

NETEVIA CARD PROGRAM AGREEMENT

Last Updated: July 15, 2022

These Terms and Conditions (these “Terms”) set forth and govern the terms of the relationship between Account Owner and Bank with respect to the Netevia Card Program (each term as defined below). **Account Owner hereby acknowledges that nothing in these Terms establishes a customer relationship between Bank and any person besides the Account Owner, including, without limitation, the Business Administrator or any Authorized User. Account Owner further acknowledges that Authorized Users are its agents and accepts sole responsibility for ensuring that Authorized Users comply with these Terms or any terms or conditions governing Card use established by Account Owner.**

1. DEFINITIONS.

“Access Information” means collectively a PIN, online user name, password, challenge questions, and any other security information used to access the Card Account.

“Account Owner” means the entity that has qualified for and established a Card Account (See Section 5.2 – Establishing the Card Account).

“Authorized User” means any person designated by the Business Administrator as authorized to receive a Card and use the Card Account on Account Owner’s behalf.

“Bank” means Sutton Bank, member Federal Deposit Insurance Corporation (“FDIC”).

“Business Administrator” means the person Account Owner designates on the Website to administer the Card Account and act on Account Owner’s behalf in connection with these Terms, including, without limitation, for purposes of designating Authorized Users, funding the Card Account, and setting Card Account limitations (See Section 5.2 – Establishing an Account).

“Card” means the MasterCard branded Netevia payment Card issued by Bank that allows Authorized Users to access funds loaded to the Card Account. Each reference to “Card” also shall include “Cards.” A Card may be a virtual card represented by a 16-digit account number and a physical card embossed with the same 16-digit number.

“Card Account” means the account between Account Owner and Bank established and governed by this Agreement and includes all Sub-Accounts.

“Payment Card” means Account Owner’s credit or debit card issued in the Account Owner’s name by a U.S. financial institution.

“Principal Owner” means (1) each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of Account Owner and (2) one individual with significant responsibility for managing the Account Owner, such as an executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or any other individual who regularly performs similar functions.

“Sub-Account” means that portion of the Card Account that the Business Administrator has given an Authorized User the ability to access pursuant to the procedures set forth in this Agreement (See Section 5.5 – Authorized User Eligibility).

“We,” “us,” and “our” mean Bank and its successors, affiliates, and assignees.

“Website” means: netevia.com

2. ACTIVATING THE CARD.

No Authorized User may use a Card until the Business Administrator has activated that Card pursuant to these Terms.

3. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A CARD ACCOUNT.

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 WHO OPENS AN ACCOUNT. WHAT THESE MEANS FOR ACCOUNT OWNER: WHEN ACCOUNT OWNER OPEN AN ACCOUNT, WE WILL ASK FOR THE NAME, ADDRESS, EMPLOYER IDENTIFICATION NUMBER AND ORGANIZATIONAL DOCUMENTS OF THE ACCOUNT OWNER AND THE NAMES, ADDRESSES, DATES OF BIRTH, AND OTHER INFORMATION CONCERNING EACH PRINCIPAL OWNER THAT WILL ALLOW US TO IDENTIFY THE ACCOUNT OWNER AND ITS PRINCIPAL OWNERS. WE MAY ALSO ASK TO SEE A COPY OF EACH PRINCIPAL OWNER’S DRIVER’S LICENSES OR OTHER IDENTIFICATION DOCUMENTS.

