

EverBank Visa® Commercial Card Program Agreement



1.1. General

This Visa Commercial Card Program Agreement (“Agreement”) governs the commercial credit card program (the “Program”) that EverBank, National Association, (“we,” “us,” “our” “EverBank” and the “Bank”) is establishing for use by the business organization identified on the Application (“you,” “your” and the “Company”) and your Representatives. For the purposes of this Agreement, certain operational terms are defined throughout the Agreement. Please read this Agreement carefully, and keep it with your records regarding your Account. This agreement incorporates by reference:

- Your card carrier,
- Your Pricing Schedule,
- Any change in terms that may occur from time to time, and
- Any other documents or information provided to you regarding the terms and conditions applicable to your Account, each as may be amended from time to time.

1.2. Other agreements

You will abide by all terms, conditions, covenants, and agreements applicable to the use of your Account, including, but not limited to, any agreement you may enter into with us and the terms and conditions contained on any sales slips, Cash Advance slips, monthly Statements, and any Card issued to you. Breach of any condition or obligation of this Agreement by any other applicant for your Account or by any Representative shall be a breach by you.

1.3. General terms

As used in this Commercial Card Program Agreement, the following terms have the meaning provided below.

1.3.1. Definitions and meanings

1.3.1.1. “Account” means the master account established by us for the Company, which includes any Sub-Account(s) established for any Representative(s) of the Company.

1.3.1.2. “Application” means the Visa Commercial Card Application you submitted to us.

1.3.1.3. “Business Day” means every day is a “Business Day” except Saturdays, Sundays and federal holidays.

1.3.1.4. “Card” means a Visa Commercial Card issued by us pursuant to this Agreement.

1.3.1.5. “Deposit Account” means any deposit account that you maintain with us.

1.3.1.6. “Pricing Schedule” means the separate schedule we will send to the Program Administrator and each Representative that sets forth the finance charges and fees applicable to the Program.

1.3.1.7. “Program Administrator” means the employee or officer of the Company identified as such on the Application. The Program Administrator is responsible for managing the operational and financial details of the Program for the Company, including giving us specific instructions in accordance with the terms of this Agreement, including without limitation instructions to add or remove Representatives. If there is more than one Program Administrator you agree that (a) we may accept instructions from any Program Administrator, and (b) if we receive conflicting notices or requests from any one or more Program Administrator(s), we may honor or refuse to honor any or all of the conflicting notices or requests, at our option, without giving any notice to the Program Administrator(s) whose notice or request is not honored, and we will not be liable for taking or refusing to take any action with regard to any conflicting notices or requests.

1.3.1.8. “Representative” means an employee, officer, partner, agent or other person for whom the Program Administrator requests us to establish a Sub-Account and issue a Card.

1.3.1.9. “Sub-Accounts” means separately numbered and identified Card accounts established for use by the Company and/or its Representatives. Use of the Sub-Account by your Representatives shall be governed by the terms and conditions of the “Cardholder Agreement” that we will provide to each of your Representatives that receive a Card. We reserve the right to change the terms of the Cardholder Agreement at any time. We will provide you and your Representatives notice of such changes to the extent required by applicable law.

1.4. Use of account

In consideration of our providing the Company this Program, you agree to comply with the terms and conditions of this Agreement as set forth below.

1.4.1. It is understood that you have applied for the Account solely for business purposes, and you agree to use the Account and any Sub-Account accordingly and to advise each Representative of this limitation. You agree to pay us for and/or indemnify us against any expense and/or liability arising directly or indirectly from any claim based on the assertion that the Account, including any Sub-Account, has been or is being used for personal, family or household purposes.

1.4.2. Subject to the terms of the Cardholder Agreement, each Sub-Account may be used to make Purchases and obtain Cash Advances.

1.4.3. Cash loans (“Cash Advances”) may be obtained by presenting a Card to us or at a participating financial institution, or by using the Card and the corresponding personal identification number (“PIN”) at any automated teller machine (“ATM”) which will accept Visa credit cards. Cash Advances also include certain “quasi-cash” transactions that we deem to be similar to obtaining cash. Such quasi-cash transactions that we consider to be similar to cash transactions include, without limitation, the use of a Card and/or the Account to obtain wire transfers, to purchase money orders, to purchase traveler’s checks and to purchase foreign currency.

