



## Business Rewards Visa Credit Card Agreement

This Business Rewards Visa Credit Card Agreement (“**Agreement**”) is between Mercantile Bank (“**Bank**”) and the customer identified on the Signature Page to this Agreement (“**Customer**”), and is dated the Agreement Date set forth on the Signature Page.

### 1. AGREEMENT.

1.1 Governing Documents. This Agreement governs the Service and includes the Interest and Fee Schedule, Business Rewards Program Terms, Security Agreement and Guaranty, and any supplemental agreements or forms provided to Customer or executed by Customer at Bank’s request. Customer is deemed to have accepted this Agreement upon the earlier of execution of this Agreement or first use of a Card or the Card Account. Customer confirms that Customer has requested that Bank provide the Service and the Card Account, and that Customer will be requesting Cards for use by its employees and representatives for use in connection with Customer’s business.

1.2 Glossary of Defined Terms. Capitalized terms used but not defined in the body of this Agreement have the meanings given to them in Schedule A to this Agreement.

1.3 Secured Indebtedness. The Indebtedness and other obligations of Customer under this Agreement are secured by the Security Agreement and the Guaranty.

1.4 Customer Use. This Service is offered and provided for the sole and exclusive benefit of Customer. This Service may only be used for lawful business purposes and shall not be used (a) for or on behalf of any other person or entity, or (b) for personal, household or consumer purposes.

1.5 Format. This Agreement may be provided to Customer in paper form or, in whole or part electronically. All or any part of this Agreement sent or executed electronically shall be considered in writing and shall constitute an original to the full extent permitted by Applicable Law.

1.6 Customer Identification. **To help the government fight the funding of terrorism and money laundering activities, Federal Law requires all financial institutions to obtain, verify and record certain business account information. If you are opening an account for yourself or another individual, we will ask for the name, address, date of birth, social security number, and other information that will allow us to identify all customers on the account. We may also ask to see a driver’s license, passport or other identifying documents.**

### 2. CARD SERVICE.

2.1 Establishing the Card Account. Bank agrees to provide Customer with the Service as provided in this Agreement. The Service includes the Online Portal subject to Bank’s approval.

2.2 Lawful Use of Card Account. Customer agrees to use the Card Account and each Card only in accordance with Applicable Law including Visa Rules, and shall not use the Card Account or Cards for any illegal transaction or purpose including any transaction that is prohibited by Federal Reserve Regulation GG – Unlawful Internet Gambling Enforcement Act of 2006.

2.3 Cash Advance Option. Customer may request that cash advances be available to Cardholders. If Bank approves the request, Bank may set a limit on the total amount of cash advances that may be outstanding against the Credit Limit or under any Card.

2.4 Transactions. Cards and the Card Account may be used to effect the purchase or reservation of goods or services and permitted cash advances by all generally recognized means including swipe, optional virtual card numbers (single or multiple use), signed seller drafts, telephone and internet entry, and use of the Card Account number. Subject to the limitations set forth in this Agreement, Customer is responsible for all uses of a Card and Card number regardless of the means by which the transaction is effected and even if use is not authorized by Customer or violates Customer’s internal policies or restrictions. Bank reserves the right to block authorizations from certain types of merchants including those in the business of selling crypto currencies, cannabis and online gambling. Bank reserves the right to limit the number of authorizations given during any period of time and Bank may deny an authorization if Bank suspects that the Card Account is being used without permission.

2.5 Rewards Program. The Service includes the Business Rewards Program the terms of which are set forth on the Business Rewards Program Terms attached to this Agreement. Points and other benefits earned in the Rewards Program accrue for the benefit of the “Primary Cardholder” designated by Customer. Bank reserves the right to supplement or amend the Business Rewards Program Terms, and to

discontinue the Rewards Program itself at any time. Customer understands that the product and services available through the Business Rewards Program are provided by unrelated, independent third parties and Bank shall have no responsibility or liability for any products or services purchased or used by Customer or the Primary Cardholder through the Business Rewards Program.

### **3. IMPLEMENTATION.**

3.1 Customer Information. Customer agrees to: (a) execute or complete, in form and content satisfactory to Bank, any and all documents, applications and information forms required by Bank; and (b) provide Bank with all information and documents Bank may request with respect to Customer, including financial, management and company information, beneficial ownership information, and other business information and documents. Customer represents and warrants that all information and documents provided to Bank are true and correct, and that all individuals or entities designated by Customer as authorized are in fact authorized to act for Customer. Customer authorizes Bank to obtain information about Customer from credit bureaus and other similar sources of information. Customer acknowledges that Bank will rely on the accuracy, completeness and timeliness of the information provided by or about Customer in establishing and providing the Service.

3.2 Authorized Persons. Customer agrees to furnish Bank with resolutions and documentation in form required by Bank authorizing this Agreement, the Security Agreement and Guaranty and identifying and appointing Authorized Persons. The Authorized Persons shall have such authority as is delegated to them in such documentation, and may have such other authority as is mutually agreed upon by Bank and Customer. Changes in the Authorized Persons and their authority must be communicated to Bank promptly in the manner and pursuant to documentation required by Bank. If Customer chooses to communicate changes in Authorized Persons to Bank by some other means, Bank is entitled (but not obligated) to rely upon such changes as having been authorized by Customer. Bank is entitled to rely on the indicated authority of any person previously designated as an Authorized Person until Bank receives written notice of a change and has had a reasonable opportunity to act on it. Further, Bank may, in its sole discretion, rely on the actual or apparent authority of Customer personnel.

3.3 General Card Management. The Authorized Persons have authority to: (a) designate persons who will be issued Cards and become Cardholders and establish their individual Card credit limit; (b) cancel a Card and change the credit limit associated with a Card; (c) issue replacement Cards; and, (d) obtain information and reports about, and monitor the Card Account and Card use.