4. CONSENT TO USE ELECTRONIC SIGNATURES AND COMMUNICATIONS.

- 4.1. Account Owner Consent. To the extent permitted by applicable law, Account Owner consents to use electronic signatures and to electronically receive all records, notices, statements, communications, and other items for all services provided to Account Owner and Authorized Users under these Terms and in connection with Account Owner’s relationship with us (collectively, “Communications”) that we may otherwise be required to send or provide Account Owner in paper form (e.g., by mail). Account Owner’s consent will remain in effect until Account Owner withdraws its consent as specified below.
- 4.2. Account Owner’s Right to Withdraw Consent. Account Owner’s consent to receive Communications electronically will remain in effect until the Account Owner withdraws it. The Account Owner may withdraw its consent to receive further Communications electronically at any time by contacting us at (855)479-4411. If the Account Owner revokes its consent to receive Communications electronically, we reserve the right to close the Card Account and return the remaining Card Account balance as set forth in this Agreement. Such revocation will be effective after we have a reasonable period of time to act on the Account Owner’s withdrawal request. Please note that such revocation of consent to receive Communications electronically will not apply to any Communications that were sent before Account Owner’s request to withdraw consent becomes effective. After such revocation is effective, Authorized Users will no longer be able to use a Card Account or participate in the Program, except as expressly provided

in this Agreement. In addition, we may charge the Account Owner a reasonable fee for providing paper copies of Communications.

- 4.3. Changes. We reserve the right, in our sole discretion, to communicate with the Account Owner in paper form. In addition, we reserve the right, in our sole discretion, to discontinue the provision of electronic Communications or to terminate or change the terms and conditions on which we provide electronic Communications. Except as otherwise required by applicable law, we will notify Account Owner of any such termination or change by updating this Agreement on the Website or delivering notice of such termination or change electronically.

5. CARD ACCOUNT TERMS.

- 5.1 Business Administrator. By designating any individual as the Business Administrator, Account Owner acknowledges and agrees that we will and are entitled to assume that all actions or omissions of such individual were duly authorized actions or omissions, as applicable, taken or not taken on behalf of Account Owner.

5.2 Establishing an Account.

5.2.1 Eligibility

In order to establish the Card Account, Account Owner must:

- (i) designate the Business Administrator;
- (iii) agree to these Terms;
- (iv) Provide Payment Card or Bank Account (as defined below) via the Website; and
- (v) Provide the requested information regarding the identity of the Account Owner.

5.2.2 Account Owner's Representation and Warranties

Account Owner represents and warrants to us that:

- (i) Account Owner has received a copy of these Terms and agrees to be bound by and to comply with them and understands that they are subject to change as may be needed to comply with applicable law;
- (ii) Account Owner is duly organized, validly existing and in good standing under the laws of the applicable state its formation in the U.S.;
- (iii) Account Owner is duly qualified and in good standing to do business in all jurisdictions where Account Owner conducts its business;
- (iv) Account Owner has all necessary organizational power and authority to establish the Card Account, enter into these Terms, and perform all its

obligations hereunder, and none of those actions will conflict with any other agreement to which Account Owner is a party;

- (v) all personal and business information Account Owner may provide to us will be true, correct, and complete;
- (vi) the individual accepting and agreeing to these Terms on Account Owner behalf has the necessary corporate authority to so act;
- (vii) the Business Administrator has or will have all necessary corporate authority to act on Account Owner's behalf;
- (viii) The Business Administrator has or will have necessary corporate authority to designate Authorized Users to use the Card Account; and
- (ix) The Card Account will only be used for the lawful business purposes of the Account Owner.

5.3 Funding of the Card Account. Subject to the limitations set forth in this Agreement, the Business Administrator may only add funds to the Card Account as described in this Section 5.3. Business Administrator may not add funds to the Card Account by sending personal checks, cashier's checks, or money orders to us. We will return all checks and money orders unless the Card Account has a negative balance, in which case we may, in our sole discretion, apply the proceeds of the check or money order towards the negative balance of the Card Account.

5.3.1 Bank Account Transfer. The Business Administrator may authorize us to electronically debit Account Owner's designated deposit account at Account Owner's designated U.S. depository financial institution ("Bank Account") via the Automated Clearing House Network ("ACH") for a specified amount on a one-time or recurring basis and add such amount to the Card Account. The Business Administrator may provide such authorization and Account Owner's Bank Account information via the Website. Amounts debited from the Bank Account will be added to the Card Account generally within three business days of when we receive the authorization and all required consents and information.

