

Voyager Merchant Program Application & Agreement Checklist

This Merchant Application may be opened with, and completed and signed electronically, using Adobe Reader. While an electronic application is preferred, applicants may also print out, complete and sign the application by hand.

Before submitting your completed Merchant Application (the “Merchant Application” or “Application”) please:

- Page 2 **Merchant Information.**
Complete all sections. Note that your legal name is required in this section; brand or abbreviated names cannot be accepted. Select your transaction acceptance method in the checkboxes provided to expedite set-up.
- Page 3 **Taxpayer Identification Number and Certification.**
Complete this section OR submit a W-9. It is not necessary to do both. Sole proprietorships should provide owner's social security number in this section if taxes for the business are reported under their social security number and not under the federal tax ID.

Automated Clearing House Authorization and Bank Account Information.
All payments are made electronically. Applications cannot be processed unless this section is completed as directed. Submit a voided check with your completed Application.

Principal Owner.
Complete as directed.
- Page 4 **Personal Guaranty.**
If this program will be guaranteed by the Principal Owner sign the Personal Guaranty section as directed.
- Pages 5-12 **The Voyager Merchant Program Agreement (the “Agreement”).**
Read pages 5-12 carefully and retain a copy for your records. Altering any information on pages 5-12 will make this Merchant Application & Agreement invalid.
- Page 12 **Authorization and Execution.**
Sign and complete as directed. Failure to properly complete this section will delay processing of your Application.

Please return completed Merchant Applications, voided check, ACH forms, and W9s, if included, to U.S. Bank by email to newmerchantapplications@usbank.com, fax to 866.645.3676 or mail to U.S. Bank at U.S. Bank | Merchant Program | 12800 Foster Street | Overland Park, Kansas 66213-2623. U.S. Bank will send you a Customer Identification Questionnaire to complete and return. Please complete the Customer Identification Questionnaire upon receipt and return it and any other materials that may be requested as soon as possible to ensure a seamless approval process. Failure to timely complete and return the Customer Identification Questionnaire and other required materials will delay the application approval process.

If you have questions about the Merchant Program, please call 800-987-6590 or email newmerchantapplications@usbank.com.

U.S. Bank Voyager Merchant Program Application

Merchant Information			
Company's Legal Name		Date Company Established	
Doing Business As ("DBA"), if any. Please list all DBAs.			
Company Phone Number – <i>Merchant Number</i>	Company Fax Number	Federal Tax ID	
Company Physical Address (PO Box not acceptable)			
City	State	Postal Code	
Company Mailing Address, if different from Physical Address			
City	State	Postal Code	
Card Program Contact Name		Customer Service Number	
Email Address (To Contact Company/Merchant Regarding Processing Of This Application)		Website Address	
Additional Contact Name(s) and Contact Information (Phone, Email Address)			
Description of Products and Services Offered (This application cannot be processed without this information.)			
Estimated Average Ticket or Invoice Amount \$		Estimated Monthly Sales Volume \$	
Point of Service ("POS") Type	OPIS Station/Rack ID	Affiliated Service Group	
Is your company a certified Minority or Women Owned Business (MWOB)? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Does Merchant conduct business in a foreign country? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, list countries and nature of business conducted:			

Indicate Your Transaction Acceptance Method By Checking The Appropriate Box(es) Below.			
<input type="checkbox"/> Vehicle Class 1-6	<input type="checkbox"/> Vehicle Class 7-8	<input type="checkbox"/> MSA POS ¹	<input type="checkbox"/> U.S. Bank Voyager Maintenance Solution [®]

¹ MSA POS means the U.S. Bank Multi Service Aviation[®] point of sale device

Taxpayer Identification Number and Certification

Please provide taxpayer information below OR submit a W-9. It is not necessary to do both.

Legal Business Name (As shown on your Income Tax Return)

Employer Identification Number EIN:

Social Security Number
(only needed if the business legal name is the owner's legal name) SSN:

Business Name/Entity Name if different from above:

Check appropriate box for Federal Tax Classification (Required):

- Individual/Sole Proprietor
 C Corporation
 S Corporation
 Partnership
 Trust/Estate
 Limited Liability Company
 Select tax classification:
 C Corporation
 S Corporation
 Partnership
 Other
 Tax Exempt Organization (include documents that support tax status)

Under penalties of perjury, and by its signature on this instrument, Merchant certifies that:

