

# PRIORITY CORPORATE CREDIT CARD AGREEMENT

Last Updated: July 9, 2021

These Terms and Conditions (these “Terms” or this “Agreement”) set forth and govern the terms of the relationship between Account Owner and Bank with respect to the Priority Card issued in connection with the Priority Commercial Credit Program (each term as defined below). **Account Owner is responsible for instructing the Business Administrator and any and all Authorized Users regarding these Terms and for ensuring that such persons comply with all applicable requirements set forth herein.**

## 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 Card Accounts).

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

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

“Business Administrator” means any person Account Owner designates to administer the Card Account and associated Cards and/or act on Account Owner’s behalf in connection with these Terms, including without limitation by designating Authorized Users, funding the Card Account, and setting Card Account limitations (See Section 5.2 – Establishing Card Accounts).

“Card Account” means, collectively, one or more accounts between Account Owner and Bank established and governed by this Agreement and includes all Sub-Accounts except as indicated in this Agreement.

“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 the legal entity and (2) one individual with significant responsibility for managing the legal entity listed above, 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.

“Priority” means Priority, LLC, which is an unaffiliated third-party business partner of Sutton Bank.

“Priority Commercial Credit Program” means the program pursuant to which Priority offers credit to Account Owner for commercial purposes, which credit may be accessed through the use of the Card in compliance with these Terms and the Priority Agreement between Account Owner and Priority.

“Priority Agreement” means the agreement between Account Owner and Priority, setting forth the terms and conditions governing the commercial credit that may be extended to Account Owner, from time to time, by Priority, which credit may be accessed through the use of the Card.

“Priority Card” or “Card” means the Visa branded credit card issued by Bank that allows Authorized Users to access credit extended to Company by Priority. Each reference to “Priority Card” also shall include the plural “Priority Cards.” A Priority Card may be (i) a virtual card represented by a 16-digit account number that Account Owner uses to make accounts payable payments through Priority’s CPX platform (a “Virtual Card”); or (ii) a credit card (which can be physical or virtual) embossed with, or represented by, a 16-digit number (the “Commercial Card”).

“Sub-Account” means that discrete portion of the Card Account that an Authorized User has been given the ability to access by Account Owner 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: (i) for Virtual Cards: <https://cpxchange.com>; and (ii) for Commercial Cards: <https://www.card-data.com/PriorityOne>.

## **2. ACTIVATING THE CARD.**

AN AUTHORIZED USER CANNOT USE A CARD ACCOUNT OWNER HAS PROVIDED TO THEM UNTIL THE BUSINESS ADMINISTRATOR HAS ACTIVATED THAT CARD PURSUANT TO THESE TERMS. ACCOUNT OWNER HEREBY REPRESENTS AND WARRANTS THAT EACH AUTHORIZED USER WILL COMPLY WITH THESE TERMS. ACCOUNT OWNER HEREBY AGREES TO ACCEPT SOLE RESPONSIBILITY FOR ALL ACTIONS OF SUCH AUTHORIZED USERS.

## **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 OPENS 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 OWNERS' 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). By accepting and agreeing to these Terms electronically, Account Owner represents that: (1) Account Owner has read and understands this consent to use electronic signatures and to receive Communications electronically; (2) Account Owner satisfies the minimum hardware and software requirements specified below; and (3) 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 Account Owner withdraws it. Account Owner may withdraw its consent to receive further Communications electronically at any time by contacting Customer Service at 1-866-279-1273 (866-CPX-1CRD) (for Commercial Cards) or 1-833-279-8472 (833-CPX-VISA) (for Virtual Cards). If Account Owner revokes its consent to receive Communications electronically, we reserve the right to close Account Owner's Card Account. Such revocation will be effective after we have a reasonable period of time to act on 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, except as expressly provided in this Agreement; and all amounts owed to Priority may be immediately due and payable pursuant to Account Owner's Priority Agreement. In addition, we may charge Account Owner a reasonable fee for providing paper copies of Communications.
- 4.3. Account Owner Must Keep Contact Information Current With Us. In order to ensure that we are able to provide Communications to Account Owner electronically, Account Owner must notify us and Priority of any change in its email address by updating Account Owner's profile on the Website.
- 4.4. Copies of Communications. Account Owner should print and save or electronically store a copy of all Communications that we or Priority send to Account Owner electronically. We reserve the right to assess a fee for any such paper copy.
- 4.5. Hardware and Software Requirements. In order to access and retain Communications provided to you electronically, you must have: (1) a valid email address; (2) a computer or other mobile device (such as tablet or smart phone) that operates on a platform like Windows or a Mac environment; (3) a connection to the Internet; (4) a Current Version of Internet Explorer 8 (or higher), Mozilla Firefox 7.0, Safari 5, or Chrome 15; (5) a Current Version of a program that accurately reads and displays PDF files, such as Adobe Acrobat