5.3.2 Credit and Debit Card Charges. The Business Administrator may authorize us to charge the Payment Card, directly or through our authorized service providers, for a specified amount on a one-time or recurring basis and add such amount to the Card Account. The Business Administrator may provide such authorization and Payment Card information via the Website. Amounts charged to the Payment Card will be added to the Card Account or applicable Sub-Account and available for transactions generally within one business day of when we receive Business Administrator's and all required consents and information.

5.4 Transaction Requirements. Cards may only be used to purchase goods and services for the business purposes of Account Owner and cannot be used for any unrelated personal, family or household purposes.

5.5 Authorized User Eligibility. Prior to distributing any Card to an Authorized User, Account Owner shall ensure that each Authorized User is a United States citizen or permanent

resident of at least 18 years of age (or older if residing in a state where the majority age is older); and provides or agrees that the Business Administrator may provide all requested information, such as the Authorized User's name, email address, and such other information as we may request from time to time (collectively, "User Information"). Account Owner further represents and warrants that all User Information submitted to us will be truthful, accurate, current, and complete in all material respects. The Business Administrator must notify us promptly and in writing of changes to any User Information. When the Business Administrator requests that we revoke the permission of any Authorized User as described in Section 5.6, that Authorized User will no longer be able to use any Card in their possession once such request has been acted on. We are entitled to assume that Account Owner's business records relating to each Sub-Account are true and correct at all times.

- 5.6 Revocation of Authorized User Privileges. The Business Administrator must modify the settings on the Website or notify Customer Service to request that the use privileges granted to any existing Authorized User be revoked. Such revocation will be effective once we have processed the request, which may take a reasonable amount of time.
- 5.7 Revocation of Business Administrator Privileges or Change in Business Administrator. The Account Owner must notify us at (855)479-4411 to revoke any permission(s) of the Business Administrator or designate a different Business Administrator. Any revocation of such permission(s) or designation will be effective only after we have a reasonable period of time to process the Account Owners request.
- 5.8 Card. The Card is a transaction debit card issued by the Bank. The Card is not a credit card. The Card is not a gift card. The Card remains our property and must be returned to us upon our request. To the extent permitted by applicable law, we may cancel, repossess, or revoke the Card at any time without prior notice. The Card cannot be redeemed for cash. The Card is not for resale and may not be transferred or assigned. The Account Owner acknowledges and agrees that when any of its Authorized Users have both a virtual Card and a physical Card, both Cards will access the same Card Account.
- 5.9 Card Account. The Account Owner acknowledges and agrees that the value available in the Card Account is limited to the funds that have been added to that account as described by the funding process as described in Section 5.3 (Funding of the Card Account). The Account Owner will not receive any interest on the funds in the Card Account.
- 5.10 Activating Cards. The applicable Authorized User must activate every Card before it can be used. In the case of a physical Card, the Authorized User must both activate the Card and set a PIN before it can be used (See Section 5.12 – Card & PIN Security). An Authorized User may activate a virtual Card and a physical Card on the Website or by calling (855)479-4411.
- 5.11 Fees. No fees shall be assessed for using any Card.
- 5.12 Card and PIN Security. When selecting a PIN for a physical Card, the Business Administrator should not use numbers or words that appear in the Business Administrator's date of birth, address, or social security number. Business Administrator and Authorized Users must memorize PINS and not share them with anyone. No one

should write the PIN on a Card or keep it in the same location as the Card. The Business Administrator and Account Owner Authorized Users should treat the Card with the same care as cash. Always protect the Card and keep it in a safe place. Do not send a Card number in an email or text message. Make sure Card and Access Information is secured with encryption when used to perform transactions over the Internet or wireless networks.

