholder Portal ("**CHP**") gives your Cardholders who register to use this application the ability to access and manage their Card accounts. With CHP, users can view their account statement, update contact information, view account balances and transaction information, make payments on individual Card accounts, and set alerts or notifications on their Cards. Program Administrators have the ability to manage Cardholder entities to CHP via the Fifth Third Direct CCM application.

Section 17.6 Smart Data. Smart Data is an Admin Application provided by Mastercard that facilitates the reporting and management of account activity for Users and Cardholders (including their managers).

Section 17.7 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.

Section 17.8 Additions and Changes. We may in the future add or change features of these Admin Applications, or 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

Section 18.1 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.

Section 18.2 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 Incorporated.

Section 18.3 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.

Section 18.4 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.

Section 18.5 EPay Payment File Auto-Release Option. The auto-release function is an optional method of ePay Batch payment processing. If you chose to opt-in to the auto-release function, this functionality will be enabled within your Fifth Third Direct account by your implementation specialist. You will be able to confirm the successful release of your payment either by (a) reviewing your payment file processing results within Fifth Third Direct, or (b) utilizing the file-based authentication method.

Section 18.5.1 Payment Auto-Release Confirmation in Fifth Third Direct.
When auto-release is enabled, upon our receipt of your payment file, we will automatically release your payment file without any additional intervention required by you. If there are errors in the payment file that prevent us from releasing the payment, you will see the errors noted for your review in Fifth Third Direct. You understand that this auto-release functionality requires us to rely entirely upon the information provided by you in the initial payment file that you send to us. As such, you agree to hold Fifth Third Bank harmless for any losses incurred as a result of our reliance upon the information and details as provided by you in the payment file. For avoidance of doubt, this does not relinquish Fifth Third Bank from responsibility for losses incurred as a result of Bank not accurately submitting payment as detailed in the payment file. Should you wish to discontinue use of the auto-release functionality, you can contact your relationship team at any time.

Section 18.5.2 Payment Auto-Release Confirmation by File-Based Authentication. If you choose to use the file-based authentication method, then upon our receipt of your payment file, we will send you a confirmation file and automatically release your payment file without any additional intervention required by you. If there are errors in the payment file that prevent us from releasing the payment, you will see the errors noted in the confirmation file that we send to you. You understand that this auto-release functionality requires us to rely entirely upon the information provided by you in the initial payment file that you send to us. As such, you agree to hold Fifth Third Bank harmless for any losses incurred as a result of our reliance upon the information and details as provided by you in the payment file. For avoidance of doubt, this does not relinquish Fifth Third Bank from responsibility for losses incurred as a result of Bank not accurately submitting payment as detailed in the payment file. Should you wish to discontinue use of the auto-release functionality, you can contact your

relationship team at any time.

Section 18.6 EPay Vendor File Auto-Approve Option. The vendor file auto-approve function is an optional method of vendor enrollment for ePay Batch payment processing. If you choose to opt-in to the auto-approve function, this functionality will be enabled within your Fifth Third Direct account by your implementation specialist. The Vendor File Auto-Approve Option allows you to enroll vendors in the platform without having to provide the secondary review and confirmation of the vendor information in the initial Vendor File that you submit to the Bank as part of the standard enrollment process. You will be able to confirm the successful enrollment of your vendor by either (a) reviewing the vendor file processing results within Fifth Third Direct, or (b) utilizing the file-based authentication method.

Section 18.6.1 Vendor Confirmation in Fifth Third Direct. When auto-approve is enabled, upon our receipt of your vendor file, we will automatically enroll the vendor using the information you provided in the vendor file. You will be able to view the successful enrollment of the vendor within Fifth Third Direct. Should your vendor file contain any errors that prevent us from enrolling the vendor (such as missing information fields), these will also be noted in Fifth Third Direct. You understand that this auto-approve functionality requires us to rely entirely upon the information provided by you in the initial vendor files that you send to us. As such, you agree to hold Fifth Third Bank harmless for any losses incurred as a result of our reliance upon the information and details as provided by you in the vendor files. For avoidance of doubt, this does not relinquish Fifth Third Bank from responsibility for losses incurred as a result of Bank not accurately enrolling a vendor as detailed in the vendor files. Should you wish to discontinue use of the auto-approve functionality, you can contact your relationship team at any time.

Section 18.6.2 Vendor File-Based Authentication. When auto-approve is enabled with file-based authentication, upon our receipt of your vendor file, we will automatically release your vendor file and send you a confirmation file without any additional intervention required by you. If there are any errors in your vendor file that prevent us from enrolling the vendor, you will see those errors noted in the confirmation file that we send to you. You understand that this auto-approve functionality requires us to rely entirely upon the information provided by you in the initial vendor files that you send to us. As Such, you agree to hold Fifth Third Bank harmless for any losses incurred as a result of our reliance upon the information and details as provided by you in the vendor files. For avoidance of doubt, this does not relinquish Fifth Third Bank from responsibility for losses incurred as a result of Bank not accurately enrolling a vendor as detailed in the vendor files. Should you wish to discontinue use of the auto-approve functionality, you can contact your relationship team at any time.