3.4 Cardholders. Bank will issue one or more Cards and account numbers associated with the Card Account to each individual Cardholder designated by an Authorized Person provided that Bank reserves the right at anytime, in its discretion, to refuse to issue any requested Card. Customer is fully and unconditionally liable to Bank for the use of the Cards by each Cardholder or any person who uses a Card. Customer agrees to notify Bank immediately if Customer cancels any Cardholder's privileges; Customer is responsible for preventing further use of such Cardholder's Card by either destroying it or returning it to Bank. Subject to the terms and conditions of this Agreement, the Card and Card Account may be used to purchase goods or services and obtain cash advances (if permitted under this Agreement) wherever the Card is honored.

3.5 Cards. All Cards are and shall remain Bank's property. Customer agrees to review, and require each Cardholder to review, Cards upon receipt to confirm that all information contained on such Card is correct. If such information is not correct, Customer must immediately notify Bank. Customer agrees, and shall ensure that each Cardholder agrees to return any or all Cards to Bank immediately upon request.

### **4. CREDIT LIMIT.**

4.1 Establishment. The Card Account is subject to a Credit Limit. The initial Credit Limit is the amount set forth on the Signature Page to this Agreement. Customer is responsible for specifying an individual limit for each Card.

4.2 Over-limit Transactions. Customer agrees not to make or conduct any transactions, or allow any Cardholder or others to do so, that would cause the Card Account balance to exceed the Credit Limit or any individual Card limit. Customer will remain liable for all transactions, even for those that exceed the Credit Limit or Card limit. Bank may refuse to authorize any transaction against the Card Account that would bring the total amount outstanding against the Card or against the Card Account as a whole to a level that would exceed the Credit Limit or Card limit. If Bank, in its sole discretion, authorizes or accepts a transaction on the Card Account or a Card that would exceed the Credit Limit for the Card Account or the individual limit for a Card: (a) Bank shall not be liable for doing so, and (b) Customer shall, at Bank's request immediately pay in full the entire amount of the excess, together with any applicable over-limit charges and related fees.

4.3 Changes. Subject to Applicable Law, Bank at any time may increase or decrease the Credit Limit (including any portion of the Credit Limit available for cash advances) to be effective immediately or at a designated time including at Customer's request. Bank will notify Customer of any such changes through Customer's monthly Account Statement or by sending Customer a separate notice, which may be after the change occurs.

## 5. PAYMENT.

5.1 Promise to Pay. Customer promises to pay all Indebtedness when due. Customer is required to pay Bank whether or not the use of the Card Account, Card, or other means by which indebtedness was incurred was authorized by Customer or a Cardholder. The Online Portal includes a feature enabling Customer to make payments on the Card Account.

5.2 Card Account Statements. At the end of each Billing Cycle, if there was activity in the Card Account, Bank will provide Customer with an Account Statement showing the total amount owed as of the end of such Billing Cycle. The Account Statement will be mailed or, if Customer elects, transmitted electronically, and is also available to Customer through the Online Portal. Customer agrees to promptly review and reconcile its Account Statements. If Customer believes that an Account Statement is incorrect or requires additional information about any transactions shown on an Account Statement, Customer agrees to notify Bank at the address or phone number provided in Section 7.4 within thirty (30) days (sixty (60) days in the case of an unauthorized transaction). If Customer does not so notify Bank within such period, Customer waives any and all rights with respect to the disputed charge or error to the fullest extent permitted by Applicable Law and the Account Statement shall be deemed correct and accepted by Customer subject only to Visa's Zero Liability Policy and Applicable Law.

5.3 Payment Due Date. Customer must pay at least the minimum payment shown on the Account Statement by the Payment Due Date. The minimum payment for each Billing Cycle in which there is a balance owed is the greater of \$50 or 5% of the outstanding balance. All payments must be made in US Dollars. An interest charge is imposed in accordance with the Interest and Fee Schedule. Bank may assess a late fee to the Card Account if the required payment is not paid when due. Bank may accept partial payments, late payments and payments marked "Payment in Full" or with words of similar effect without losing any of Bank's rights to collect the full balance of the Card Account. Payments are considered made when received and processed by Bank.

5.4 Automatic Payment. If Customer has enrolled in the Automatic Payments option, Customer authorizes Bank to make Automatic Payments to be effective on the Payment Due Date or next business day following Payment Due Date. Customer agrees that this authorization will remain in effect until revoked or changed by Customer by giving written notice to Bank of the revocation or change at least ten (10) Business Days before the next Payment Due Date. Customer understands that if an Automatic Payment does not occur for any reason whatsoever, Customer is still required to make the required monthly payment and Customer will be responsible for any late fees, charges, or other consequences of late or non-payment. If the Automatic Payment option is revoked, terminated or not effective for any reason Customer is solely responsible for timely making all payments required under this Agreement in some other permitted manner.

5.5 Application of Payments. Subject to Applicable Law, payments may be applied to Indebtedness in any manner Bank may choose in its discretion.

5.6 Interest and Fee Schedule. Customer agrees to pay the fees, interest, and charges associated with the Card Account including those set forth in the attached Interest and Fee Schedule.

5.7 Foreign Transactions. If a Card or the Card Account is used to effect a transaction in a foreign currency, the transaction amount will be converted to U.S. dollars by Visa. Visa converts currency to U.S. dollars using either the government mandated exchange rate or the wholesale exchange rate in effect one day before the date of the conversion, as applicable. The date of conversion by Visa may differ from the purchase date and the posting date identified in the Account Statement.

## 6. ONLINE ACCESS.

6.1 Online Portal. The Online Portal can be accessed by the CSA and Authorized Users, and by Cardholders with respect to their Card. Use of the Online Portal may also be subject to the terms of use posted for that website. Bank does not monitor Customer's use of the Online Portal or the Service, and is not responsible if any CSA or Authorized User exceeds the limits of their authority.