1. The number shown on this Merchant Application is the correct taxpayer identification number (or I am waiting for a number to be issued to me), and
 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
 3. I am a U.S. citizen or other U.S. person. (See IRS instructions for form W-9 and/or form W-8BEN for information defining who is a U.S. person.)
- Instructions - You **must** cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Automated Clearing House and Bank Account Information

Merchant agrees that all settlement shall be made by Automated Clearing House ("ACH") Payment. Accordingly, U.S. Bank National Association shall deposit funds into the bank account referenced below by ACH for payment of each daily billing file processed by U.S. Bank. Merchant also agrees that each daily billing file, prior to being paid, will be adjusted with debit transactions to account for billing errors, chargebacks and/or fees and all other charges as stated in section 3 of the Agreement. U.S. Bank is authorized to make adjustments (debit transactions) to Merchant's accounts in the event of billing errors or chargebacks. Disputes regarding deposits (credits) should be made within 15 days of issuance of the daily billing file. Disputes regarding charges (debits) should be made within 45 days after the account was charged.

Complete all areas below and submit a voided check.

Name of Bank	Branch	Bank Phone Number
City	State	Zip Code
Transit/ABA Number – Routing Number		Account Number
Account Settlement Contact and/or Individual(s) authorized to make changes to Bank Information:		Printed Name and Title
Account Settlement Email Address		

Principal Owner

First Name	MI	Last Name	Percentage of Ownership
Title	Date of Birth		Social Security Number
Home Address (PO Box is not acceptable)			
City	State	Zip Code	
Email Address			

Personal Guaranty

The undersigned Guarantor(s), by signing this Merchant Application, jointly and severally, guaranty the performance and payment by Merchant of its duties and obligations to U.S. Bank pursuant to this Merchant Application and the Agreement, as may be amended from time to time, with or without notice. Guarantor(s) understand further that U.S. Bank may proceed directly against Guarantor(s) without first exhausting U.S. Bank's remedies against any other person or entity responsible to U.S. Bank or any security held by U.S. Bank or Merchant. This Personal Guaranty will not be discharged or affected by the death of the Guarantor(s), will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any of U.S. Bank's successors. Guarantor(s) understand that the inducement to U.S. Bank to accept this Merchant Application is consideration for the guaranty and that this Personal Guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit for this Personal Guaranty.

Signature	Printed Name	Social Security Number	Date
Signature	Printed Name	Social Security Number	Date
Cosigner's Home Address (cannot be a PO Box)			
City	State	Zip Code	

U.S. Bank Voyager Merchant Program Agreement

This Merchant Program Agreement (“**Agreement**”) is entered into by the entity signing this instrument as “**Merchant**” and U.S. Bank National Association (“**U.S. Bank**”). The “**Effective Date**” of this Agreement is the date signed by Merchant.

U.S. Bank operates a network for facilitating purchases of fuel, maintenance, and related products and services (the “**Voyager Network**”) (collectively, the “**Program**”); and Merchant sells fuel or maintenance, and related products and services. U.S. Bank desires to expand the Voyager Network for its customers and Merchant desires to accept U.S. Bank Voyager Fleet Cards for purchases of fuel, maintenance, or related products and services.

Now, therefore, for and in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Merchant and U.S. Bank agree to the following:

1. **DEFINITIONS.** “**Account**” means a U.S. Bank Voyager Fleet Card account. “**Card**” means a U.S. Bank Voyager Fleet Card. “**Identification Information**” means legal names, physical street addresses, taxpayer identification numbers, dates of birth, or other information or documentation. “**Intellectual Property**” or “**Intellectual Property Rights**” means any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, moral rights, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force. “**Total Sales Value**” means the value of all transaction activity processed by Merchant including all applicable taxes and fees.
2. **FEES.** The fees listed below apply to this Agreement. Failure of U.S. Bank to apply any fee outlined in this Agreement at any time does not preclude U.S. Bank from ever applying such fee. U.S. Bank reserves the right to change fees upon 30 days prior notice to Merchant.

fees		
description	unit	fee
MSA point of sale device rental	monthly	\$20.00
vehicle class 1-6		
description	unit	fee
card administration	Total Sales Value	2.95%
teletran transaction	Total Sales Value	3.5%
teletran transaction through MSA point of sale site	Total Sales Value	2.95%
Voyager Maintenance Solution administration	Total Sales Value	15%
vehicle class 7&8		
description	unit	fee
fuel transaction, non-financial	each	\$1.00
fuel transaction, funded	each	\$1.00
fuel related transaction	each	\$1.00
cash withdrawal[1]	each	\$1.00
manual authorization caused by Merchant	each	\$2.00
delivery	each	\$20.00
payment file processing	each	\$1.00
non-fuel transaction	Total Sales Value	2.5%
Voyager Maintenance Solution administration	Total Sales Value	15%