- 5.13 **Lost or Stolen Card or Compromised PIN.** The Card Account is a commercial Card Account and does not provide protections for lost or stolen Card Accounts or unauthorized transactions except as expressly stated in this Agreement. Cards should be treated like wallet cash. **Until the Business Administrator or an Authorized User reports a Card as lost or stolen or reports an unauthorized transaction on a Card Account, Account Owner shall be fully responsible for all transactions, even if that Card is lost, stolen or used for unauthorized transactions.** Customer Service must be contacted IMMEDIATELY if the Business Administrator or an Authorized User believes: (a) a Card has been lost or stolen, (b) someone has gained unauthorized access to any Access Information, or (c) someone other than the Business Administrator has transferred or may transfer funds from the Card Account. Reporting a lost/stolen Card or unauthorized transactions through (855)479-4411 or by logging into the Website to deactivate the Card Account is the best way to minimize possible losses. If the Authorized User has both a virtual and a physical Card and one of those Cards is reported as lost or stolen, both Cards will be canceled and new Cards will be issued. Unless we authorize a transaction after a Card has been blocked (See Section 5.27 – Our Liability to Account Owner), Account Owner is responsible for all unauthorized transactions initiated and fees incurred from the unauthorized use of a Card Failure to promptly notify us could result in the Account Owner losing ALL of the money in the Card Account.
- 5.14 Using the Card. Cards may not be used for ATM cash withdrawals or cash back at the point-of-sale and may not be used for business payroll payments. An Authorized User may use a Card to make purchases at any merchant that accepts MasterCard debit cards or debit cards of other networks in which the Bank participates, subject to the available Sub-Account balance, the transaction limits and transaction restrictions outlined below, and the other terms and conditions of this Agreement. If an Authorized User uses a Card number without presenting the Card (such as for a mail order, telephone, or Internet purchase), the legal effect will be the same as if the Authorized User used the Card itself. Each time an Authorized User uses a Card, the Account Owner authorizes us to reduce the value available in the applicable Sub-Account in the amount of the transaction plus any applicable fees. An Authorized User shall not be permitted to exceed the amount of funds that are available funds in the applicable Sub-Account. Nevertheless, if a transaction exceeds the amount of available funds as described in Section 5.19, Account Owner will be fully liable to us for the full amount of the transaction plus any applicable fees. We may refuse to process a transaction, or temporarily “freeze” the Card Account or any Sub-Account if we notice transactions that are unusual or appear suspicious, or use of the Card Account that are not consistent with its intended use, in which case we will notify the Business Administrator.
- 5.15 Merchant Holds on Available Funds. When an Authorized User uses a Card or Card number to initiate a transaction at certain merchant locations, websites, or mobile applications such as hotels, restaurants, gas stations, and rental car companies, where the final purchase amount is unknown at the time of authorization, a hold may be

placed on the available funds in the applicable Sub-Account for an amount equal to or in excess of the final transaction amount. Those held funds will not be available until the merchant sends us the final transaction amount. Once we receive the final transaction amount, it may take up to seven days for the hold to be removed. Please be advised that an Authorized User may experience difficulties using a Card at unattended vending machines, kiosks, and gas station pumps. If a physical Card is declined at a “pay at the pump” gas station even though the applicable Sub-Account contains sufficient funds, the Authorized User should pay for their purchase inside the station with the cashier. An Authorized User may not use a virtual Card for making purchases at any vending machines, kiosks or gas station pumps.

