

dollar amount of any dispute or suspected error and a description of the dispute or error. Any communication regarding a dispute or suspected error must be received in written form by U.S. Bank within sixty (60) days after the Statement Date on the Statement on which the disputed or incorrect charge first appeared.

8. LOST OR STOLEN CARD(S) OR COMPROMISED ACCOUNT(S).

- a. Company and/or Authorized Officer shall immediately, upon receipt of such information, notify U.S. Bank of any lost or stolen Cards, compromised Accounts or Account Information or to cancel Cards, Accounts, or Account access. Such notification and/or request for cancellation can occur by telephone, in writing, or by any agreed to electronic means. Addresses and telephone numbers at the time of this writing appear at the end of this Section 8a. After notification has been made to U.S. Bank of such lost or stolen Cards, compromised Accounts or Account Information, or to cancel Cards, Accounts or Account access, use of such Cards or Accounts is expressly prohibited. Failure to notify U.S. Bank immediately of lost or stolen Cards, compromised Accounts or Account Information, or to request cancellation of Cards, Accounts or Account access, as required by this Section 8, may result in Company and/or Authorized Officer's liability for any charges, fees, transactions or purchases on such Cards or Accounts. Company and/or Authorized Officer shall not be liable for use of such Cards or Accounts following receipt by U.S. Bank of the notice required herein. Company and/or Authorized Officer agree to assist U.S. Bank in determining the facts, circumstances and other pertinent information related to any loss or possible unauthorized use of Cards, Accounts or Account Information, and to comply with such procedures as may be required by U.S. Bank in connection with the investigation. Such procedures may include the submission of pertinent information in writing, within sixty (60) days of the date of the loss. Notwithstanding the foregoing, U.S. Bank shall continue to process all claims for lost, stolen or unauthorized use of Cards or Accounts whether or not such information is submitted within sixty (60) days of the loss. Additionally, notwithstanding the foregoing, since Cardholders have no liability to U.S. Bank for lost, stolen or cancelled Cards or Accounts, should Company and/or Authorized Officer separately hold a Cardholder liable for any such loss related to unauthorized use by someone other than the Cardholder, Company and/or Authorized Officer agree to advise Cardholder, in advance, of any liability that may be imposed on a Cardholder and Company and/or Authorized Officer acknowledge that any such liability imposed on any Cardholder cannot exceed fifty U.S. dollars (\$50.00). In any event, Company and/or Authorized Officer acknowledge that by complying with all such procedures losses by both parties may be limited. U.S. Bank is not responsible for controlling the use of any Card(s), Account(s) or Account Information, other than as specifically provided herein. Notification can be made by telephone to 800-987-6591, in writing to U.S. Bank at PO Box 13050 Overland Park, KS 66282-3050 OR by facsimile at 800-987-6592.
- b. Company and/or Authorized Officer agrees to use fraud controls provided by U.S. Bank and acknowledges that such use is required in order to exercise any recovery from U.S. Bank. At minimum, Company and/or Authorized Officer agree to: (1) ensure that Account Information and Cards are safeguarded and kept separate and apart from one another, and (2) have daily transaction and spending limits in place on Cards based on the spending needs of their drivers. U.S. Bank shall not be liable for any losses due to fraud if Company and/or Authorized Officer fail to demonstrate that both such fraud controls are in effect and actively used.
- c. Subject to the terms set forth above in this Section 8, U.S. Bank agrees it shall be liable for fraudulent charges incurred or arising by the use of Cards in the Card Program, however, U.S. Bank shall not in any event be liable for any employee and/or Cardholder misuse of a Card.

9. FEES. The fees and charges listed below may apply to this Agreement. Failure of U.S. Bank to apply any fee or charge outlined in this Agreement at any time does not preclude U.S. Bank from ever applying such fee or charge. U.S. Bank reserves the right to change pricing upon thirty (30) days prior notice to Company.

- a. **Returned Check Fee.** If any check for payment of an Account is returned unpaid, U.S. Bank will charge a returned check fee ("**Returned Check Fee**") of twenty U.S. Dollars (\$20.00).
- b. **Finance Charge.** A Finance Charge as provided in Section 5 of this Agreement.
- c. **Foreign Currency Fee.** U.S. Bank will charge a foreign currency conversion fee ("**Foreign Currency Conversion Fee**") of two percent (2.0%) for transactions made outside the United States and the Statement will reflect the conversion into U.S. Dollars on transactions that have occurred in a different currency and an applicable exchange rate for such conversions.