3. **PROGRAM.**
 - 3.1. **Acceptance.** Merchant shall accept the Cards or Accounts, as applicable, for purchases of fuel or maintenance, and related products and services in compliance with the Voyager® Network Rules and Procedures (“**Rules**”) at usbpayment.com/voyager-rules.
 - 3.2. **Negotiated Pricing and Component Changes.** Merchant shall provide U.S. Bank with notice of negotiated pricing with Voyager Fleet Program customers, component changes, and termination of negotiated pricing in compliance with the Rules. Merchant’s failure to provide timely written notice in compliance with the Rules, or U.S. Bank’s failure to timely apply negotiated pricing, changes, or terminations may result in chargebacks to the other party. Merchant remains obligated to pay all acceptance fees whether or not notices are timely delivered or applied.
 - 3.3. **Payment.** Merchant shall transmit transaction records to U.S. Bank in compliance with the Rules. U.S. Bank will deduct fees, billing errors, chargebacks, unauthorized charges, fraudulent charges, and other deductions,

including those referenced in the Rules, if any, from the total value of transactions processed and will pay Merchant by Automated Clearing House. Merchant authorizes U.S. Bank to deduct fees, billing errors, chargebacks unauthorized charges, fraudulent charges, and other deductions, if any, from Merchant's business account if deductions cannot be made from the amount due for payment.

- 3.4. **Disclaimer.** Merchant is liable for any damages, costs, claims or liability for acceptance out of compliance with the Rules. U.S. Bank's obligation to reimburse Merchant for purchases is limited to Merchant's compliance with the Rules. U.S. Bank is not liable for any harm caused by Merchant's use of a non-approved processor. U.S. Bank has no obligation to pay Merchant for transactions that are not submitted in compliance with the Rules.

4. SECURITY AND CONFIDENTIALITY.

- 4.1. **Security.** "Secured Information" means information regarding accounts, passwords, personal identification numbers, and other sensitive information or Confidential Information of either party.

- (a) Either party may receive or otherwise have access to Secured Information and shall implement or maintain an information security program designed to (i) ensure the security, integrity and confidentiality of Secured Information; (ii) protect against any anticipated threats or hazards to the security or integrity of such Secured Information; (iii) protect against unauthorized access to or use of such Secured Information that could result in substantial harm to the person or entity that is the subject of the Secured Information; and (iv) ensure the proper disposal of such Secured Information.
- (b) U.S. Bank will maintain physical, electronic, and procedural safeguards designed to (i) maintain the security and confidentiality of Identification Information; (ii) protect Identification Information against anticipated threats or hazards to the security or integrity of Identification Information; and (iii) prevent unauthorized access to or use of such Identification Information that could result in substantial harm or inconvenience to Merchant.
- (c) Merchant will safeguard Secured Information provided by U.S. Bank in a manner that is no less stringent than those applicable to Merchant's acceptance of cards subject to compliance with the Payment Card Industry Data Security Standards.
- (d) At a minimum, Merchant will install and maintain commercially reasonable cybersecurity defenses against any feature, routine, or device that is intended or designed to (i) disrupt the operation of any U.S. Bank owned or licensed software or system; (ii) cause any U.S. Bank owned or licensed materials, software, or system to be destroyed, altered, erased, damaged or otherwise made inoperable; or (iii) permit any person or entity to destroy, alter, erase, damage or otherwise render inoperable any U.S. Bank owned or licensed materials, software, or system, including, but not limited to, any cyber-attacks such as any computer virus, trap door, back door, time bomb, malicious program or mechanism such as a software lock or routine for password checking, central processing unit serial number checking, or time dependency.

- 4.2. **Confidentiality.**

- (a) **Confidential Information.** Each party may have access to and each party may provide to the other party information that the owner of such information regards as confidential or proprietary. "Confidential Information" includes information of a commercial, proprietary, or technical nature whether now in existence or hereafter created. Confidential Information includes, but is not limited to, the following: (i) information marked as "confidential" or similarly marked, or information that a party should, in the exercise of reasonable judgment, recognize as confidential; (ii) Intellectual Property of each party; (iii) Identification Information; (iv) the business, financial or technical information of each party and its respective affiliates; (v) each party's objectives, materials, financial results, technological developments, and other similar proprietary information and materials; and (vi) notes, memoranda, analyses, compilations, studies, and other documents, whether prepared by either party or for either party, which contain or otherwise reflect Confidential Information.