6.2 Online Card Administration. The Online Portal offers access to Card Account Statements and related information, and a payment feature. The Online Portal is administered and managed by the CSA who has the authority to act for Customer as an Authorized Person including the authority to: (a) access all Card Account information and use the Card Account; (b) appoint additional CSA's with equal authority, and revoke such authority; (c) designate and manage Authorized Users, establish Authorized User profiles and entitlements, and terminate or restrict Authorized User status and entitlements; (d) make payments on the Card Account; and, (e) agree to and manage Security Procedures related to the Online Portal. Authorized Users can be granted access to the administrative features of the Online Portal.

6.3 Reliance. Bank is authorized to recognize the authority of the CSA until written notice of the removal of such CSA has been received by Bank, and Bank has a reasonable opportunity to comply with the notice.

6.4 Security Procedures. Access to the Online Portal is subject to Security Procedures. Access to the Online Portal using such Security Procedures will be considered by Bank for all purposes and without further investigation to be authorized by Customer and Cardholders, as the case may be. Bank may accept, act and rely upon all instructions or data transmitted and actions taken using the Security Procedures.

6.5 Cardholder Features. Cardholders may enroll for access to Online Portal features that enable them to view their Card information and transactions. A Cardholder will be required to register through the platform, accept and be subject to terms of use and establish a user profile. Access to these feature is subject to Security Procedures.

6.6 Payments. Payments through the Online Portal are made through ACH transactions authorized through the payment features of the Online Portal. The CSA, Authorized User or Cardholder making a payment is responsible for the accuracy and completeness of the payment information they provide and for timely payment of Indebtedness when due.

6.7 Unavailability of Access. Customer understands the Online Portal may be unavailable due to maintenance, upgrades, technical issues, general periods of outage or interruption and other events beyond Bank's control. Bank does not warrant that the Online Portal will be uninterrupted or error free. If the Online Portal is unavailable during normal business hours for an extended period, Bank will work with Customer and all similarly situated customers to establish an alternative method to access the Service. In any event, Bank will have no liability to Customer based on the unavailability of the Online Portal or any other communications system or website, or any failure to remedy the problem in a timely manner.

6.8 Notifications. Authorized Users and Cardholders may be required or may choose to accept Notifications. Customer consents to the sending of Notifications to Authorized Users and Cardholders. Notifications are intended as a convenience and for informational purposes only. Notifications do not constitute a Bank record and the sending or absence of a Notification cannot be relied upon. There is a risk that delivery of a Notification may be delayed or prevented due to factors beyond Bank's control. Notifications are not encrypted or coded. Replies to a Notification are not permitted and will not be read or acted upon. Customer or the Cardholder is responsible for managing the contact information for the Notifications.

6.9 Proprietary Rights. Customer acknowledges and agrees that Bank or the applicable Bank Provider, as the case may be, shall own and retain any and all intellectual property rights associated with the Service and all software, functionality, processes, procedures, systems, know-how, databases, inventions, User Guides and other documentation and materials provided to Customer by Bank or the Bank Provider in connection with the Service, all information generated or created through the Service (excluding Customer's proprietary information) and any and all improvements, enhancements, derivative works, modifications or developments made, conceived or developed by Bank or the applicable Bank Provider. Copying of such software, User Guides, and documentation is strictly prohibited without Bank's written consent. Except for the right to use and access the Card Account and Service as expressly provided in this Agreement, Customer shall not acquire any intellectual property or other interest or rights in any Bank or Bank Provider property as a result of using the Service.

6.10 Equipment and Communication Capabilities. Customer is responsible for (a) having a technology infrastructure and systems that are compatible with the Bank's systems and for the security of its technology infrastructure and systems, and (b) any malfunction, security breach, non-function, inaccuracy or other failure of any its technology infrastructure and systems.

## **7. MONITORING AND LIABILITY.**

7.1 Use of Cards. Customer agrees to provide Cards only to persons authorized by Customer to be Cardholders. Customer understands that Bank is authorized to charge the Card Account for all transactions resulting from the use of a Card and Card Account at any time, whether or not Customer has authorized its use or the Cardholder exceeds his or her authority or limits. Customer assumes all responsibility and liability for all such use except as otherwise provided in this Agreement.

7.2 Card and Account Controls. Customer is responsible for monitoring the Cards and Card Account for any unauthorized or improper use, misuse and fraud. Customer is responsible for cancelling (a) any lost, misused, or stolen Cards or if Customer suspects the Card or Card Account may have been the subject of unauthorized or improper use, misuse, or fraud, and (b) and retrieving the Card of any Cardholder (as well as any associated authorization) no longer authorized by Customer to use a Card or the Card Account.

7.3 Visa's Zero Liability Policy. Visa's Zero Liability policy may apply to unauthorized Card and Card Account transactions. Visa's Zero Liability Policy does not apply to certain commercial cards and anonymous prepaid card transactions or transactions not processed by Visa. Additional details and other conditions may be found in the Visa Rules. If a transaction is unauthorized and meets the requirements of Visa's Zero Liability Policy, and Customer properly follows the requirements of Visa's Zero Liability Policy and this Agreement, Customer will not be liable for the unauthorized transaction. Use of the Card Account or a Card is not considered "unauthorized" if effected by a Cardholder who has actual, implied or apparent authority for such use, or Customer or Cardholder receives a benefit from the transaction.

7.4 Prompt Notice. If Customer believes there is an unauthorized transaction on the Card Account, Customer must notify Bank immediately, but not later than sixty (60) days from the date of the Account Statement (as shown on the face of such Account Statement) on which such transaction appears, in writing at CUSTOMER SERVICE, PO Box 31535, Tampa, FL 33631-3535 or by telephone at (866)839-3485. If a Card has been lost or stolen, Customer must notify Bank immediately. The notice must, at a minimum, include the following information: (a) the Customer's name; (b) the Card Account number; (c) the dollar amount of any disputed transaction or suspected error; and (d) a brief description of the disputed or unauthorized transaction or suspected error.