1.4.4. The Company and/or its Representatives may obtain special Purchase or Cash Advance promotional offers that we may, in our discretion, provide from time to time. We will inform you and/or your Representatives of any special interest rates or other terms and conditions that apply to these special Purchase or Cash Advance promotional offers at the time we offer them.

1.4.5. From time to time, we may offer rebate or rewards programs to you and/or your Representatives. The terms and conditions applicable to any such rebate or rewards programs will be disclosed to you and/or your Representatives at the time we offer them.

1.4.6. All transactions are subject to (a) the Company Credit Limit and (b) the applicable credit limit for each Sub-Account as defined in the Company Credit Limit, Sub-Account Limits and Liability section of this Agreement.

1.4.7. You may choose to use your Card to make a cash withdrawal or purchase in a foreign country (an "International Transaction"). If your International Transaction is in a currency other than U.S. dollars, the transaction will be converted into a U.S. dollar amount by Visa® International Inc., using the procedures established by Visa International, Inc., based on the exchange rate in effect at the time the transaction is processed. The exchange rate between the transaction currency and the billing currency used for processing international transactions is a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives, or a government-mandated rate in effect for the applicable central processing date, in each instance. You will be charged an International Transaction Service Fee of 2.0% of the transaction. We monitor your accounts for signs of potential fraud, which could include the use of your Card in a manner that is out of the ordinary. If you are planning on using your Card in a foreign country (for example, if you are traveling abroad) please let us know in advance. Otherwise, it is possible that your International Transactions may be delayed or declined.

1.4.8. We are not responsible if any ATM, merchant, vendor or financial institution will not accept or honor a Card.

1.4.8.1. The Account, Sub-Accounts, and Cards are not to be used as payment for any illegal purchase (including, but not limited to, online gambling transactions). You agree to use the Account and any Sub-Account and Card, and to advise each Representative of this limitation.

1.5. Issuance of cards

We will establish a Sub-Account for and issue a Card to each Representative designated in writing to us by the Program Administrator; however, we reserve the right to decline to establish a Sub-Account for and issue a Card to any Representative whom we may deem unqualified for a Sub-Account and/or a Card. Except as you shall otherwise direct us in writing, you hereby request and authorize us to issue such Cards, including a renewal or replacement Card prior to each Card's expiration date. Each Representative who receives a Card will also receive the EverBank Visa Commercial Card Cardholder Agreement (the "Cardholder Agreement") and Pricing Schedule applicable to his/her Sub-Account.

1.6. Company credit limit, sub-account limits and liability

1.6.1. The amount we approve as your total credit line for Purchases and, if applicable, Cash Advances ("Company Credit Limit") will be communicated to the Program Administrator when we first issue Cards to you and/or your Representatives. We may, at our sole discretion, change your Company Credit Limit at any time, whether after a request by you or otherwise. We will notify the Program Administrator of any such change. You agree at all times to limit the aggregate Purchases and Cash Advances on all Sub-Accounts so that the Company Credit Limit will not be exceeded. A credit balance on your Account does not increase your Company Credit Limit. If we authorize any transaction in excess of the Company Credit Limit, our authorization shall not be deemed an increase in the Company Credit Limit and does not obligate us to authorize subsequent transactions in excess of the Company Credit Limit.

1.6.2. We will also establish credit limits for Purchases and Cash Advances for each Sub-Account. Unless you request otherwise on the Application, the credit limits for Purchases and Cash Advances for each Sub-Account shall be an apportionment of the Company Credit Limit calculated by dividing the Company Credit Limit by the number of Sub-Accounts. In the event that the sum of the credit limits for all Sub-Accounts exceeds the Company Credit Limit, you are responsible for managing your and your Representative's use of the Sub-Accounts in order to avoid rejection of transactions that would cause you to exceed the Company Credit Limit. We may, at our sole discretion, change the credit limits of one or more Sub-Accounts at any time, whether after a request by you or otherwise. A credit balance on any Sub-Account does not increase the credit limit on such Sub-Account. If we authorize any transaction in excess of the credit limits for the Sub-Account used for such transaction, our authorization shall not be deemed an increase in such credit limits and does not obligate us to authorize subsequent transactions in excess of such credit limits.

1.6.3. We may also establish activity limits for each Sub-Account from time to time based on our internal risk analysis in order to protect against fraudulent or unauthorized transactions. Such limits are imposed solely to protect the Bank, and you are not an intended beneficiary of such limits and may not rely on such limits to protect your interests. Such limits may include but are not limited to a maximum number of transactions or maximum aggregate dollar amount of transactions permitted for each Sub-Account on any day or during any billing cycle.