- (b) **Exceptions.**

- (i) **General Exceptions.** Confidential Information does not include information that (i) is already rightfully known to the receiving party at the time it obtains Confidential Information from the disclosing party; (ii) is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement or any other confidentiality obligations; (iii) is lawfully received on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement; (iv) is contained in, or is capable of being discovered through examination of, publicly available records or materials; or (v) is developed by U.S. Bank or Merchant without the use of any proprietary, non-public information provided by the other party.
- (ii) **U.S. Bank Exceptions.** U.S. Bank may (i) use and disclose Merchant's Confidential Information to the extent necessary to maintain compliance with the Rules; or (ii) use and disclose non-identifying data to any entity or third party to the extent that such data is aggregated, summarized, or otherwise presented in a manner that does not directly or indirectly identify such data as attributable to the parties or their affiliates.

- (iii) **Third Parties.** Portions of Merchant data are captured by third parties, including, but not limited to third-party service providers and merchant processors during the course of normal business operations. The confidentiality provisions of the Agreement do not extend to such third parties.
- (c) **Restriction and Care.** Each party shall hold Confidential Information in confidence and disclose Confidential Information only to those employees or agents whose duties reasonably require access to such Confidential Information. Each party must protect Confidential Information using at least the same degree of care it uses to protect its own Confidential Information, but in no event, less than a reasonable degree of care to prevent unauthorized disclosure or duplication (except as required for backup systems) of such Confidential Information. Each party shall cause its affiliates, agents, employees, independent contractors, and parents to hold and maintain Confidential Information in confidence, and shall only use and disclose such Confidential Information for the purpose of performing its obligations, exercising its rights, or enforcing its rights under this Agreement, or as otherwise expressly permitted by this Agreement.
- (d) **Disposition of Confidential Information.** Upon termination of this Agreement, each party shall immediately, upon election by the disclosing party, return or destroy all Confidential Information in its direct or indirect possession or control that is the property of the disclosing party. Upon written request, the recipient will provide the disclosing party written certification of destruction of any Confidential Information. Notwithstanding, U.S. Bank may retain one copy of Confidential Information for archival purposes in accordance with applicable law, rule or regulation. The receiving party shall return any Confidential Information maintained in an electronic format to the disclosing party in an industry standard format or, at the option of the owner, deleted and removed from all computers, electronic databases, and any other media.
- (e) **Compelled Disclosure.** Each party shall promptly provide to the disclosing party notice of any order by a court or governmental agency having proper jurisdiction to disclose any Confidential Information, so the disclosing party may seek an appropriate protective order. U.S. Bank may be prohibited by a governmental agency from disclosing the governmental agency's request for Confidential Information and under such circumstances U.S. Bank is excused from notifying Merchant of any disclosure of Confidential Information thereunder. Each party shall disclose Confidential Information only to the extent required by applicable law.
- (f) **Non-Publicity.** Merchant shall not make any case study, testimonial, press release, or other public announcement regarding this Agreement or any activities performed hereunder. Merchant and its affiliates shall obtain the prior written approval of U.S. Bank's Media Relations department for any press release that Merchant seeks to release that contains U.S. Bank's identity. U.S. Bank shall have at least 15 business days to review and respond to any such request for approval.

5. INTELLECTUAL PROPERTY.

- 5.1. **U.S. Bank Intellectual Property.** Merchant may use trademarks or other proprietary words or symbols of U.S. Bank to identify U.S. Bank products in correspondence and publications issued in the ordinary course of business to the extent such use would be permitted by applicable law and subject to the U.S. Bank use guidelines. U.S. Bank is the exclusive owner or licensee of any and all copyrights, trademarks, service marks, and any other right associated with U.S. Bank products or Intellectual Property. Except as otherwise expressly stated in this Agreement, copying, redistribution, publication, or retransmission of any portion of U.S. Bank products or Intellectual Property is strictly prohibited without the express written permission of U.S. Bank. Merchant will not change or delete any proprietary notices for U.S. Bank products or Intellectual Property. Nothing in this provision grants any ownership rights to Merchant for U.S. Bank products or Intellectual Property. U.S. Bank shall be the exclusive and sole owner of, and will have all right, title, and interest to, any Intellectual Property or work product resulting from the development or improvement of the Program pursuant to this Agreement.
- 5.2. **Merchant Intellectual Property.** U.S. Bank may use trademarks or other proprietary words or symbols of Merchant to properly identify Merchant products in correspondence and publications issued in the ordinary course of business to the extent such use would be permitted by applicable law in the absence of the Agreement. Materials that use or display any name, trademark, or logo of Merchant are the Intellectual Property of Merchant, and are copyrighted and protected by the United States copyright laws. Merchant is the exclusive owner or licensee of any and all of its Intellectual Property. Any copying, redistribution, publication, or retransmission of any portion of Merchant's Intellectual Property is strictly prohibited without the express written permission of Merchant except as provided herein. U.S. Bank will not change or delete any proprietary notices for Merchant's Intellectual Property. Nothing in this provision grants any ownership rights to U.S. Bank for Merchant's Intellectual Property.