- 5.16 Transaction Limits. The maximum amount that can be spent using an individual Card is limited to: (a) the limits set by the Business Administrator and (b) limits set forth by the Bank. The Bank’s limits are: (1) maximum amount that can be spent using an individual Card is \$2,500 per day, (2) the maximum amount that can be spent using an individual Card in any thirty-day period is \$7,500 (3) the maximum amount that can be loaded to any Sub-Account is \$5,000 per day, and (4) the maximum amount that can be loaded to any Sub-Account in any thirty-day period is \$15,000. In order to protect the Card Account, we may temporarily impose limits on the dollar amount, number, and type of transactions performed using a Card. To the extent permitted by applicable law, we reserve the right to: (a) change the transaction limits; (b) limit, block, or place a hold on certain types of transfers or transactions; and (c) limit, suspend, or block transfers from particular persons, entities, or Sub-Accounts.
- 5.17 Transaction Restrictions. Account Owner or any Authorized User may not use any Card for online gambling or illegal transactions. The Business Administrator may restrict transactions based on Merchant Category Code or Merchant ID. We may refuse to process any transaction we believe violates the terms of this Agreement.
- 5.18 Responsibility for Transactions. Account Owner is responsible for all transactions initiated and fees incurred by use of any Card. If the Business Administrator or an Authorized User permits another person to have access to a Card Account number, we will treat this as if the Business Administrator has authorized such person to use the subject Card, and Account Owner will be liable for all transactions and fees incurred by such person, even if they exceed the authorization granted. Account Owner will further be responsible for any transactions made and any fees incurred by an Authorized User even if that Authorized User exceeds the scope of their permissions. If the Business Administrator has requested revocation of an Authorized User’s permissions as described in Section 5.6, transactions made using the subject Card will be considered unauthorized after that request has been processed.
- 5.19 Sub-Account Balances. It is important to know the amount of available funds in each Sub-Account. If there are insufficient funds in the applicable Sub-Account to cover a requested Card transaction, that transaction will be declined. If an Authorized User learns that the funds in the Sub-Account are insufficient, they can request that the merchant charge a part of the purchase to the Card and pay the remaining amount with cash or another payment card. These are called “split transactions.” Some merchants do not allow split transactions. The Account Owner acknowledges and agrees that the funds available for Card transactions will be limited to the available funds in the applicable Sub-Account that are not subject to hold. Neither Account Owner nor any Authorized User may use any funds added to the Card Account in error. No transaction

that could create a negative balance for any Sub-Account shall be permitted; provided, however, that such balances may occur inadvertently, for example, as the result of adjustments made to reverse an error or reflect a merchant adjustment. If a Sub-Account has a negative balance, Account Owner agrees that: (a) we may transfer funds from the Card Account to the applicable Sub-Account in the amount of the negative balance; (b) we may automatically apply any subsequent deposits to the Card Account to the applicable Sub-Account in the amount of the negative balance; or (c) if there are insufficient funds in the Card Account, require Account Owner to pay us on demand by a personal check, money order, or other payment method authorized by us for the amount of the negative balance. If such payments are requested, they should be mailed to us at the address provided below or the address stated in the notice requesting payment.

5.20 Transaction History. The Business Administrator may obtain information about the available funds in the Card Account or any Sub-Account and a 60-day history of all Card Account transactions on the Website.

5.21 Account Alerts. If the Business Administrator or any Authorized User provides an email address to us, we will send that person important notices via email. All such notices shall be deemed to have been given to the Account Owner. In addition, if the Business Administrator or any Authorized User provides a mobile phone number or other text message address to us, we shall assume that the Account Owner has obtained all legally required consent(s) of such persons to receive texts at that number or address. For the avoidance of doubt, the Account Owner accepts sole and complete responsibility for obtaining all such consent(s) and agrees to notify us promptly of any changes in the applicable contact information. The Business Administrator or Authorized User may change the frequency of notifications we provide at any time by updating their notification setting on the Website. Third-party data charges and message fees may apply.

5.22 Transactions in Foreign Currencies. If an Authorized User makes a purchase using a Card in a currency other than in U.S. dollars, the amount of funds deducted from the applicable Sub-Account will be converted by MasterCard into U.S. dollars. The exchange rate applied will be selected by MasterCard from the range of rates available in wholesale currency markets on the applicable central processing date, which may vary from the rate MasterCard itself receives or the government-mandated rate. The exchange rate used on the central processing date may be different from the rate that was in effect on the date the Account Owner performed the transaction.