1.6.4. Your liability for charges to the Account and the Sub-Accounts shall not be limited by (a) the Company Credit Limit, (b) the credit limits for the Sub-Accounts, or (c) any activity limits for any Sub-Account. If your aggregate charges exceed the Company Credit Limit or any Sub-Account credit limit at any time during a billing cycle, you will remain fully liable to pay us for all such charges and any fees.

1.7. Promise to pay; form of payment

1.7.1. You may request that we bill each Representative directly. If you elect to have each Representative billed directly, the Representative shall be liable for all indebtedness related to the Card and Sub-Account, as provided in the Cardholder Agreement. However, the Company hereby irrevocably, absolutely and unconditionally guarantees to the Bank the prompt payment and performance when due of all indebtedness, obligations and liabilities from time to time outstanding with respect to each Card and Sub-Account. In the event that any amount owed by a Representative remains unpaid for 30 days after the date of the first invoice on which such amount appears, the Bank may invoice the Company for such amount. Upon receipt of the invoice, the Company shall immediately pay to the Bank the full amount owed on the Sub-Account. The obligations of the Company under this section, shall be enforceable irrespective of the validity, legality or enforceability of the Representative's individual obligations and shall not in any way be affected by or conditional upon (a) any action taken by the Bank under the Cardholder Agreement or the exercise by the Bank of any right or power thereby conferred, (b) the bankruptcy or similar proceedings involving or affecting a Representative, the Company or others, (c) any modification, alteration, or amendment of, or addition to, any Cardholder Agreement whether with or without the Company's knowledge or consent, or (d) any other action, inaction or circumstance whatsoever (with or without notice to or knowledge of or consent by the Company) that may in any manner vary the risks of the Company or might otherwise constitute a legal or equitable discharge of any surety or guarantor. The Company hereby waives (a) all guarantor and suretyship defenses to the Company's liability hereunder, and (b) all presentments, demands for performance or payment, protests, notices of protest, non-performance, dishonor, default and non-payment, notices of the existence, creation or incurrence of new or additional obligations by the Representatives, and all other notices or formalities, except as expressly set forth herein or to which the Company may otherwise be entitled.

1.7.2. Alternatively, you may request that we bill the Company directly. If you elect to have the Company billed, then you must submit payments with the frequency and by the method instructed by the Bank. In such event you agree to pay us or to our order, the full amount necessary to pay the entire balance of your Account, including without limitation the following amounts: (a) the total of all Purchases and Cash Advances charged to your Account during the prior billing cycle; and (b) the fees and other charges assessed on each Sub-Account as provided in the Cardholder Agreement. We will apply each payment you make in any manner we select, in our sole discretion, except as applicable by law. If the Company is billed directly you also agree that, in addition to your other obligations under this Agreement, that upon our request you will pay us immediately the full amount of any outstanding balance exceeding either (a) the Company Credit Limit or (b) the Credit Line for any Sub-Account. Any failure to comply with our payment procedures may result in your payments being processed, deposited, or credited later than you anticipate, in which case you agree to pay.

1.7.3. Regardless of whether we bill each Representative or the Company, the Company further agrees that:

1. If the Company pays us with a check or similar instrument that has notations or instructions on or with the check, you agree that (a) we may disregard such notations or instructions, and (b) we may credit any payment we receive to your Account, and our crediting of that payment will not mean that we have agreed to such notations or instructions on or with that payment, unless you send the payment (including the special notations or instructions) to:

EverBank
 Attention: Credit Services
 P.O. Box 44060
 Jacksonville, FL 32231

2. It shall pay all costs and expenses, including any collection costs, reasonable attorneys' fees and court costs, incurred by us in enforcing this Agreement, if we forward your Account or any Sub-Account to a collection agency and/or to an outside attorney for collection.

1.8. Statements

We will furnish to each Representative statements (or statements including a bill if we have agreed to bill Representatives directly) for each period ending on each "Cycle End Date" set forth on the Company Profile reflecting all transactions posted to the applicable Sub-Account and for which there is a debt or credit balance of \$1.00 or more. We will furnish to the Program Administrator statements (or a summary if we have agreed to bill Representative directly) for the period ending on each Cycle End Date, reflecting all transactions posted to all Sub-Accounts and all activity relating to the charging of fees and charges hereunder and any credits with respect to the same. Our statements and/or summaries to you shall be in accordance with our standard business credit card reporting statement formats as of the time of such reports. Statements and summaries will be delivered via mail (or via the Internet, if we decide to make statements and summaries available via the Internet and if the Program Administrator and Representatives elect to receive statements and summaries via the Internet).