6. DEFAULT.

- 6.1. **Event of Default.** Merchant shall be in default for (i) any violation of its obligations set forth in section 4 (Security and Confidentiality) and section 5 (Intellectual Property); (ii) default of any other agreement between the parties or their affiliates that has not been cured in the time specified in the applicable agreement; (iii) any representations

or warranties that fail to be true and correct at any times during this Agreement; or (iv) any violation of any other covenants, conditions, or provisions set forth in this Agreement (each an **“Event of Default.”**)

- 6.2. Cure.** Merchant shall cure any Event of Default under section 6.1.(i)-(ii) within five days of notice of an Event of Default. Merchant shall cure any Event of Default occurring under section 6.1(iii) within ten days of notice of an Event of Default. Merchant shall cure any Event of Default occurring under section 6.1(iv) within 30 days of notice of an Event of Default. If any such cure reasonably requires more than the allotted time, Merchant and U.S Bank may agree on an alternative plan to cure. Merchant shall cure in accordance with such a plan agreed upon by Merchant and U.S Bank. If the Event of Default cannot be cured U.S. Bank shall have the immediate right to terminate this Agreement as a result of Merchant’s default and cease any payment to Merchant, credit any damages resulting therefrom or other claimed amount against any payment or other sum then or thereafter due Merchant, and debit any damages resulting therefrom or other claimed amount to any of Merchant’s accounts. U.S. Bank shall also have the right to pursue any and all rights and remedies provided at law or in equity or elsewhere in this Agreement, including without limitation, the right to pursue the remedy of specific performance and to seek money damages for loss arising. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- 6.3. Remedies.** In an Event of Default (after the notice and cure period), in addition to any other remedies at equity or law, U.S. Bank may: (i) immediately terminate this Agreement; (ii) retain and will not be required to pay Merchant any payables pursuant to this Agreement; (iii) accelerate and demand immediate reimbursement of any fees owed to U.S. Bank, and Merchant shall comply with such demand; and (iv) collect on demand, and Merchant shall promptly comply with such demand any amount directly or indirectly related to any Event of Default, including any fees or losses sustained by U.S. Bank, and any reasonable court and legal costs incurred by U.S. Bank to exercise its rights or remedies under this section 6. For the purposes of any Event of Default under section 6.1.(iv) related to payment or the deduction of fees, the date on the transaction file in which the fees first appeared will constitute notice of Event of Default. If Merchant violates its obligations under section 4 (Security and Confidentiality) or section 5 (Intellectual Property), in the addition to the foregoing, U.S. Bank shall be entitled to injunctive relief in its favor and to specific performance without proof of actual damages and without the requirement of the posting of any bond or similar security because U.S. Bank’s remedies at law may be inadequate to protect U.S. Bank against immediate and irreparable harm caused by any anticipated or actual breach of Merchant’s obligations as set forth in section 4 (Security and Confidentiality) or section 5 (Intellectual Property) and because damages resulting from such a breach may be difficult to ascertain. Merchant shall pay U.S. Bank \$100,000.00 for Merchant’s violation of its obligations under section 4 (Security and Confidentiality) or section 5 (Intellectual Property). If U.S. Bank determines, in its sole discretion, its harm (including but not limited to actual costs) associated with Merchant’s violation of section 4 (Security and Confidentiality) or section 5 (Intellectual Property) exceeds \$100,000.00, Merchant agrees that it will reimburse U.S. Bank for the full amount identified by U.S. Bank.