Reader version 7 or higher; (6) a computer or device and an operating system capable of supporting all of the above; and (7) a printer to print out and save Communications in paper form or electronic storage to retain Communications in an electronic form. "Current Version" means a version of the software that is currently being supported by its publisher.

- 4.6. Copies of Communications. You should print and save and/or electronically store a copy of all Communications that we or Priority send to you electronically.
- 4.7. Changes. We reserve the right, in our sole discretion, to communicate with 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 Administrators. By designating any individual as a "Business Administrator," Account Owner acknowledges and agrees that we and Priority are entitled to presume that all actions or omissions of the Business Administrator are duly authorized actions or omissions of Account Owner.

5.2 Establishing an Account.

### 5.2.1 Eligibility

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

- (i) designate, by sending an email to CPXAcctMgmt@prioritycommercialpayments.com, a Business Administrator to act on Account Owner behalf in connection with these Terms and authorize that person to administer the Card Account;
- (ii) agree to these Terms, as may be amended from time to time as set forth on the Website in accordance with applicable law;
- (iii) provide us with the information requested to verify the identity of the Account Owner; and
- (iv) confirm to us that it has entered into a Priority Agreement with Priority.

### 5.2.2 Account Owner's Representation and Warranties

By requesting, activating or using a Card or by retaining, using or authorizing the use of the Card, Account Owner represent and warrant 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 in accordance with applicable law;
- (ii) Account Owner is in good standing under its Priority Agreement;
- (iii) Account Owner is duly organized, validly existing and in good standing under the laws of the state in the United States of its formation;
- (iv) Account Owner is duly qualified and in good standing to do business in all jurisdictions where Account Owner conducts its business;
- (v) Account Owner has all necessary organizational power and authority to establish the Card Account, enter into these Terms, and to perform all of the obligations to be performed by it under these Terms;
- (vi) the personal and business information Account Owner provides to us in connection with the Card Account is true, correct and complete;
- (vii) the individual accepting and agreeing to these Terms on Account Owner's behalf has the requisite corporate authority to so act;

- (viii) the Business Administrator is a citizen or permanent resident of the United States and is at least 18 years of age (or older if residing in a state where the majority age is older) and shall possess all necessary organizational power and authority to act on Account Owner behalf;
  - (ix) the Business Administrator has the requisite corporate power and authority to allow Authorized Users to use the Card Account; and
  - (x) the Card Account will only be used for business purposes and not be used for personal, family or household purposes.
- 5.3 Compliance with Priority Agreement. Account Owner agrees that the availability of the Card Account is conditioned on Account Owner's continued compliance with all terms and conditions set forth in the Priority Agreement between Account Owner and Priority. **We reserve the right to close the Card Account immediately, and revoke all Cards distributed to Authorized Users, if we learn at any time that Account Owner is not in full compliance with the Priority Agreement.**
- 5.4 Permitted Transactions. Transactions approved and processed with the Card may only be used to purchase goods and services for business purposes and cannot be used for 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 (i) 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 (ii) 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 represent and warrants that all User Information Account Owner provides to us shall be truthful, accurate, current, and complete. Account Owner further agrees to notify us and Priority promptly and in writing of changes to any User Information. When the Business Administrator notifies us to revoke such permission, the subject Authorized User will no longer be able to use any Card in their possession. We shall be entitled to presume that Account Owner's business records relating to any and all Sub-Accounts are true and correct.
- 5.6 Revocation of Authorized User Privileges. The Business Administrator must modify the settings on the Website or notify Customer Service to revoke permission for an Authorized User to use the Card issued to them by Account Owner. Any revocation of such permission will be effective only after we and Priority have had a reasonable period of time to process Account Owner's withdrawal.
- 5.7 Revocation of Business Administrator Privileges. Account Owner must notify Priority via e-mails at CPXAcctMgmt@prioritycommercialpayments.com to revoke permission for any Business Administrator to administer the Card Account. Any revocation of such permission will be effective only after we and Priority have had a reasonable period of time to process Account Owner request.
- 5.8 Card. The Priority Card is a credit card issued by the Bank that allows Account Owner to access credit extended to Account Owner by Priority. The Card may be used to pay for goods and services or to advance cash from automated teller machines. 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. Account Owner acknowledge and agree that when Account Owner, including any Authorized Users, has both a virtual Card and a physical Card, the virtual Card and the physical Card will have separate Card Accounts.
- 5.9 Activating Card. The Business Administrator must activate every physical Card before it can be used. the Business Administrator must both activate the Card and set a PIN before it can be used (See Section 5.11 – Card & PIN Security). Business Administrator may activate a physical Card on the Website (<https://www.card-data.com/PriorityOne>) or by calling 1-866-279-1273 (866-CPX-1CRD).
- 5.10 Fees. No fees are assessed for using the Card.
- 5.11 Card and PIN Security. When selecting a PIN for a physical Card, the Business Administrator should not use numbers or words that appear in 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. 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.