1.9. Representations; certificates

1.9.1. The Company represents and warrants that (a) it has the power and authority to execute, deliver, perform, and take all actions contemplated by, this Agreement, (b) all such action has been duly and validly authorized by all necessary proceedings on the Company's part, and (c) the Application (which incorporates this Agreement) has been duly and validly executed and delivered by a duly authorized officer of the Company (the "Contract Officer").

1.9.2. Upon our request, you will deliver to us certificates by your Clerk, Secretary or Assistant Secretary, certifying to us (a) true copies of the Company's articles of incorporation (or other formation documents) and bylaws attached thereto, (b) true copies of all action taken by the Company to authorize the execution, delivery and performance of this Agreement, and (c) the authority, incumbency and signature of the Contract Officer (or any successor thereto), together with satisfactory evidence of the incumbency of such Clerk, Secretary or Assistant Secretary. Each such certificate will be dated within 30 days of delivery of same.

1.10. Default

The following constitute events of default under this Agreement:

- You fail or any Representative fails to make the Minimum Payment Due on the applicable Payment Due Date or meet any other payment obligation under this Agreement;
- You breach any other material term of this Agreement;
- Your borrowing exceeds the Company Credit Limit on a material, re-occurring basis;
- You default under the terms of any other obligation to us or to any of our affiliates;
- You default (as principal or as guarantor or other surety) in any payment of any obligation for borrowed money beyond any period of grace and/or waiver with respect thereto, or default in the observance of any material covenants, terms or conditions contained in any agreement or instrument by which such obligation is created, secured or evidenced, if the effect of such default is to cause, or to permit the holder of such obligation to cause all or part of such obligation to become due before the otherwise stated maturity, regardless if any of the foregoing have been waived or forgiven by the holder of such obligation;
- A significant change occurs in your ownership or organizational structure or in the type or volume of your business, to the extent that the Company's credit standing is no longer the same as it was when we initiated the Program;
- You become insolvent or are dissolved or we otherwise believe in good faith that the prospect of payment and/or performance under this Agreement is impaired; or
- A federal bankruptcy petition and/or a state reorganization petition is filed by or against you, a receiver is appointed for you, and/or you make an assignment for the benefit of creditors.

1.11. Remedies

In the event of any default, we may, at our option:

- Close your Account and/or any Sub-Accounts and cancel any Cards;
- "freeze" your Account and/or any Sub-Account (i.e., temporarily suspend your ability or the ability of your Representatives to make Purchases and obtain Cash Advances);

- Require immediate payment of the full balance on your Account and/or any Sub-Accounts, including, without limitation, accrued fees and other charges;
- Terminate this Agreement; and/or
- Increase the interest rate.

1.12. Banking relationship

We reserve the right to cancel this Agreement or suspend your right to use or access your Account if you close your Deposit Account, if you do not meet the minimum balance requirement for your Deposit Account, or if you terminate your Deposit Account as provided for in the agreement governing your Deposit Account.

1.13. Banker's lien and right of set-off

We have and will retain a general lien on all of your property and/or money in our possession or in the possession of any of our affiliates. In the event you do not make any payment as agreed, we may exercise our right of set-off against any obligation you owe to us under this Agreement, including a set-off against any deposit account or other account(s) you have with us or any of our affiliates, to the extent permitted by law.

1.14. Financial information, credit reports and re-evaluation of credit

You agree to submit current financial information to us any time upon request, including audit materials if available. You also authorize us to obtain credit reports regarding your Company prior to the opening of your Account and at any time during the term of this Agreement. We also may obtain a credit report on your Company after your Account is closed, if you owe us any amount related to the Account or any Sub-Account. We will also obtain personal consumer credit reports on each Representative and any individual guarantor of your obligations from time to time. We will use such information to evaluate or re-evaluate your creditworthiness. Upon determination that your creditworthiness has changed adversely or that it does not satisfy our current credit standards, we may close the Account or any Sub-Accounts, lower the Company Credit Limit, and/or make adjustments to the finance charge and/or fees applicable to the Account and Sub-Accounts. We may report our credit experience with you to third parties to the extent permitted by applicable law. Late payments, missed payments, or other defaults on your Account may be reflected in your credit report. We will protect the privacy of your financial information according to our usual banking confidentiality policies and applicable law.