7. TERM AND TERMINATION.

- 7.1. Term.** This Agreement will commence on the Effective Date and will remain in effect unless terminated pursuant to the provisions set forth herein.
- 7.2. Termination.**
- (a) Either party may terminate this Agreement without cause by providing 90 days prior written notice of termination.
 - (b) U.S. Bank may terminate this agreement as stated in section 6.3 (Remedies) in the event that an Event of Default is uncured or U.S Bank has determines that fraud or other emergency has occurred or will imminently occur with respect to Merchant’s activities pursuant to this Agreement.
 - (c) U.S. Bank may immediately suspend or terminate this Agreement upon one or more of the following events:
 - (i) Merchant’s failure to comply with section 13.1 (Compliance with Applicable Statutes and Regulations) of this Agreement; or
 - (ii) U.S. Bank’s determination that provision of services under this Agreement, in U.S. Bank’s sole discretion, is counter to any existing, new or amended law, regulation, regulatory interpretation, or anticipated regulatory interpretation or any enforcement of any existing, new or amended law, regulation, regulatory interpretation, or anticipated regulatory interpretation.
- 7.3. Survival.** The following provisions survive termination of this Agreement: section 4 (Security and Confidentiality); section 5 (Intellectual Property); section 6 (Default); section 8 (Indemnification); section 9 (Limitation of Liability); section 12 (Audit); section 10 (Notices); section 13.6 (Cumulative Remedies); section 13.8 (Governing Law); section 13.14 (Set-Off); and section 13.19 (Jury Trial Waiver).

8. INDEMNIFICATION.

8.1. General Indemnification. Except to the extent of the negligence or willful acts or omissions of U.S. Bank or its employees, agents, or contractors, Merchant agrees to indemnify U.S. Bank and its agents, officers, directors, employees, and contractors from any claims, actions, demands, damages, injuries, injunctions, suits, fines, penalties, costs and expenses, and liability whatsoever (including reasonable attorneys' fees), by any person, entity, or governmental authority arising in connection with any third party claims arising out of (i) the actual or alleged infringement by Merchant, its agents, contractors, servants, or employees of any patent, copyright, trademark, trade secret, or other property or contract right of any other person; (ii) the actual or alleged failure of Merchant to promptly pay sums due to third parties; (iii) the actual or alleged violation of any law, rule, regulation, or authority by Merchant, its agents, contractors, servants, or employees; (iv) any negligent or intentional act or omission of Merchant, its agents, contractors, servants, or employees; or (v) any Event of Default.

8.2. Indemnification Procedures. U.S. Bank shall notify Merchant of any claim asserted and each action or suit filed or served, and provide Merchant a copy of any written documentation received in relation with the claim for which U.S. Bank is seeking indemnification pursuant to this section 8, provided, however, that the failure to give such notice shall not relieve Merchant of its indemnification obligations. Merchant may thereafter assume control of such claim, provided, that U.S. Bank shall have the right to participate in the defense or settlement of such claim. U.S. Bank may employ counsel at its own expense to assist it with respect to any such claim; provided, however, that if such counsel is necessary because of a conflict of interest of Merchant or its counsel or because Merchant does not assume control, Merchant shall bear the expense of such counsel. Merchant may not settle any claim, admit to any liability, or consent to any judgment with respect thereto without the consent of U.S. Bank (which consent may not be unreasonably withheld, delayed or rejected). Merchant is not obligated to indemnify and defend U.S. Bank with respect to a claim (or portions of a claim) if U.S. Bank (i) fails to promptly notify Merchant of the claim and fails to provide reasonable cooperation to defend or settle the claim; and (ii) if, and only to the extent that, the failure materially prejudices Merchant's ability to satisfactorily defend or settle the claim.

9. LIMITATION OF LIABILITY. U.S. Bank and its affiliates shall not be liable for any consequential, special, indirect, or punitive damages of any nature (including lost profits) regardless of whether the parties have been advised of the possibility of such damages. U.S. Bank's liability shall not exceed the net compensation earned by Merchant pursuant to this Agreement in the 12 months immediately preceding the claim.

10. NOTICES. Any notice required to be given to a party pursuant to this Agreement shall be in writing and will be deemed received either (i) two days after the date of mailing if sent by overnight, registered, or certified mail, return receipt requested, or (ii) one day after the date of mailing if sent by a national overnight courier service. Notices shall be sent to the following addresses: to **U.S. Bank at U.S. Bank National Association, 901 Marquette Avenue EP-MN-A17S, Minneapolis, MN 55402, Attn: CPS Contract Services** and to Merchant at the address stated on the Application. Either party may change its notification address at any time by written notice to the other.

11. REPRESENTATIONS AND WARRANTIES.

11.1. Mutual Representations and Warranties. Each party respectively represents and warrants, at all times during this Agreement, that:

- (a) This Agreement constitutes a valid, binding, and enforceable agreement of itself;
- (b) The execution of this Agreement and the performance of its obligations under this Agreement are within its powers, has been authorized by all necessary action, and does not constitute a breach of any agreement between itself and any other party;
- (c) It complies with all applicable state and federal statutes, ordinances, rules, regulations, and requirements of governmental authorities related to their rights and obligations under this Agreement;
- (d) Its execution of and performance under this Agreement does not cause it to breach any duty arising in law or equity; and
- (e) It possesses the financial capacity to perform all its obligations under this Agreement.