10. CONFIDENTIALITY. U.S. Bank considers the Fleet Card Program to be a unique service involving proprietary information of U.S. Bank. Company agrees that the Fleet Card Program reports, manuals, documentation, systems, processes and related materials (whether or not in writing) are confidential and will be circulated only to employees and agents of Company, and only to the extent necessary for Company to participate in the Fleet Card Program. U.S. Bank agrees that it will maintain all non-public data relative to Company's Account(s) under the Fleet Card Program as confidential information and U.S. Bank agrees to use such data regarding Company exclusively for the providing of services to Company hereunder and not to release such information to any other party except its agents; provided, however, that U.S. Bank must disclose transaction information to merchants and third party processors. Notwithstanding the foregoing, since Company participates in the Fleet Card Program through a third party who participates in a referral or similar program with U.S. Bank, Company consents to U.S. Bank sharing Company information with the third party to carry out the requirements of the third party program, and Company acknowledges that such shared information may contain direct or indirect identification of Company. U.S. Bank agrees to take all reasonable steps to safeguard such proprietary information and not to release such information to any party or agent not essential to participation in the Fleet Card Program or the third party program.

11. TERM, TERMINATION AND SUSPENSION.

- a. This Agreement shall remain in full force and effect for an initial term of five (5) years from the Effective Date of this Agreement, and shall continue thereafter until terminated by Company or U.S. Bank upon thirty (30) days prior written notice to the other party. After the completion of the Base Period either party may terminate this Agreement without cause, at any time, upon ninety (90) days prior written notice to the other Party. The effective date of termination shall be stated in the written notice of termination. All Cards and Accounts shall be deemed canceled effective upon termination of this Agreement.
- b. Notwithstanding the foregoing, either party shall have the right to terminate this Agreement immediately, by written notice of such termination to the other party, upon any one (1) or more of the following events: (i) dissolution or liquidation of the other Party, or Parent thereof, if applicable; (ii) insolvency of the other party or Parent thereof, if applicable, or the filing of a bankruptcy or insolvency proceeding by the other party, the appointment of a receiver or trustee for benefit of creditors of the other party or if the other party enters into an arrangement with its creditors; (iii) any material and adverse change in the financial condition of the other party; or (iv) any failure by the other party to perform a material obligation of this Agreement.
- c. Upon termination of this Agreement for any reason, Company shall destroy all Cards and return all confidential information of U.S. Bank to U.S. Bank. Company, and Authorized Officer if applicable, shall remain liable for all Debt incurred or arising by virtue of the use of a Card and/or Account prior to the termination date.
- d. U.S. Bank shall have the right to suspend any and all services and Debt to Company under this Agreement in the event that: (i) Company has breached any term of this Agreement; (ii) Debt due from Company, in the aggregate, exceeds any of the ACL or the PCL as these terms are defined in Section 16 of this Agreement; or (iii) an Account becomes delinquent. An Account will become Delinquent unless U.S. Bank receives the New Balance, less any disputed amounts, on or before the Due Date. Court costs plus reasonable attorney fees (as allowed by law) may be added to any delinquent balance referred to an attorney for collection.

- e. Rights, Debt or liabilities that arise prior to the suspension or termination of this Agreement shall survive the suspension or termination of this Agreement.

12. INDEMNIFICATION.

- a. Except to the extent that any injury is due to Company's or a Participant's negligent acts or omissions, U.S. Bank shall indemnify and hold Company and Participants harmless against all losses, damages, costs, expenses and liability which may result in any way from any negligent or wrongful act or omission of U.S. Bank, its agents, employees and subcontractors. U.S. Bank shall indemnify and hold Company and Participants harmless against demands, claims, suits, or proceedings alleging infringement of any patent of the United States, or any trademark, service mark, copyright or other proprietary right arising out of or incident to this Agreement.
- b. Except to the extent that any injury is due to U.S. Bank's negligent acts or omissions, Company shall indemnify and hold U.S. Bank harmless against all losses, damages, costs, expenses and liability which may result in anyway from any negligent or wrongful act or omission of Company, Participants, its agents, employees and subcontractors. Company and Participants shall indemnify and hold U.S. Bank harmless against demands, claims, suits, or proceedings alleging infringement of any patent of the United States, or any trademark, service mark, copyright or other proprietary right arising out of or incident to this Agreement.

13. LIMITATION OF LIABILITY. IN NO EVENT SHALL COMPANY, PARTICIPANT(S), U.S. BANK OR ANY AFFILIATE OF U.S. BANK BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY NATURE.