7.5 Cooperation and Assistance. Customer agrees to reasonably cooperate with Bank in any investigation into each transaction in question, which may include Customer providing Bank with any reasonably requested information and documentation. Visa's Zero Liability Policy does not apply if Bank determines, based on substantial evidence that Customer or any Cardholder was negligent or fraudulent in the handling or use of the Card Account or the Card. Customer agrees that Bank may deem Customer to have been negligent if Customer does not notify Bank of an unauthorized transaction within the required time period. If Visa's Zero Liability Policy does not apply, and: (a) ten (10) or more Cards have been issued on the Card Account, Customer shall be liable for all charges on the Card Account, including any charges that result from unauthorized use; or (b) nine (9) or fewer Cards are issued on the Card Account, Customer's liability resulting from the unauthorized use of any one Card shall not exceed the lesser of \$50.00 or the amount of the unauthorized transaction before Bank is notified of such use; Customer shall not be liable for unauthorized use of a Card that occurs after Customer notifies Bank of the loss, theft, or unauthorized use of such Card, either orally or in writing, at the address or phone number provided. These requirements are subject to, and shall be applied in accordance with Applicable Law.

7.6 Replacement Funds. Where applicable, Visa's Zero Liability policy requires Bank to provisionally credit the Card Account for a transaction resulting from the unauthorized use of a Card or the Card Account. Replacement funds are provided on a provisional basis and may be withheld, delayed, limited, or rescinded by Bank based on Customer's gross negligence or fraud, a delay in reporting unauthorized use, an investigation and verification of a claim, and account standing and history, or if it is otherwise determined that Visa's Zero Liability policy is not applicable to the disputed transaction.

7.7 Updates. Visa's Zero Liability Policy is subject to the terms and conditions established by Visa and as updated from time to time. In the case of a conflict between the terms of this Agreement and Visa's Zero Liability Policy terms, Visa's Zero Liability Policy terms will control.

7.8 Bank Internal Programs. Customer acknowledges that Bank may, in its discretion, apply software and other programs and processes including to screen certain transactions for further review and verification by Customer. Customer acknowledges that the benefit of additional verification outweighs the potential delays associated with these programs and processes until Bank obtains such verification. These programs do not impose any obligation on Bank and cannot be relied upon by Customer as a substitute for careful monitoring and control over its transactions.

7.9 Declined Transactions. Customer acknowledges that Bank reserves the right, at any time and without prior notice, to decline to authorize any requested transaction for security reasons, suspected fraud, illegal or unauthorized activity, protection of Customer or Bank and other reason permitted under the Visa Rules. Bank will not have any liability for refusing to authorize any transaction, even if a Credit Limit was not reached.

## **8. DEFAULT.**

8.1 Events. The occurrence of any of the following will constitute an event of default:

- (a) Customer fails to make any payment when due under this Agreement;
- (b) The filing of a petition or commencement of any proceeding by or against Customer or Account Guarantor under the United States Bankruptcy Code;
- (c) The appointment of a receiver for Customer or Account Guarantor or any of Customer's or Account Guarantor's property or an assignment for the benefit of creditors;
- (d) The commencement of any proceeding to dissolve or liquidate Customer;
- (e) The death of Account Guarantor and if Customer is an individual, their death;
- (f) Any financial statement or other information provided to Bank in connection with the Card Account is false or misleading;
- (g) Customer fails to comply with or to perform any other term, obligation, covenant, or condition in this Agreement or the Security Agreement or to comply with any term, obligation, covenant, or condition contained in any other agreement between Bank and Customer;
- (h) The Guaranty is no longer in effect for any reason other than termination by mutual written agreement of Bank, the Account Guarantor and Customer;

- (i) Any sale or transfer of all or a substantial or material part of Customer's assets, other than in the ordinary course of business;
- (j) Any violation of, breach of or default under the Guaranty, Security Agreement or any other arrangement securing this Agreement;
- (k) Any material adverse change in Customer's or the Account Guarantor's financial condition;
- (l) There occurs any default by Customer or Account Guarantor in connection with any loan, advance, or other extension of credit made to Customer by Bank or any of its affiliates; or
- (m) Bank, in good faith, concludes the prospect of payment or performance of this Agreement by Customer is materially impaired.

8.2 **Remedies.** If any event of default occurs Bank may, with or without prior notice: (a) declare a default in which case the entire outstanding balance of Indebtedness is immediately due and payable; (b) suspend or terminate further use of and advances on the Card Account; (c) terminate or cancel this Agreement and the Card Account and revoke the Cards; (d) declare the entire unpaid balance of all other loans owing from Customer to Bank immediately due and payable; and (e) terminate the Business Rewards Program in which case all points are forfeited; and (f) exercise the right of set off. All such rights are in addition to any other rights and remedies available to Bank under Applicable Law, this Agreement, or any other agreements between Customer and Bank.

**Important Notice About Credit Reporting: Bank may report information about Customer's use of the Card Account to credit bureaus and consumer reporting agencies in Customer's name, the name of your business organization, and in the name of any Account Guarantor. Late payments, missed payments, or other defaults under this Agreement may be reflected in Customer's and Account Guarantor's credit reports and consumer reports.**

## 9. TERM AND TERMINATION.

9.1 **Term.** This Agreement shall have a term beginning on the Agreement Date set forth below and shall remain in full force and effect until terminated by either party as provided in this Agreement.

9.2 **Customer.** Customer may cancel or close the Card Account by providing Bank with written notice of termination; provided, however, that the cancellation or closing of the Card Account shall not affect Customer's obligation to pay the Indebtedness. Cancellation or closing of the Card Account shall be binding on each and every Cardholder.