Section 18.7 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.

Section 18.8 Additions and Changes. We may in the future add or change features of Fifth Third ePay or any of the Admin Applications, or 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. AFFILIATE JOINDER

Section 19.1 Joinder. By executing this Agreement, the Customer (which for the purposes of this section shall be referred to as "Initial Customer"), each Affiliate listed below, and Bank agree that each such Affiliate shall have all of the rights and obligations of, and shall for all purposes be, a party to 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 Initial Customer and Bank.

Section 19.2 Affiliate Representation, Warranty and Covenant. Initial Customer represents, warrants, and covenants to Bank that: (a) **each entity signing this Agreement as an Affiliate meets the following definition of Affiliate: an entity in which Initial Customer maintains a direct or indirect ownership interest;** (b) Initial Customer has the authority to use the Card Service on behalf of each Affiliate as permitted by this Agreement; and, (c) the individual signing on behalf of the Initial Customer is duly authorized to execute this Agreement on behalf of each Affiliate. Each Affiliate hereby agrees to be bound by the terms of this Agreement for the use of the Card Service.

Section 19.3 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 Card Service and requesting that Bank issue and cancel Cards; setting Card limits for Card transactions; executing Implementation Materials (which includes, but is not limited to, any documents that facilitate the use of the Card Service, specifications, set-up and sign-up forms provided by Bank, and those completed and submitted by Customer, including electronically, and written Security Procedures); acceptance and allocation of the payment of rebates; 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 each Customer and Affiliate, 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 19.4 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 in order to use the Services, and that such Security Procedures are commercially reasonable for the Instructions to be provided on behalf of each Affiliate. As such, each Customer acknowledges and agrees that: (a) Bank may rely upon 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 Card Service and any Instructions and liable for any Card transactions made using 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 understand and agree that use of the Card Service and any transactions affecting each Affiliate's Accounts may be reflected on the records of Bank as initiated by the Initial Customer.

Section 19.5 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, now or in the future, including, but not limited to, obligations for Fees and indemnification. Initial Customer further agrees that unless and until the full amount owing to Bank by the Affiliates under this Agreement have been paid in full, that Initial Customer will not exercise or enforce any right of exoneration, contribution, reimbursement, recourse, or subrogation available to Initial Customer against such Affiliate. If any Affiliate's payment applied by Bank to such Affiliate's obligations under this Agreement 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 Initial Customer's obligations and liabilities under this Agreement will be enforceable as fully as if such application had never been made. Initial Customer agrees to pay any and all such amounts upon demand by Bank. **Initial Customer acknowledges and agrees that Initial Customer's guarantee is provided for good and valuable consideration, as Bank would not have otherwise permitted Affiliate(s) to use the Card Service as permitted for and requested by Initial Customer under this Agreement without the foregoing guarantee.**

20. GENERAL PROVISIONS

Section 20.1 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; (b) a merchant's or Vendor's use of a Card or Account number you give to them; (c) a merchant's or supplier's failure to accept the Card or the Account; or, (d) 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.

Section 20.2 Worldpay. If you are using the merchant processing services of Worldpay, LLC ("**Worldpay**"), you understand that Worldpay is a separate, independent legal entity. We are not responsible for the actions or obligations of Worldpay, its successors or assigns, or any agent or vendor engaged or used by Worldpay with respect to merchant processing services.

Section 20.3 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.

Section 20.4 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: (a) by a written instrument signed by both parties; or, (b) 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.

Section 20.5 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.

Section 20.6 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.

Section 20.7 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.

Section 20.8 **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.

Section 20.9 **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.

Section 20.10 **Entire Agreement.** 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.

Section 20.11 **Electronic Execution and Consent.** The parties agree that this Agreement is entered into on an interstate basis and agree that the Agreement and Card 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 with a manual original signature.

Section 20.12 **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.

Section 20.13 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.

Section 20.14 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 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.

Section 20.15 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.*

Section 20.16 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 representatives.

CUSTOMER NAME:

Kenton County School District

Tax ID: 61-6001301

By:

Print name: Dr. Henry Webb

Print title: Superintendent

By:

Print name:

Print title:

FIFTH THIRD BANK, N. A.:

By:

Print name:

Print title:

Date:

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

By: N/A

Print name:

Print title:

This Agreement includes the following Affiliates:

Affiliate Name:

Tax ID No.:

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 logo or name)	\$500.00
Custom Card (multiple colors and/or images allowed)	Varies based on requirements

Transaction Fees

Online Reporting (Smart Data)	\$0.10 per transaction reconciled
Foreign Currency Conversion Fee	2%
Cash Advance Fee	3% of total advanced (\$3.00 min.)
Cash Advance* Finance Charge	19.8% per annum (<i>begins accruing on date of transaction</i>)

*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 (waived if >\$350,000 spend in calendar year)	\$250.00
Online Card Administration (CCM)	No charge
Finance Charge Rate (applied using the average daily balance method)	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

FEE SCHEDULE ACKNOWLEDGED BY:

Initials of Customer Authorized Person: _____

Initials of Bank Officer: _____

Date: _____