- 14. WARRANTIES.** Company warrants the truth, completeness and accuracy of the following in connection with this Agreement: (i) The financial information and all other information provided to U.S. Bank; (ii) This Agreement is a valid, binding and enforceable agreement; (iii) The execution of this Agreement and the performance of its Debt are within Company's power, has been authorized by all necessary action and does not constitute a breach of any agreement of Company with any party; (iv) Company has and continues to comply with all applicable state and federal statutes, ordinances, rules, regulations and requirements of governmental authorities as they relate to the use of the Card and/or participation in the Fleet Card Program; (v) the execution of this Agreement and the performance of its Debt under this Agreement will not cause a breach by it of any duty arising in law or equity; and (vi) Company possesses the financial capacity to perform all of its Debt under this Agreement. The parties agree that the failure of any of the above representations and warranties to be true during the term of this Agreement shall constitute a material breach of this Agreement and U.S. Bank will have the right, upon notice to Company, to immediately terminate this Agreement and all amounts outstanding hereunder shall be immediately due and payable. **U.S. Bank hereby disclaims any and all warranties with respect to goods and services purchased with its Cards and/or Accounts, including, without limitation, the implied warranty of merchantability or fitness for a particular purpose.** This warranty and damages disclaimer shall apply whether U.S. Bank acts as card issuer, arranger of third party credit, or otherwise.

- 15. FINANCIAL INFORMATION.** Since this Agreement is for an extension of credit with a financial institution and not a vendor services agreement, Company shall provide information as requested by U.S. Bank to perform periodic credit reviews. Unless such information is publicly available or available through U.S. Bancorp (the parent Company of U.S. Bank) or any of its subsidiaries, Company shall either provide: (i) if Company anticipates monthly charge volume of equal to or less than \$25,000.00, information about an authorized officer whom U.S. Bank may underwrite on behalf of Company within Section 2 of the Application, or (ii) if Company anticipates monthly charge volume of greater than \$25,000.00 but less than \$50,000.00, last year's annual financial statements, or (iii) if Company anticipates monthly charge volume of greater than \$50,000.00 but less than \$250,000.00, the last two (2) years of annual financial statements, or (iv) if Company anticipates monthly charge volume of greater than \$250,000.00, the last three (3) years of annual financial statements. If the initial set of financial statements is older than five (5) months when provided, Company must also provide interim financial statements. Annually thereafter, as soon as available and in any event not later than one hundred twenty (120) days after the end of each fiscal year of Company, Company must provide the previous years financial statements. U.S. Bank prefers audited financial statements that have been prepared by Company's independent certified public accountant. In the event U.S. Bank requires additional information to conduct its review of Company, or if Company's monthly charge volume increases such that the information it provided as described in 15.(i) above is no longer sufficient for underwriting Company, Company agrees to provide to U.S. Bank the information set forth in 15.(ii), (iii) or (iv) above, as the case may dictate, and, if requested, such other information regarding the business, operations, affairs, and financial condition of Company as U.S. Bank may reasonably request. Such information may include, but is not limited to, quarterly financial statements, organizational charts, executive biographies and other formal documentation.

- 16. AGGREGATE PRODUCT CREDIT LIMIT AND ACCOUNT CREDIT LIMITS.** Subject to credit approval by U.S. Bank, an account credit limit (an "ACL") for each Account and an aggregate product credit limit (the "PCL") for all Accounts shall be established by U.S. Bank pursuant to this Agreement.

- a. **Revising the PCL.** U.S. Bank, at its sole discretion, shall have the right to revise the PCL. U.S. Bank shall provide notice to Company of any decrease in the PCL which results in a revised PCL that is lower than the aggregate current amount outstanding on all Accounts. Upon such notice, Company shall have ten (10) days to make a payment to U.S. Bank that is sufficient to reduce the aggregate current amount outstanding to an amount that is equal to or less than the revised PCL.
- b. **Revising ACLs.** U.S. Bank, at its sole discretion, shall have the right to revise any ACL. (1) *Company Accounts.* U.S. Bank shall provide notice to Company of any decrease in an ACL which results in a revised ACL that is lower than the aggregate current amount outstanding on the Account. Upon such event, Company shall have ten (10) days to make a payment to U.S. Bank on the Account that is sufficient to reduce the aggregate current amount outstanding for such Account to an amount that is equal to or less than the revised ACL. (2) *Fraudulent Activity.* U.S. Bank may revise any ACL and/or limit spending activity on any Account for which fraudulent activity is suspected.

- 17. CHANGE IN TERMS OF THE AGREEMENT.** U.S. Bank may change the terms of this Agreement at any time by giving Company notice. If permitted by applicable law, such changes will apply to existing Account balances as well as future purchases. If Company does not accept the changes, Company must notify U.S. Bank in writing within twenty-five (25) days after the date of the notice that Company refuses to accept the changes and elects to terminate this Agreement. Should Company elect to terminate this Agreement pursuant to this Section 17, all outstanding Debt shall become due and payable by Company to U.S. Bank, according to the terms of this Agreement. Company will also be responsible for ensuring the destruction of all Cards.