- 5.12 **Lost or Stolen Card or Compromised PIN.** The Card Account is a commercial Card Account and does not provide consumer protections for lost or stolen Card Accounts or unauthorized transactions. **Until the Business Administrator or Authorized User reports a Card as lost or stolen or reports an unauthorized transaction on a Card Account, Account Owner is fully responsible for all transactions, even if the Card is lost, stolen or used for unauthorized transactions.** Please contact Customer Service IMMEDIATELY if the Account Owner, Business Administrator, or any Authorized User believes: (a) a Card has been lost or stolen, or (b) someone has gained unauthorized access to any Access Information. Reporting a lost/stolen Card or unauthorized transactions by calling Customer Service at 1-866-279-1273 (866-CPX-1CRD) (for Commercial Cards) or 1-833-279-8472 (833-CPX-VISA) (for Virtual Cards) or by sending an email to [CPXAcctMgmt@prioritycommercialpayments.com](mailto:CPXAcctMgmt@prioritycommercialpayments.com) to deactivate the Card Account is the best way to minimize possible losses. If an Authorized User or Account Owner has both a virtual and a physical Card and one of those Cards is reported as lost or stolen, the Card that is lost or stolen will be canceled and a new Card will be issued. Unless we have authorized a transaction after a Card Account is blocked (See Section 5.25 – Our Liability to Account Owner), Account Owner is responsible for all unauthorized transactions initiated and fees incurred from the unauthorized use of a Card Account.
- 5.13 **Using the Card.** The physical Card may be used for ATM cash withdrawals or cash back at the point-of-sale. The Card may not be used for business payroll payments. An Authorized User may use a Card to make purchases at any merchant that accepts Visa credit cards subject to the terms and condition of this Agreement, which require compliance with the Priority Agreement. If Account Owner or 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. We may refuse to process a transaction, or temporarily “freeze” the Card Account and attempt to contact the Business Administrator if we notice transactions that are unusual or appear suspicious, or use of the Card Account that are not consistent with its intended use.
- 5.14 **Merchant Holds on Available Credit.** When an Authorized User uses the 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 credit in the applicable Sub-Account for an amount equal to or in excess of the final transaction amount. The amount subject to the hold will reduce the available credit in the applicable Sub-Account until the merchant sends us the final transaction amount. Once we receive the final transaction amount, it may take up to two business days for the hold to be removed. During that period, the Account Owner and Authorized User will not have access to the credit subject to the hold. Please be advised that an Authorized User may experience difficulties using Account Owner physical Card at unattended vending machines, kiosks, and gas station pumps. If the physical Card is declined at a “pay at the pump” gas station even though the Card Account has sufficient credit available, the Authorized User should pay for the purchase inside with the cashier. An Authorized User may not use a virtual Card for making purchases at any vending machines, kiosks or gas station pumps.
- 5.15 **Card Account and Transaction Limits.** Subject to any conditions imposed by the Priority Agreement, there are no daily, monthly, or other transaction limits on the amounts that can be spent using the Card.
- 5.16 **Transaction Restrictions.** Account Owner or its Authorized Users 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. If the Priority Card is not accepted at a merchant location, a different card will have to be used in order complete the transaction. We may refuse to process any transaction we believe violates the terms of this Agreement.
- 5.17 **Responsibility for Authorized Transactions.** Account Owner is responsible for all transactions initiated and fees incurred by use of a Card. If the Business Administrator or an Authorized User permits another person to have access to a Card number, we will treat this as if the Business Administrator has authorized such person to use the subject Sub-Account, 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 any Authorized User even if the Authorized User exceeds