9.3 **Bank.** Bank may, by giving written notice to Customer at any time, without liability to Customer or any Cardholder and without affecting Customer's liability for any Indebtedness, terminate this Agreement or terminate, suspend or limit Customer's and any Cardholder's right to use the Card or Cards and the Card Account subject to Applicable Law. Unless sooner terminated, the privilege to use the Cards and the Card Account shall expire on the date shown on each respective Card.

9.4 **Effects.** Termination or expiration of this Agreement, the Card Account, or any Card will not release Customer from any Indebtedness, or Customer or Bank from any of their respective obligations that arose or became effective prior to any such termination except that termination does terminate the Business Rewards Program and Customer forfeits all points accumulated under the Business Rewards Program not then used or redeemed. Customer remains obligated to repay any and all Indebtedness.

## 10. LIMITATIONS OF LIABILITY.

10.1 **Standard of Care.** Bank agrees to use reasonable care in providing the Service.

10.2 **Actual Damages.** Customer agrees that Bank's liability to Customer, if any, relating to the Service or this Agreement shall be limited (to the maximum extent permitted by Applicable Law) exclusively to actual, provable damages directly resulting from Bank's gross negligence or willful misconduct. Bank will be responsible only for performing the Service as set forth in this Agreement.

10.3 **Excluded Responsibility.** Under no circumstances shall Bank or any Bank Provider be responsible for any Losses and Damages that arise, directly or indirectly, in whole or in part, from:

- (a) Any act or omission of Customer, its agents, employees or officers or any other person or entity not within Bank's control (other than Bank Providers acting within the scope of their duties to Bank), including, but not limited to, Visa, other third party networks or operators, any governmental entity, financial institution or other party to a transaction;
- (b) Any breach by Customer of this Agreement;
- (c) The application of any government or funds transfer system rule, guideline, policy, or regulation; or

(d) Bank's inability to confirm to Bank's satisfaction the authority of any person to act on Customer's behalf.

**10.4 Limitation of Damages.** Except for Losses and Damages caused solely by Bank's gross negligence or willful misconduct, Bank's liability for any Losses and Damages arising under or in connection with this Agreement or the Service shall not exceed, in the aggregate for the life of this Agreement an amount equal to three percent (3%) of the average daily balance (computed as provided in the Interest and Fee Schedule) on the Card Account for the three (3) Billing Cycles prior to the date of the loss or event causing the Loss and Damage. Customer agrees that, except where otherwise required by Applicable Law, Bank shall not be liable for any consequential, special, punitive, speculative or indirect loss or damage which Customer or any other person or entity may incur or suffer in connection with this Agreement or the Service regardless of whether Bank had knowledge or should have had knowledge that such loss might be incurred, and Bank assumes no liability for Customer's attorney fees.

**10.5 Notice and Making of Claims.** **Customer agrees to promptly notify Bank of any claim and any fact or circumstances which could reasonably be expected to give rise to a claim against Bank by Customer or any third party in connection with the Service, and in any case to make such claim promptly. In no event shall any claim, action, suit or proceeding against Bank for damages arising under or in connection with this Agreement or the Service be made or brought more than one (1) year after the date of Bank's alleged act or omission.**

**10.6 Reliance.** Customer understands and agrees the interest rate and fees set forth in the Interest and Fee Schedule have been established in contemplation of the limitations on liability set forth in this Agreement.

**11. INDEMNIFICATION.** Customer agrees to indemnify, defend and hold Bank and the Indemnitees harmless individually and collectively from and against all Losses and Damages that result or arise, directly or indirectly, in whole or in part from: (a) the use of the Service, Card Account or Cards by Customer or any Cardholder; (b) any material breach in a material representation, warranty, covenant or obligation of Customer contained in this Agreement or the Security Agreement; (c) any violation by Customer of any Applicable Law in connection with the use of the Service; (d) any misconduct or wrongful, illegal, fraudulent or negligent act or omission of Customer or of any of its officers, directors, employees, agents or other representatives or Customer Vendor in connection with this Service or the use of the Cards and Card Account; and, (e) any claim by any third party (including Customer Vendor) or governmental entity against Bank relating to the Service including any dispute with any third party. Customer is not obligated to indemnify any Indemnitee for Losses and Damages incurred by an Indemnitee arising directly from the gross negligence or willful misconduct of the Indemnitee. The obligation to defend by Customer shall include the right of Bank to proceed with counsel of its own choosing.

**12. GOVERNING LAW; VENUE; JURY TRIAL WAIVER.** This Agreement shall be governed by the laws of the state of Michigan. Any litigation arising out of this Agreement shall be brought in the Circuit Court of the County of Kent, Michigan, or the U.S. District Court for the Western District of Michigan, located in Kent County, Michigan. EACH PARTY, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE SERVICE.

**13. DISCLAIMER OF WARRANTIES.** Unless otherwise stated in this Agreement, Bank makes no representations or warranties, expressed or implied, in law or in fact including, but not limited to, the implied warranties of fitness for a particular purpose and of merchantability with respect to the Service.

**14. REPRESENTATIONS BY CUSTOMER.** Customer represents and warrants to Bank that:

- (a) It is a corporation or other entity duly incorporated or organized, validly existing, and in good standing under the laws of the state of its incorporation or organization, or a sole proprietorship;
- (b) The execution, delivery and performance by Customer of this Agreement and the Security Agreement are within Customer's powers, have been duly authorized by all necessary action and do not contravene Customer's bylaws, charter or other governing documents or any law or contractual restriction;
- (c) No authorization, approval or other action by, and no notice to or filing with any governmental authority or regulatory body is required for the execution, delivery and performance by Customer of this Agreement or the Security Agreement;
- (d) This Agreement constitutes the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with the terms of this Agreement;
- (e) The financial statements provided by Customer to Bank were when delivered, and remain true, accurate and complete; and,

(f) No information furnished by Customer to Bank in connection with this Agreement or the implementation of the Service is inaccurate in any respect, contains any material misstatement of fact, or omits any fact necessary to make such statements not misleading.