5.23 Receipts. An Authorized User should receive a receipt for each Card transaction. The Account Owner agrees to retain, verify, and reconcile Card transactions against those receipts.

5.24 Refunds and Disputes. An Authorized User will not receive cash refunds for Card transactions. If a merchant gives an Authorized User a credit for merchandise returns or adjustments, the merchant may do so by processing a credit adjustment, which we will credit to the available funds in Sub-Account. We are not responsible for the delivery, quality, safety, legality, or any other aspects of goods or services purchased using a Card. All such Card transaction disputes must be addressed and handled directly with the merchant from whom those goods or services were purchased.

- 5.25 Confidentiality. The privacy and security of non-public personal information is very important to us. We safeguard the information we receive regarding the employees and agents of our business customers in a manner consistent with how we safeguard customer information. The Account Owner agrees that we may disclose information to third parties regarding the Business Administrator, any Authorized User, the Card Account, or Card transactions: (a) as necessary to effect, administer, or enforce the Card transaction requested; (b) to protect against or prevent actual or potential fraud, unauthorized transactions, or other liability; (c) as necessary to comply with government agency or court orders; or (d) as permitted and required by applicable law.
- 5.26 Replacement Cards. The expiration date of a virtual Card is identified on the front of the Card. The expiration date of a physical Card is identified on the front of the Card. If there is a positive balance of funds in the applicable Sub-Account upon expiration of the subject Card and this Agreement is not in default, we may issue a new Card. We may also issue a new Card when the Card expires even if there are no funds in the applicable Sub Account. If a Card must be replaced for any reason, the applicable Authorized User should contact the Business Administrator, who must contact Customer Service. Please note that User Information must be provided whenever a replacement Card is requested.
- 5.27 Our Liability to Account Owner. If we do not complete a transfer of funds to or from the Card Account or any Sub-Account on time or in the correct amount according to these Terms, we may be liable to the Account Owner for the losses or damages. However, there are some exceptions. We will not be liable if: (a) through no fault of ours, Account Owner does not have enough available funds in the Card Account or an applicable Sub-Account to perform the requested transaction; (b) circumstances beyond our reasonable control (such as fire, flood, water damage, power failure, strike, labor dispute, computer breakdown, telephone line disruption, or natural disaster) prevent or delay the transfer despite reasonable precautions taken by us; (c) the system, or point-of-sale terminal was not working properly and the Business Administrator or applicable Authorized User knew of the problem when the subject Card transaction was initiated; (d) funds in the Card Account, including any Sub-Account, are subject to legal process or are otherwise not available for transactions; (e) a merchant refuses to accept a Card; (f) access to the funds in applicable Sub-Account is blocked because the Business Administrator or Authorized User reported the subject Card as lost or stolen; or (g) if we have reason to believe the subject transaction is unauthorized.
- 5.28 Errors or Questions About Card Account Transactions. The Business Administrator must call Customer Service at (855), or email us at (855)479-4411 as soon as the Account Owner believes an error has occurred involving the Card Account. We must hear from the Business Administrator no later than 60 days after the earlier of the date the Account owner electronically accessed the Card Account, if the error could be viewed in Card Account electronic transaction history, or the date we sent the FIRST written transaction history on which the error appeared. When the Business Administrator sends us notice of an error involving the Card Account, they will need to tell us: (a) Account Owner's name, Account Owner name and Card number; (b) why Account Owner believe there is an error and the dollar amount involved; and (c) approximately when the error took place. We will review that information in a commercially reasonable manner. If the Business Administrator requires additional information about our error resolution process, contact Customer Service at (855)479-4411.