1.15. Cancellation of cards and closing sub-accounts

1.15.1. If you at any time desire us to cancel any outstanding Card and/or to close a Sub-Account, the Program Administrator shall so notify us (as directed in the Notices section of this Agreement). The notice must specify the requested effective date of such action. Upon cancellation of any Card and/or closure of any Sub-Account at the request of the Program Administrator, you will promptly notify the Representative involved and will use your best efforts to obtain and destroy such cancelled Card. You agree to indemnify us against any expense or liability arising directly or indirectly from any claim based on alleged wrongful cancellation of a Card and/or closure of a Sub-Account, if such action was taken by us at the direction of the Program Administrator.

1.15.2. The Program Administrator must notify us immediately if you suspect or know that one of your Cards is lost or stolen, or if any Sub-Account and/or any Card has been used without authorization, by calling the designated number for such notices shown on your periodic statements. The Program Administrator must immediately follow up the telephone call with a signed, written notice on Company letterhead to the address specified in the Notices section of this Agreement. As soon as possible following receipt of such notice, we will cancel the lost or stolen Card and/or close the specified Sub-Account. If we issue at least ten (10) Cards to you or your Representatives and/or establish at least ten (10) Sub-Accounts, you will be liable for all unauthorized use of all Cards and Sub-Accounts. If we issue fewer than ten (10) Cards to you or your Representatives and/or establish fewer than ten (10) Sub-Accounts, your liability for unauthorized use of a Card and/or a Sub-Account will be limited to the lesser of (a) \$50 or (b) the amount of money, property, labor or services obtained by the unauthorized use. You will not be liable, however, for any unauthorized use that occurs after we receive notice as required by this section of the Agreement. Unless we have received notice and canceled the Card and/or closed the Sub-Account as provided in section 1.15.1 above, use of a Card and/or a Sub-Account by a Representative at any time, even if the Representative is no longer associated with or employed by you, does not constitute unauthorized use.

1.15.3. In addition, we may cancel any or all of your Cards and/or close any or all of your Sub-Accounts at any time, subject to applicable law.

1.15.4. Notwithstanding any cancellation of Cards and/or any closure of Sub-Accounts as provided in this section, this Agreement shall remain in full force and effect and you will continue to be responsible for full payment with respect to: (a) the balance on any closed Sub-Account and all charges to such Sub-Account, including without limitation, Purchases, Cash Advances, and any other transactions that post after closure of such Sub-Account (other than transactions utilizing a lost or stolen Card and/or a Sub-Account used without authorization after we have received notice as provided in section 1.15.2 above, and (b) all fees and charges assessed by us in connection with all such transactions.

1.16. Term of agreement; termination of agreement or sub-accounts

1.16.1. The initial term of this Agreement and the Program is one year (the "Initial Term"), and will automatically renew for successive one (1) year renewal terms (each, a "Renewal Term"), unless terminated according to the following provision; provided, however, that the Company and the Bank may each terminate this Agreement and your Account (including all Sub-Accounts) at any time, as follows:

1. The Bank may terminate this Agreement immediately in the event of default (as defined in the Default section); or
2. Either party may terminate this Agreement without cause upon not less than 30 days prior written notice to the other party and, in such case, no Card and/or Sub-Account shall be used for any Purchase or for any Advance on or after the date which is 15 calendar days preceding the stated date of termination in such notice; or
3. In the event the Company should close all, or a substantial majority, of its Sub-Accounts in accordance with the Cancellation of Cards and Closing Sub-Accounts section of this Agreement, we shall have the option to terminate this Agreement immediately.

1.16.2. Notwithstanding such termination, this Agreement shall remain in full force and effect with respect to: (a) all transactions that occur prior to the date of such termination, (b) all fees and charges which may have accrued or may accrue to us with respect to any such transactions, and (c) our general lien and right of set-off set forth in the Banker's Lien and Right of Set-Off section of this Agreement.