the scope of the authority Account Owner has granted to them. If the Business Administrator wants to withdraw permission for an Authorized User to use a Card, then transactions made with the Card will be considered unauthorized only after the Business Administrator notifies us that the person is no longer authorized to use the Card Account.

- 5.18 Transaction History. The Business Administrator may obtain information about the available credit in the Card Account or Sub-Accounts and a 12-month history of the Card Account transactions on the Website.
- 5.19 Account Alerts. If the Business Administrator or any Authorized User provide email addresses to us, we will send those persons important notices via email about the Card Account or applicable Sub-Account. All such notices shall be deemed to have been given by us to Account Owner. In addition, if the Business Administrator or Authorized User provide mobile phone number or other text message addresses to us, we shall assume that Account Owner has obtained all legally required consent of such persons to receive text at the subject number or address. For the avoidance of doubt, Account Owner accepts sole and complete responsibility for obtaining such consent and agrees to notify us promptly of any changes. The Business Administrator or Authorized User may change the frequency of notifications at any time by updating their notification setting on the Website. Third-party data and message fees may apply.
- 5.20 Transactions in Foreign Currencies. If an Authorized User makes a purchase using the Card in a currency other than in U.S. dollars, the applicable exchange rate will be selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which may vary from the rate Visa itself receives or the government-mandated rate. The exchange rate used on the central processing date may be different than the rate that was in effect on the date Authorized User performed the transaction.
- 5.21 Receipts. Account Owner or its Authorized User should get a receipt for each Card transaction and Account Owner agrees to retain, verify, and reconcile Card transactions against those receipts.
- 5.22 Refunds and Disputes. Account Owner or an Authorized User will not receive cash refunds for Card transactions. If a merchant gives credit for merchandise returns or adjustments, the merchant may do so by processing a credit adjustment, which we will credit to the account balance of the Card Account. We are not responsible for the delivery, quality, safety, legality, or any other aspects of goods or services that purchased using a Card. All such disputes must be addressed and handled directly with the merchant from whom those goods or services were purchased.
- 5.23 Confidentiality. The privacy and security of non-public personal information is very important to us. We safeguard the information we collect regarding the employees and agents of our business customers in a manner consistent with how we safeguard customer information. Account Owner agrees that we may disclose information to third parties about the Business Administrator, Authorized Users, the Card Account, or Card transactions: (a) as necessary to effect, administer, or enforce a Card transaction requested or authorized; (b) with Account Owner's consent; (c) to protect against or prevent actual or potential fraud, unauthorized transactions, or other liability; and (d) to comply with government agency or court orders; (e) as permitted and required by applicable law.
- 5.24 Replacement Cards. The expiration date of a physical Card is identified on the front of the Card. Upon expiration of the Card, if the Card Account is in good standing, we may issue a new Card. If Account Owner or an Authorized User needs to replace a Card for any reason, please contact the Business Administrator, who in turn should contact Customer Service. Please note that certain User Information will need to be provided whenever a replacement Card is requested.
- 5.25 Our Liability to Account Owner. We will not authorize a transaction and will not be liable to the Account Owner or any Authorized User if: (a) through no fault of ours, Account Owner does not have enough available credit in the Card Account or an applicable Sub-Account to perform a 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 transaction despite reasonable precautions taken by us; (c) the system, or point-of-sale terminal was not working properly and the Business Administrator or the Authorized User knew about the problem when the subject transaction was initiated; (d) the merchant refuses to accept the Card; (e) if access to a Card Account has been blocked after the Business Administrator or Authorized User reported a Card lost or stolen; or (f) if we have reason to believe the transaction is unauthorized.