- 5.29 Assignment. To the extent permitted by applicable law, we may assign these Terms without Account Owner's consent. The Account Owner may not assign or transfer this Agreement without our prior written consent.
- 5.30 Severability and Waiver. If any provision of this Agreement is held to be invalid or unenforceable, such provision will be deemed to be modified to the minimum extent necessary to make it valid and enforceable and the rest of this Agreement will not be affected. We do not waive our rights by delaying or failing to exercise them at any time.
- 5.31 Amendment. Subject to applicable law, we may add to, delete, or amend this Agreement at any time in our sole discretion without providing notice to the Account Owner. We reserve the right, subject to applicable law, to deliver to the Business Administrator any notice of changes to existing terms or the addition of new terms by posting an updated version of this Agreement on the Website or delivering notice of changes electronically. By continuing to participate in the Program, the Account Owner agrees to be bound by the updated Terms.
- 5.32 Entire Terms. These Terms constitute the entire and sole agreement between Account Owner and us with respect to the Program and supersedes all prior understandings, arrangements, or agreements, whether written or oral, regarding the Program.
- 5.33 Cancellation and Suspension. To the extent permitted by applicable law, we may cancel or suspend any Sub-Account, the entire Card Account, or this Agreement immediately, for any reason, and without giving Account Owner prior notice. Account Owner may cancel any Sub-Account, the entire Card Account, or this Agreement at any time by notifying Customer Service at the number or address provided below. Cancellation or suspension of this Agreement will not affect any of our rights or Account Owner's obligations arising under this Agreement before such cancellation or suspension occurred. In the event the Card Account is canceled, closed, or terminated for any reason, the Account Owner may request the unused balance to be returned to the Account Owner via a check to the mailing address we have in our records.
- 5.34 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio, consistent with the Federal Arbitration Act, without giving effect to any principles that provide for the application of the laws of another jurisdiction.
- 5.35 Indemnification. Account Owner agrees to defend, indemnify, and hold harmless us and our parents, subsidiaries, and other affiliated companies, and our and its employees, contractors, officers, and directors upon request against any and all claims, suits, damages, costs, lawsuits, fines, penalties, liabilities, and expenses (including, without limitation, reasonable attorneys' fees) that arise from Account Owner's violation of these Terms, applicable law, or any third-party rights, or Account Owner's fraud or willful misconduct. We reserve the right to assume the exclusive defense and control of any matter subject to indemnification by Account Owner, in which event Account Owner will cooperate in asserting any available defenses.
- 5.36 NO WARRANTY OF AVAILABILITY OR UNINTERRUPTED USE. From time to time, services related to the Program may be unavailable. When this happens, the Business Administrator may be unable to access the Website and Authorized Users may be unable to use Cards assigned to them or obtain Card information. The Business Administrator should notify us immediately if any such interruptions occur. Account

Owner agrees that we will not be responsible for temporary interruptions in service due to maintenance, website changes, or failures, nor shall we be liable for extended interruptions due to failures beyond our control, including but not limited to the failure of interconnecting and operating systems, computer viruses, forces of nature, labor disputes and armed conflicts.