11.2. Merchant Representations and Warranties. Merchant represents and warrants, at all times during this Agreement, that:

- (a) The financial information and all other information provided to U.S. Bank by Merchant or its officers, employees, agents, successors and assigns is true, complete and accurate;
- (b) Merchant shall comply with all requirements of this Agreement and the Rules, which U.S. Bank may change at any time without notice to Merchant; and
- (c) The consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this Agreement, or if any such third-party consent or approval is required, Merchant has obtained any and all such consents or approvals.

- 12. AUDIT.** U.S. Bank may at any time during normal business hours and upon reasonable prior written notice, inspect, audit, and examine all of Merchant's facilities, records, personnel, books, accounts, data, reports, papers, and computer records relating to the Program to ensure Merchant is in compliance with this Agreement, the terms and conditions of the Rules, and applicable law.
- 13. MISCELLANEOUS PROVISIONS.**
- 13.1. Compliance with Applicable Statutes and Regulations.** The parties will maintain compliance with U.S. Bank policy and all statutes, regulations, economic sanctions laws, anti-money laundering laws, and trade restrictions imposed by the United States, United Nations, European Union or Canada applicable to the products and services contemplated under this Agreement. U.S. Bank may require Identification Information for Merchant, its affiliates, and any authorized signers, beneficial owners, employees, agents, authorized agents, or directors of Merchant and its affiliates. Merchant must promptly provide any such required Identification Information to U.S. Bank.
- 13.2. Bankruptcy.** Merchant agrees to provide U.S. Bank with prompt written notice if Merchant or its parent, or any of its subsidiaries or affiliated entities is the subject of any voluntary or involuntary bankruptcy or insolvency petitions or proceedings. Furthermore, Merchant and Merchant's representatives signing this Agreement for Merchant hereby authorize U.S. Bank to investigate the business history and obtain business related reports and information from any other source which may bear upon the Merchant's financial responsibility or acceptability of the Program set forth in this Agreement.
- 13.3. Financial Information.** Because U.S. Bank is a regulated entity and must perform its due diligence in all legal relationships U.S. Bank may request certain financial information from Merchant. Upon request, Merchant shall provide U.S. Bank audited financial statements prepared by an independent certified public accountant selected by Merchant. Merchant shall provide U.S. Bank such other information which may include business history and related reports and information regarding Merchant's financial condition as U.S. Bank may request from time to time.
- 13.4. Complete Agreement.** This Agreement, and any schedules or exhibits attached hereto and incorporated by reference constitute the complete understanding between the parties with respect to this subject and supersede all prior oral or written communications and agreements on this subject. If there is any inconsistency between the terms of this Agreement and the terms of any schedule or exhibit, the terms of such schedule or exhibit will control. This Agreement will not be construed against either party due to authorship.
- 13.5. Modification.** U.S. Bank may change this Agreement at any time upon written notice to Merchant. If permitted by applicable law, the changes will apply to existing balances as well as future transactions. If Merchant refuses to accept the changes, Merchant must notify U.S. Bank in writing within 30 days from the date of the notice that it refuses to accept the changes and elects to terminate this Agreement. Should Merchant terminate this Agreement pursuant to this Section 13.5, all debt due to U.S. Bank will immediately become due and payable by Merchant to U.S. Bank, according to the terms of this Agreement.
- 13.6. Cumulative Remedies.** Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.
- 13.7. Force Majeure and Excusable Delay.**
- (a) Neither party is responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, fire, flood, strikes, war, epidemics, pandemics, shortage of power, telecommunications or Internet service interruptions, or other acts or causes reasonably beyond the control of that party. The party suffering the force majeure event shall: (i) implement its applicable disaster recovery plan to the extent appropriate, and practicable; (ii) give the other party prompt notice of the occurrence of a force majeure event; (iii) use diligent efforts to re-commence performance as promptly as commercially practicable pursuant to its disaster recovery plan; and (iv) provide periodic updates to the other party regarding its efforts to re-commence performance until performance has re-commenced in accordance with this Agreement.
- (b) Either party may terminate this Agreement upon written notice to the other, if the non-terminating party is unable to perform a material portion of its obligations as a direct result of a force majeure event for more than 30 consecutive days. Delay in either party's performance is excused to the extent its performance is delayed solely due to an act or omission of the other party.
- 13.8. Governing Law.** The laws of the state of Minnesota and applicable federal laws and regulations of the United States apply to any dispute arising out of this Agreement, its subject matter, or its formation. Any dispute or claim arising out of or related to this Agreement must be brought before a state or federal court located in the city of Minneapolis, Minnesota.
- 13.9. Interpretation of Terms.** The parties expressly agree that the Agreement will not be construed more strongly against either party, regardless of which party is more responsible for its preparation. The Agreement constitutes