Customer agrees to promptly notify Bank if any of the representations or warranties were, when made, or become untrue or if Customer experiences any material adverse change in its business, financial condition, results or operations or prospects.

## 15. GENERAL PROVISIONS.

15.1 Setoff. To the fullest extent permitted by Applicable Law, Customer agrees that Bank shall have the right to set off any unpaid Indebtedness or other obligation of Customer to Bank under this Agreement against funds in any deposit account with Bank (other than any deposit account clearly labeled for the benefit of an unrelated third party) without notice except as required by Applicable Law.

15.2 Confidentiality. Customer agrees that all information concerning Bank which comes into Customer's possession in connection with the Service including, but not limited to, software licensed to Customer, User Guides, and pricing and product information shall be maintained as confidential and will not be used or divulged to any other person or entity except as required by Applicable Law or judicial proceedings, or to employees, officers, directors, and service providers as necessary for them to provide their services to Customer.

15.3 Additional Limitations. Bank is not responsible or liable in any way for: (a) the refusal or delay of any other financial institution, merchant, terminal, or any person to honor or accept any Card or the Card Account for any reason; (b) any goods or services purchased or obtained with a Card or charged to the Card Account or redeemed through the Rewards Program; (c) any dispute Customer may have with any other financial institution, merchant, or any person over goods or services purchased using the Card or the Card Account or redeemed through the Rewards Program; or (d) any failure of a merchant to seek authorization before honoring a Card. Customer is in all events responsible for the purchases and transactions made with the Card or Card Account.

15.4 Enforcement Costs. Customer shall pay to Bank all fees, costs, expenses and other Losses and Damages Bank incurs in collecting or enforcing any obligation owed by Customer under this Agreement including all reasonable attorneys' fees, court costs and related costs and expenses.

15.5 Amendment. This Agreement may not be amended or modified unless agreed to in writing by Bank and Customer. Bank may, however, amend this Agreement from time to time including the Interest and Fee Schedule by giving notice to Customer in any manner permitted by this Agreement or by sending a copy of the amended documents to Customer's address contained in Bank's records. Bank may, when it determines it is practical to do so, give Customer thirty (30) days prior notice of the effective date of the amendment, unless a different notice or effective date is required by Applicable Law; provided that the Business Rewards Program Terms may be changed at any time without prior notice. Use of the Card Account in any way following the effective date of the amendment shall be deemed Customer's acceptance of and agreement to the amendment. If Customer does not agree to the changes as set forth in an amendment, Customer must terminate the Service prior to the effective date of the amendment by giving written notice of termination to Bank, discontinuing further use of the Service and returning to Bank all Cards issued to Customer.

15.6 Validity. To the extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision shall be held to be invalid, illegal or unenforceable, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without rendering invalid, illegal or unenforceable the remainder of any such provision or the remaining provisions of this Agreement.

15.7 Integration; Waiver. This Agreement, the Interest and Fee Schedule and the other agreements and documents expressly referenced in this Agreement contain the complete and exclusive understanding of the parties with respect to the Service and supersede any prior or contemporaneous agreements, statements, applications and discussions between the parties with respect to the Service. 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 its obligations under this Agreement operate as a waiver of any prior, current or subsequent breach. No waiver, alteration or modification of any of the provisions of this Agreement will be binding unless in writing and signed by a duly authorized representative of the party to be bound except as provided in Section 15.5. Neither any course of conduct between the parties nor trade usage will act to modify or alter the provisions of this Agreement. A waiver by Bank or Customer of any term or provision in this Agreement shall not be construed as a waiver of such term or provision at any other time or in any other document.

15.8 Notices. Unless otherwise stated in this Agreement including Section 7.4, all notices shall be in writing. Notices to Bank shall be delivered by hand or recognized courier service, or mailed to Bank at: Mercantile Bank, Attention: Business Banking, 310 Leonard St NW, Grand Rapids, MI 49504, and shall be effective no earlier than the end of the Business Day following the Business Day after it is received. Notices to Customer shall be delivered by recognized courier service or mailed to Customer's address in Bank's records, and shall be deemed received on the earlier of receipt or three (3) days after mailing. Bank may, at its option, send to Customer any record, notice, disclosure, Account Statements and other information via electronic means including information that Bank is required by Applicable Law



to provide to Customer in writing. Electronic means include all 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 Bank's internet website or the Online Portal). Customer consents to receive Account Statements and other notices from Bank electronically. If Customer provides Bank with a telephone number, Customer is expressly giving Bank permission to contact Customer at that number about the Card Account and Service.

15.9 Force Majeure. Bank is not responsible, and shall not incur any liability to Customer, for any failure, error, malfunction or any delay in carrying out any of its obligations under this Agreement resulting from causes beyond Bank's reasonable control, including fire, casualty, failure of the internet or communications systems lockout, strike, unavoidable accident, act of God, pandemic, act of terrorism, riot, war or the enactment, issuance or operation of any adverse law, ruling, regulation, order or decree, or requirement of any regulatory authority, or an emergency that prevents Bank from operating normally.

15.10 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Customer may not assign or transfer 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. Except for Bank Providers, no other person or entity shall be deemed to be a third party beneficiary of this Agreement.

15.11 Relationship. Bank and Customer acknowledge and agree that this Agreement creates a debtor creditor relationship and nothing in this Agreement creates any fiduciary or other duty on the part of Bank, except as expressly required of Bank under Applicable Law.

15.12 Headings. The section headings in this Agreement are intended to be for reference purposes only, and shall in no way modify or restrict any of the terms or provisions hereof.

15.13 Electronic Execution. The parties agree that this Agreement and any agreement or document referenced in this Agreement may be executed and delivered by facsimile, electronic mail in PDF or similar format or other electronic method (including any electronic signature complying with Applicable Law such as DocuSign) employed by Bank and that the copies or counterpart signatures in such form shall have the same force and effect as delivery of an original with a manual signature. Bank may, however, require that Customer deliver an original of this Agreement with a manual original signature.