- 18. REGISTERED MARKS AND TRADEMARKS.** Company has no right, title or interest, proprietary or otherwise, in or to the name or any logo, copyright, service mark or trademark owned or licensed by U.S. Bank.

- 19. NOTICES.** Except with respect to notices relating to the status of individual Cards which may be established in writing between U.S. Bank and Company or a Participant, all notices, requests and other communication provided for hereunder must be directed to Company at the address on the Application and to U.S. Bank at U.S. Bank Attn: Contract Services, 901 Marquette Avenue, EP-MN-A17S, Minneapolis, MN 55402. Unless otherwise specified herein, requests and other communication provided for hereunder must be in writing, postage prepaid, hand delivered or by any means approved by U.S. Bank. Either party may, by written notice to the other, change its notification address.

- 20. GOVERNING LAW.** The validity, interpretation and performance of this Agreement will be controlled by and construed under the laws of the State of Ohio (without giving effect to the conflict of law principles thereof) and applicable federal laws.

- 21. EMPLOYMENT OF AGENTS.** U.S. Bank may, in its sole discretion, employ affiliates or subsidiaries of U.S. Bank as agents to perform part or all of its obligations under this Agreement at any time without consent of Company; provided, however, that such action shall not affect its obligations to Company hereunder.
- 22. FLEET CONTACT.** The Fleet Contact listed on the Application is authorized to provide U.S. Bank with the information necessary to establish the Account records and Cards, including, but not limited to, PINs, Vehicle IDs, Driver IDs, and related information. U.S. Bank is authorized to send all Account information and Cards produced to the Fleet Contact's attention. Company may, at any time, by written notice to U.S. Bank, change its Fleet Contact or designate a different Fleet Contact than is listed on the Fleet Card Application.
- 23. ASSIGNMENT.** This Agreement and any and all rights and Debt associated with the same may be assigned without prior notice to Company. All of U.S. Bank's rights under this Agreement shall also apply to any assignee of this Agreement. Company may not assign or transfer this Agreement or any rights or Debt hereunder, by merger, of law, or otherwise, without the prior written consent of U.S. Bank.
- 24. CUSTOMER SERVICE.** Company may contact U.S. Bank's customer service center 24/7 at 800-987-6591 for Fleet Program customer service. Company may contact Fleet Services customer service center 24/7 at 800-987-6589 for merchant authorization support.
- 25. SEVERABILITY.** Should any provision of this Agreement be declared invalid for any reason, such decision shall not affect the validity of any other provisions, which other provisions shall remain in full force and effect as if this Agreement had been executed with the invalid provision(s) eliminated. The parties shall use their best efforts to agree upon a valid substitute provision in accordance with the purpose of this Agreement and the intent of the parties.

SCHEDULE A

FINANCE CHARGE RATE SCHEDULE

<u>State of Mailing Address</u>	<u>Balance Subject to Finance Charge</u>	<u>Periodic (Monthly) Rate</u>	<u>Annual Percentage Rate</u>
California, Colorado, District of Columbia, Georgia, Idaho, Indiana, Mississippi, New Jersey, New Mexico, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wyoming	ALL	1.75%	21.0%
Arizona, Delaware, Illinois, Kentucky, Nevada, New Hampshire, New York, Oregon	ALL	1.80%	21.6%
Pennsylvania	ALL	1.25%	15%
Minnesota	ALL	1.33%	16.0%
Michigan	ALL	1.70%	20.4%
Arkansas	ALL	.792%	9.5%
Iowa	ALL	1.65%	19.8%
Nebraska	0-\$500	1.75%	21.0%
	over \$500	1.50%	18.0%
Maryland	0-\$700	1.55%	21.0%
	over \$700	1.00%	18.0%
West Virginia	0-\$750	1.50%	18.0%
	over \$750	1.00%	12.0%
Alaska	0-\$1000	1.50%	18.0%
	over \$1000	.83%	10.0%
Kansas	0-\$1000	1.50%	18.0%
	over \$1000	1.20%	14.4%
Alabama	0-\$750	1.75%	21.0%
	over \$750	1.50%	18.0%
Connecticut, Florida, Hawaii, Louisiana, Maine, Massachusetts, Montana, North Carolina, North Dakota, Ohio, Rhode Island, Washington, Wisconsin	ALL	1.50%	18.0%
Missouri	ALL	1.67%	20.04%