the entire agreement between the parties, concerning the matters addressed herein, and cancels and supersedes any prior agreements, undertakings, declarations, or representations, written or verbal, in respect thereof.

- 13.10. Headings.** The section headings are for the convenience of the parties only and do not explain, modify, amplify or aid in the interpretation of the provisions hereof.
- 13.11. No Third Party Beneficiaries or Claims.** Except as stated in the Agreement, with reference to any successors or assigns, any services provided pursuant to the Agreement are for the sole and exclusive benefit of Merchant. No provision of the Agreement is intended to be a third party beneficiary contract nor create or vest any third party beneficiary rights, interests, or privileges in favor of any entity other than U.S. Bank and its affiliates and Merchant.
- 13.12. Delegation.** To the extent necessary to provide the Program, U.S. Bank may delegate its duties to one or more third parties without Merchant's consent. U.S. Bank remains liable for the conduct of and payment to any such third parties.
- 13.13. Relationship.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating an agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 13.14. Set-Off.** U.S. Bank may set-off any amounts Merchant owes to U.S. Bank pursuant to this Agreement or any other agreement between the parties or their affiliates against any payables due to Merchant by U.S. Bank or its affiliates.
- 13.15. Severability.** If any provision of this Agreement is declared invalid, such decision does not affect the validity of any other provisions, which remain in force and effect as if this Agreement had been executed without the invalid provision(s). The parties shall use commercially reasonable efforts to agree upon a valid substitute provision, if necessary, in accordance with the purpose of this Agreement and the intent of the parties.
- 13.16. Assignment, Transfer.** Merchant shall not assign or otherwise transfer or delegate its rights, obligations, or duties under this Agreement without U.S. Bank's prior written approval at its sole discretion. For the purposes of this provision, "transfer" refers to a merger, acquisition, consolidation, divestiture, change in control, asset transfer, amalgamation, proceeding under bankruptcy laws, or any other transfer, reorganization, or sale (in whole or in part) of Merchant. To the fullest extent not prohibited by applicable law, Merchant will notify U.S. Bank in advance of any material change (and if prohibited, within 15 days after such change) to any information provided to U.S. Bank at any time in contemplation or in furtherance of this Agreement, including, without limitation, Merchant's primary business, legal organization (e.g., partnership, corporation, etc.) or any change resulting from a transfer as described above. Merchant shall promptly provide any information requested by U.S. Bank associated with the request for approval. In conjunction with Merchant's request for U.S. Bank's written approval, Merchant will pay U.S. Bank a fee in the amount of \$1,000.00 in consideration of U.S. Bank's review of changes under this section. If U.S. Bank determines, in its sole discretion, its burden (including but not limited to actual costs) associated with the review exceeds \$1,000.00, Merchant agrees that it will reimburse U.S. Bank for the additional amount identified by U.S. Bank, without regard to whether U.S. Bank provides its approval.
- 13.17. Incorporation.** The Voyager Merchant Program Application is incorporated into the Agreement by reference as if set out at length.
- 13.18. No Waiver.** No failure or delay by either party to exercise any right, power or privilege provided under this Agreement or by applicable law will operate as a waiver thereof; nor will any single or partial exercise of any such right, power, or privilege preclude any other or future exercise thereof of the exercise of any other right, power or privilege.
- 13.19. Jury Trial Waiver.** The parties waive all rights to trial by jury in any proceeding relating to this Agreement.

14. AUTHORIZATION AND EXECUTION. This instrument may be executed and delivered electronically, and fully executed electronic versions of this instrument, or reproductions thereof, will be deemed to be original counterparts.

The signer represents and warrants that (i) he or she is authorized by an applicable bylaw, article or other corporate authority to enter into all transactions contemplated by this instrument, and (ii) the signatures appearing on all supporting documents of authority are authentic.

DATE: _____

Merchant Name

Signature of Authorized Signer

Printed Name of Authorized Signer

Printed Title of Authorized Signer