1.17. Liability for acts of representatives and other employees

You are liable for all Purchases and Cash Advances resulting from use of a Card and/or a Sub-Account by a Representative following his or her termination of employment from the Company, until you have notified us to cancel the Card and/or terminate the Sub-Account in accordance with Cancellation of Cards and Closing Sub-Accounts of this Agreement and we have actually cancelled the Card and/or terminated the Sub-Account. It is your obligation to notify us as soon as possible of (but not later than one (1) business day following) the termination of any Representative.

1.18. Indemnification

You hereby indemnify and agree to protect, defend and hold us and our directors, officers, employees, agents, attorneys and shareholders harmless from and against any and all losses, damages, expenses or liabilities of any kind or nature and from any suits, claims or demands, including all reasonable counsel fees incurred in investigating, evaluating or defending such claim, suffered by any of them and caused by, relating to, arising out of, resulting from, or in any way connected with this Agreement, your application and any transaction contemplated herein or therein including, but not limited to, claims based upon any act or failure to act by us. If you know about any facts or circumstances which may result in an indemnification claim by us under this section, you must immediately tell us about it in writing. You acknowledge that this covenant shall survive repayment of all amounts advanced under this Agreement and termination of this Agreement.

1.19. Force majeure

Notwithstanding any other provision of this Agreement, we shall not be liable for any failure, inability to perform, or delay in performance hereunder, if such failure, inability, or delay is due to acts of nature, war, terrorism, civil commotion, governmental action, fire, explosion, strikes, other industrial disturbances, equipment malfunction, or any other cause which is beyond our reasonable control.

1.20. Telephone and email communications with you

In order to ensure a high quality of service for our clients, and to provide continuing training for our contractors and employees, you agree that we may monitor, record, and share our telephone calls with you for quality assurance and compliance purposes. Also, to the extent not prohibited by applicable law, you agree that we may communicate with you for account-related business purposes at (a) any telephone number or email address that you provided in your application for the account or (b) any telephone number or email address that you may provide to us in the future. You also agree that, to the extent not prohibited by applicable law and exclusively for account-related business purposes, we may communicate with you at these telephone numbers using any means of communication technology, including (but not limited to) automatic telephone dialing systems, artificial or pre-recorded voice messages. Additionally, if any of the numbers that you provide to us either at application or thereafter is a cell phone number you understand and agree that we may also contact you with account-related information at that number through the use of text messages or email directed to your cell phone service. You understand and agree that we may contact you at your cell phone number using one or more of these communication technologies (or others that may be developed in the future) even if you will incur costs to receive such messages, text messages or emails.

1.21. Prior agreements; waiver

This Agreement constitutes the entire understanding among the parties pertaining to the subject matter hereof and supersedes all prior agreements, if any, between you and us relating to the Program. No waiver by us of any of our rights under this Agreement shall be effective unless in writing signed by our authorized representative. If for any reason we waive a right, such waiver shall not be construed to be continuing, nor shall such waiver limit or otherwise affect our right to exercise such right at a later time with or without notice.

1.22. Assignment

We may sell your Account and/or assign or transfer this Agreement and our related rights and obligations without prior notice to you and without your consent. You may not assign your rights or obligations under this Agreement.

1.23. Post judgement interest

In the event that we obtain the entry of a judgment in any court of record against you in order to collect money that you owe us under this Agreement, monthly late fees shall continue to accrue, as specified in the Pricing Schedule. In addition, we may assess interest to the extent permitted by the judgment and applicable law.

1.24. Notices

1.24.1. All notices permitted or required by this Agreement shall be in writing and shall be deemed to have been duly given if sent by personal delivery, mail, fax, or email (provided, however, that notices pursuant to Cancellation of Cards and Closing Sub-Accounts section of the Agreement must be sent by personal delivery, mail or fax and not by email), addressed in care of the Bank, to:

By Mail:

EverBank, Customer Service
Attention: TA-74
PO Box 31535
Tampa, FL 33631-3535

By Email:

risk@everbank.com

and in the case of notice to the Company, all notices under this Agreement are to be addressed to the Program Administrator at the address, fax number and/or email address set forth in the Application.

1.24.2. Any address or fax number set forth or referred to above may be changed by the party to receive notice, provided notice is given to the other party in accordance with these notice provisions; provided further that notice with respect to any changes of any such address or fax number with respect to the Company may only be provided to us by the Program Administrator or Contract Officer.