*[Signature Page Immediately Follows]*

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## Interest & Fee Schedule

Interest Rates and Charges		Fees	
<b>Annual Percentage Rate (APR) for Purchases</b>	<b>19.50%</b> This APR will vary with the market based on the Prime Rate.	<b>Annual Fee</b>	<b>None</b>
<b>APR for Cash Advances</b>	<b>19.50%</b> This APR will vary with the market based on the Prime Rate.	<b>Transaction Fees</b>	
		<b>Balance Transfer</b>	<b>None</b>
<b>How to Avoid Paying Interest on Purchases</b>	The Payment Due Date is reflected on the Account Statement. Interest will not be charged on purchases if the entire balance is paid by the Payment Due Date.	<b>Cash Advance</b>	<b>\$25.00</b>
<b>Minimum Interest Charge</b>	If you are charged periodic interest, the charge will be no less than \$0.	<b>Foreign Fees Business Card Only</b>	<b>1.00% of each transaction in U.S. Dollars</b>
		<b>Penalty Fees</b>	
		<b>Late Payment</b>	<b>Up to \$50.00</b>
		<b>Returned Payment</b>	<b>\$10.00</b>

**Balance Calculation Method (Average Daily Balance Method).** The interest charge for a Billing Cycle is computed by applying the monthly Periodic Rate to the “average daily balance” of the Card Account. To get the “daily balance”, we take the beginning balance of your Card Account each day, add any new purchases or cash advances, and subtract any payments, credits, non-accruing fees, and unpaid interest charges. To get the “average daily balance” for a particular Billing Cycle, we add up all of the daily balances for that Billing Cycle and divide the total by the number of days in the Billing Cycle.

**Billing Rights:** Information on Customer’s rights to dispute transactions and how to exercise Customer’s rights is provided in the Agreement.

**Interest.** The Annual Percentage Rate (“APR”) means the annual rate of interest charged on Card Account balances. The APR is determined each Billing Cycle by adding the applicable margins listed in the Interest and Fee Schedule to the Index Rate. The “**Index Rate**” is the highest prime rate published in the Money Rates section of *The Wall Street Journal*. The monthly period rate is calculated by dividing the APR by 12 (the “**Periodic Rate**”). The APR and the Periodic Rate vary monthly and shall be adjusted on the first day of each month (“**Change Date**”). However, the Change Date is not the date that the new rate is effective. The effective date of any change to the Index Rate is the 1<sup>st</sup> day of the month after the Change Date (“**Effective Date**”). Beginning as of the first day of the Billing Cycle during which the Effective Date falls, the monthly Periodic Rate then in effect will be applied to the balance owing on the Card Account to determine the interest charges for such Billing Cycle. An adjustment in the monthly Periodic Rate and corresponding APR will apply both to any existing balances outstanding on the Card Account in the Billing Cycle during which the Effective Date falls and to new cash advances (including any balance transfers from other credit card accounts), credit purchases, and other charges. An increase or decrease in the Index Rate will cause an increase or decrease in the monthly Periodic Rate and corresponding APR and may increase the amount and number of minimum payments. If the Index Rate ceases to be available, we may substitute a substantially similar index.

**Cash Advances.** Interest will be charged on cash advances from the date made or from the first day of the Billing Cycle in which the cash advance is posted to the Card Account, whichever is later, and will continue to accrue until the entire balance on the Card Account is paid.

**Prime Rate:** Variable APRs are based upon the current Prime Rate as of September 1, 2023.

**Purchase APR:** For Purchase transactions, we add a Margin of 11% to the Prime Rate of **8.50%**. The Purchase APR may increase or decrease each month if the Prime Rate changes.

**Cash APR:** For Cash Advance transactions, we add a Margin of 11% to the Prime Rate of **8.50%**. The Cash APR may increase or decrease each month if the Prime Rate changes.

INTEREST RATES AND CHARGES & FEE SCHEDULE



## Business Rewards Program Terms

### Important Business Rewards Program Information

#### Earning Points

- With the Business Rewards Card, earn Reward Points ("**Points**") for purchases made with the Card Account or any Card issued under the Agreement. Any other business or commercial credit card will not earn Points.
- Points will accumulate in a single "**Business Rewards Account**", and can only be redeemed by the Primary Cardholder.
- From the date the Card Account is opened until the Card Account is closed, one Point will be earned for each dollar of qualifying *Net Purchases* charged to the Card Account during each Billing Cycle.
- "**Net Purchases**" for a Billing Cycle are determined by totaling all new purchases charged to the Card Account during the Billing Cycle, then subtracting credits posted to the Card Account during the Billing Cycle for returned purchases or adjustments. Cash advances and other exclusions apply.
- There is no limit on the number of Points that may accumulate in any monthly Billing Cycle.
- Points are posted to the Business Rewards Account. Business Rewards Account activity can be viewed through the Online Portal.

#### Redemption of Points

- Points can be redeemed by the Primary Cardholder at <https://www.mercbank.com/business-banking/card-services/> or by calling (800) 453-8700.

#### Delinquent Payments and Program Points

- If the Card Account is in default (including failure to make a required payment by the Payment Due Date), Points will not be earned and Points cannot be redeemed until the default is remedied.
- If the Card Account is closed or terminated by either party, all Points will be forfeited.

#### Expiration and Use of Points

- Points will expire after the end of the 60th month from the first month posted to the Business Rewards Account.
- When Points are redeemed, the oldest points are redeemed first.