- 5.26 Errors or Questions About Card Account Transactions. Call Customer Service at 1-866-279-1273 (866-CPX-1CRD) (for Commercial Cards) or 1-833-279-8472 (833-CPX-VISA) (for Virtual Cards), or email Priority at [CPXAcctMgmt@prioritycommercialpayments.com](mailto:CPXAcctMgmt@prioritycommercialpayments.com) as soon as Account Owner thinks an error has occurred involving the Card Account. We must hear from Account Owner no later than 60 days after the earlier of the date Account Owner electronically accessed the Card Account, if the error could be viewed in Account Owner's electronic transaction history, or the date we sent the FIRST written transaction history on which the error appeared. When Account Owner sends us notice of an error involving the Card Account, Account Owner will need to tell us: (a) Account Owner's name, Authorized User's name and Card number; (b) why Account Owner believes there is an error and the dollar amount involved; and (c) approximately when the error took place. We will review the information submitted in a commercially reasonable manner. If Account Owner requires additional information about our error resolution process, contact Customer Service at 1-866-279-1273 (866-CPX-1CRD) (for Commercial Cards) or 1-833-279-8472 (833-CPX-VISA) (for Virtual Cards).
- 5.27 Assignment. To the extent permitted by applicable law, we may assign these Terms without Account Owner's consent. Account Owner may not assign this Agreement without our prior written consent.
- 5.28 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.
- 5.29 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 Account Owner. We reserve the right, subject to applicable law, to deliver to Account Owner 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 Priority Commercial Credit Program, Account Owner agrees to be bound by the updated Terms.
- 5.30 Entire Agreement. These Terms constitutes the entire and sole agreement between Account Owner and us with respect to the Priority Commercial Credit Program and supersedes all prior understandings, arrangements, or agreements, whether written or oral, regarding the Program. For the avoidance of any doubt, these Terms are in addition to, and do not supersede, the Priority Agreement between Account Owner and Priority.
- 5.31 Cancellation and Suspension. To the extent permitted by applicable law, we may cancel or suspend any Sub-Account, or the Card Account generally, 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 obligations arising under this Agreement prior to such cancellation or suspension.
- 5.32 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 law of another jurisdiction.
- 5.33 Indemnification. At our request, 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 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.
- 5.34 NO WARRANTY OF AVAILABILITY OR UNINTERRUPTED USE. From time to time, services related to the Priority Commercial Credit Program may be inoperative. When this happens, Account Owner may be unable to access the Website and Authorized Users may be unable to use the Card or obtain information about the Card. Please notify us if Account Owner has any problems using the Card or the Website. 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.

- 5.35 LIMITATION OF LIABILITY. We shall have no liability to Account Owner if we are unable to complete a 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, Account Owner Card 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 the Cards, Account Owner Card Accounts, any products or services purchased using Card Accounts, or this Agreement (as well as any related or prior agreement that Account Owner may have had with us).
- 5.36 NOTIFICATION OF CHANGES. If Account Owner's U.S. mail or postal address, or email address or telephone number changes, Account Owner 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 event, we shall not be responsible for any resulting misuse of funds available in the Card Account. Account Owner 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 a change of control, reorganization, restructuring, conversion, consolidation, division or merger of Account Owner or any Principal Owner.
- 5.37 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 5.37 and the arbitrability of the controversy, dispute, demand, claim, or cause of action) relating to the Priority Commercial Credit 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 5.37. 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's 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 5.35 (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 ITS RIGHT TO HAVE A TRIAL BY JURY; and**



- **ACCOUNT OWNER IS GIVING UP ITS RIGHT TO HAVE A COURT RESOLVE ANY DISPUTE WITH US.**

This Section will survive termination of the Card Account or these Terms 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 1-866-279-1273 (866-CPX-1CRD) (for Commercial Cards) or 1-833-279-8472 (833-CPX-VISA) (for Virtual Cards).