1.24.3. We may rely upon any notice or other communication of any nature (written or oral, including but not limited to telephone conversations) purportedly made by or on behalf of the proper party or parties, and we shall not have any duty to verify the identity or authority of any person giving such notice or other communication, beyond customary and generally accepted banking practices.

1.25. Governing law

This Agreement and all questions relating to the subject matter hereof, shall be governed by and construed in accordance with (a) federal law and, to the extent not preempted, the laws and/or regulations of the State of Florida, without regard to conflicts of law provisions, as well as (b) Visa rules, regulations, bylaws and procedures in effect, as amended from time to time.

1.26. Construction

To the extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision shall be held to be invalid, illegal or unenforceable, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability without affecting the other provisions of this Agreement.

1.27. Parties to be bound

This Agreement shall be binding upon your representatives, successors, heirs and permitted assigns (if applicable).

1.28. Alternative dispute resolution

Except as otherwise provided in applicable Visa rules, regulations, bylaws or procedures, in the event any disputes related to this Agreement or any transactions involving the Account (including any Sub-Account) or a Card issued hereunder (each, a "Dispute") arise between the Company and the Bank either during the Initial Term or any Renewal Term of this Agreement or after termination or expiration hereof, the parties agree to exchange relevant information and cooperate in good faith to attempt to resolve the Dispute. If the parties are unable to settle such Dispute, a formal arbitration procedure may be commenced by either party under the then-current Commercial Dispute Resolution Rules of the American Arbitration Association ("AAA") by giving written notice to the other party and delivering a written request to AAA to select an experienced neutral arbitrator and a proposed time and date for arbitration. All arbitrators' fees shall be equally shared by the parties. The parties shall participate in good faith in the arbitration and upon resolution of the Dispute, the arbitrator shall issue a final award, which shall be reduced to writing. The arbitration shall take place in Jacksonville, Florida unless otherwise agreed by the parties. Any award in arbitration may be enforced under the Federal Arbitration Act, and judgment on any arbitration award may be entered in any court of competent jurisdiction for enforcement. THIS SECTION SHALL NOT BE APPLICABLE TO ANY COLLECTION ACTION COMMENCED BY US AGAINST YOU TO ENFORCE THIS AGREEMENT AGAINST YOU IN ORDER TO COLLECT AMOUNTS DUE AND PAYABLE HEREUNDER.

1.29. Waiver of trial by jury

YOU AND WE HEREBY VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING HEREAFTER INSTITUTED BY OR AGAINST US OR YOU OF ANY KIND, IN ANY COURT, ARISING OUT OF THIS AGREEMENT, YOUR APPLICATION, OR ANY RELATED DOCUMENTS.

1.30. Waiver of prejudgement hearing

YOU AND WE (A) ACKNOWLEDGE THAT THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT ARE COMMERCIAL TRANSACTIONS AND (B) TO THE EXTENT PERMITTED BY ANY STATE OR FEDERAL LAW, WAIVE THE RIGHT YOU OR WE MAY HAVE TO PRIOR NOTICE OF AND A PRIOR COURT HEARING ON THE RIGHT OF ANY HOLDER OF THIS AGREEMENT TO ANY REMEDY OR COMBINATION OF REMEDIES THAT ENABLES SAID HOLDER, BY WAY OF ATTACHMENT, FOREIGN ATTACHMENT, GARNISHMENT, REPLEVIN, OR OTHER PREJUDGMENT PROCESS TO DEPRIVE YOU OF PROPERLY, AT ANY TIME, PRIOR TO FINAL JUDGEMENT IN ANY LITIGATION INSTITUTED IN CONNECTION WITH THIS AGREEMENT.

1.31. Amendments

1.31.1. We can change the terms of this Agreement at any time, including, without limitation, the terms of the Pricing Schedule. We will notify you (as provided in the Notices section of this Agreement) of any change in terms, to the extent required by applicable law. Unless required by applicable law, we will not always give you notice before action is taken or before the change is effective. New terms may apply both to new Purchases and Cash Advances and to the outstanding balances on your Account and Sub-Accounts.

1.31.2. You may make changes to the name, address, telephone or fax number, and/or email address of the Program Administrator, by providing notice to us (as provided in the Notices section of this Agreement), subject to such additional authorizations, verifications and certificates as we may require at the time of such amendment.

1.31.3. Except as provided in 1.31.1 and 1.31.2 above, this Agreement may be modified only by a writing signed by duly-authorized representatives of the Bank and the Company.