#### Information Regarding Earning and Availability of Points

- If credits exceed purchases during a Billing Cycle, the credit balance will be carried over to the following Billing Cycle and offset against future Net Purchases for purposes of earning Points.
- Net Purchases may be rounded up or down to a whole dollar amount for purposes of determining and awarding Points.
- Points are not earned for cash and cash-like transactions (including wire transfers, traveler's checks, money orders, foreign cash transactions, betting transactions, lottery tickets and ATM disbursements), convenience checks, balance transfers, and fees, credit insurance charges, transactions to fund certain prepaid card products, U.S. Mint purchases, and transactions to purchase cash convertible items.
- Bank reserves the right to adjust or reverse the number of Points that were awarded for unauthorized purchases subsequently credited to the Card Account.
- Points may be eligible to transfer or gift in Bank's discretion.
- Points have no cash value.

- Allow up to 60 days after a purchase for Points on that purchase to post to the Business Rewards Account.

**Additional Terms**

- Additional terms apply. See <https://www.mercbank.com/business-banking/card-services/business-credit-cards/> for a complete statement of the terms and rules relating to the Business Rewards Program and the Business Rewards Account.

## Schedule A Defined Terms

As used in this Agreement, the following capitalized terms have the indicated meaning:

**“Account Guarantor”** – the person who signs the Guaranty in their personal capacity assuming personal liability for all Indebtedness and other obligations incurred by Customer under this Agreement.

**“Account Statement”** – the statement or other form of information provided by Bank for each Billing Cycle showing transactions with the Card or through the Card Account, including purchases and cash advances, interest charges, fees, total Credit Limit, available Credit Limit, adjustments to the Card Account, the minimum or total payment due, the Payment Due Date and other important information relating to the Card Account.

**“Applicable Law”** – all applicable state, local and federal (and where applicable, foreign) statutes, laws, rules, regulations and common law including the UCC, and Visa Rules and the regulations of any applicable money transfer system.

**“Authorized Persons”** – Customer’s officers, employees, agents and other representatives who are authorized to act on behalf of Customer to execute this Agreement and other documents referenced in this Agreement, engage with Bank, use and manage the Service and to designate others with such authority.

**“Authorized Users”** – for purposes of this Agreement, individuals designated by Customer through the CSA or an Authorized Person as having authority to use some or all of the administrative features of this Service.

**“Automatic Payments”** - payments on the Card Account that Customer authorizes Bank to make via Automated Clearinghouse Debit automatically against a demand deposit or savings account at Bank or another financial institution designated by Customer for an amount designated by Customer but not less than the minimum amount due.

**“Bank Provider”** – processors or service providers engaged directly by Bank in connection with the Service.

**“Billing Cycle”** – a period, generally of thirty (30) days, between Account Statement dates during which transactions in the Card Account are recorded and accounted for including fees and interest.

**“Business Day”** – any day on which a majority of Bank’s offices are open to the public for conducting substantially all business functions. Saturdays, Sundays and federal holidays are not Business Days even if a majority of Bank’s offices are open.

**“Business Rewards Program”** – refers to the program offered by Bank through a Bank Provider pursuant to which Customer can accumulate points that can be redeemed for goods and services as outlined in the Business Rewards Program Terms.

**“Business Rewards Program Terms”** – the Business Rewards Program Terms attached to this Agreement as updated from time to time by Bank.

**“CSA”** or **“Customer System Administrator”** – for purposes of this Agreement, the Customer System Administrator designated by Customer with authority regarding this Service as provided in this Agreement.

**“Card”** – any means by which the right to use the Card Account or pay for or authorize a transaction is evidenced including traditional plastic embossed cards, use of the numbers on the Card electronically or orally, the authorization of virtual card numbers or any other device or process recognized in the Visa Rules.

**“Card Account”** or **“Card Accounts”** – the account or accounts that Bank establishes for Customer pursuant to this Agreement through which all transactions with the Card Account and Service will be accounted for and recorded, including interest charges, fees and adjustments.

**“Cardholder”** – the person to whom a Card is issued or authorized for use by Customer.

**“Credit Limit”** – the maximum amount (including purchases, cash advances, and interest charges) that may be outstanding on the Card Account at any time.

**“Guaranty”** – the Unlimited Continuing Guaranty executed by the Account Guarantor in favor of Bank.

**“including”** – means “including, without limitation.”

**“Indebtedness”** – Customer’s obligations under this Agreement including: (a) the aggregate outstanding principal amount of any and all advances made on or in connection with the Card Account for all purchases and cash advances (if authorized) resulting from the use of a Card or the Account (including account numbers and virtual cards); (b) interest charges and all other fees and charges owed under this Agreement; and, (c) all other fees, costs, charges, expenses, reimbursements and other similar obligations from time to time owing to Bank under this Agreement for the indemnification of Bank under this Agreement.

**“Indemnitees”** – the Bank and its directors, officers, employees, and agents, successors and assigns, parent company and affiliates.

**“Interest and Fee Schedule”** – the Interest and Fee Schedule attached to this Agreement as updated from time to time by Bank.

**“Losses and Damages”** – liabilities, damages, claims, obligations, demands, charges, costs or expenses of any kind including reasonable attorneys’ fees and expenses, and court costs.

**“Notifications”** – certain electronic notifications regarding the Card Account and Service transmitted to Customer by Bank.

**“Online Portal”** – the web portal or application through which administrative features of the Service can be accessed.

**“Payment Due Date”** – the date payment of the Card Account is due as specified on the Account Statement and as required by the terms of this Agreement.

**“Security Agreement”** – the Commercial Security Agreement between Customer and Bank pursuant to which Customer grants to Bank a security interest in all of Customer’s assets to secure the Indebtedness.

**“Security Procedures”** – the user credentials, protocols and other systems or procedures provided by Bank for authenticating access to the Online Portal and various features of the Card Account.

**“Service”** – the Card Account, Cards, Online Portal and related services and features provided by Bank pursuant to, and as described in this Agreement.

**“User Guide”** – the user manual or guide provided by Bank in print or online that provides instructions, directions and other information for the implementation and use of the Service.

**“Visa Rules”** – the Visa Rules and Policy as published and updated by Visa Inc.