- 5.37 LIMITATION OF LIABILITY. We shall have no liability to the Account Owner if we are unable to complete a Card transaction for any reason beyond our control. Except as otherwise expressly provided in this Agreement or as otherwise required by applicable law, we, our affiliates, and the parties with whom we contract in order to offer the Cards, Card Account including any and all Sub-Accounts, and related services are neither responsible nor liable for any indirect, incidental, consequential, special, exemplary, or punitive damages arising out of or relating in any way to this Agreement (as well as any related or prior agreement that Account Owner may have had with us).
- 5.38 NOTIFICATION OF CHANGES. If the Account Owner's postal address, email address, telephone number, or other contact information changes, the Business Administrator must notify us immediately. Failure to do so may result in information regarding the Card or Card Account being delivered to the wrong person or Card transactions being declined. In such an event, we shall not be responsible for any resulting misuse of funds available in the Card Account. The Business Administrator must notify us immediately in the event of the insolvency, receivership, conservatorship, bankruptcy, reorganization or change in Principal Owners. We may terminate this Agreement in the event of a change of control, reorganization, restructuring, conversion, consolidation, division or merger of Account Owner or any Principal Owner.
- 5.39 DISPUTE RESOLUTION BY BINDING ARBITRATION. For any and all controversies, disputes, demands, claims, or causes of action between Account Owner and us (including the interpretation and scope of this Section 5.39 and the arbitrability of the controversy, dispute, demand, claim, or cause of action) relating to the Program, Card Accounts, or these Terms (as well as any related or prior agreement that Account Owner may have had with us), Account Owner and we agree to resolve any such controversy, dispute, demand, claim, or cause of action exclusively through binding and confidential arbitration and the terms of this Section 5.39. The arbitration will take place in the federal judicial district located in the borough of Manhattan, New York, New York, or in the alternative, may be conducted telephonically at Account Owner request. As used in this Section, "we" and "us" mean Bank and its subsidiaries, affiliates, predecessors, successors, and assigns and all of Bank's employees, officers, directors, agents, and representatives. In addition, "we" and "us" includes any third party providing any product, service, or benefit in connection with the Card Accounts or these Terms (as well as any related or prior agreement that Account Owner may have had with us) if such third party is named as a co-party with us in any controversy, dispute, demand, claim, or cause of action subject to this Section.

Arbitration will be subject to the Federal Arbitration Act and not any state arbitration law. The arbitration will be conducted before one commercial arbitrator from the American Arbitration Association ("AAA") with substantial experience in resolving commercial contract disputes. As modified by these Terms, and unless otherwise agreed upon by the parties in writing, the arbitration will be governed by the AAA's Commercial Arbitration Rules and, if the arbitrator deems them applicable, the Supplementary Procedures for Consumer Related Disputes (collectively, the "Rules and Procedures").

Notwithstanding this agreement to arbitrate, either party may seek emergency equitable relief in federal court if it has jurisdiction or, if it does not, in a state court located in the federal judicial district of Account Owner's principal place of business residence in order to maintain the status quo pending arbitration, and each party hereby agrees to submit to the exclusive personal jurisdiction of the courts located within the federal judicial district of Account Owner's principal place of business for such purpose. A request for interim measures will not be deemed a waiver of the obligation to arbitrate.

Account Owner agrees to the following in connection with any arbitration: (a) no class or similar group arbitration will be permitted; (b) the arbitration will be confidential, and neither Account Owner nor we may disclose the existence, content, or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award; (c) subject to Section 5.37 (Limitation of Liability), the arbitrator may award any individual relief or individual remedies that are expressly permitted by applicable law; and (d) each party will pay its own attorneys' fees and expenses, unless there is a statutory provision that requires the prevailing party to be paid its fees and litigation expenses and the arbitrator awards such attorneys' fees and expenses to the prevailing party, and, in such instance, the fees and costs awarded will be determined by the applicable law.

Account Owner understands and agrees that, by agreeing to these Terms:

- **ACCOUNT OWNER IS GIVING UP ACCOUNT OWNER RIGHT TO HAVE A TRIAL BY JURY; and**
- **ACCOUNT OWNER IS GIVING UP ACCOUNT OWNER RIGHT TO HAVE A COURT RESOLVE ANY DISPUTE BETWEEN US.**

This Section will survive termination of the Card Account or these Terms as well as any voluntary payment of any debt in full by Account Owner or bankruptcy by Account Owner, or any bankruptcy by us. With the exception of subparts (a) and (b) of this Section (prohibiting arbitration on a class or collective basis), if any part of this arbitration provision is deemed to be invalid, unenforceable, or illegal, or otherwise conflicts with the Rules and Procedures, then the balance of this arbitration provision will remain in effect and will be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting part was not contained herein.

6 IMPORTANT CONTACT INFORMATION.

- 6.1 Contact Information for Customer Service. Account Owner, the Business Administrator, and Authorized Users may contact Customer Service at (855)479-4411.