

# FIRSTMARK CREDIT UNION

## VISA® BUSINESS PLATINUM CREDIT CARD AGREEMENT

**WHAT THIS AGREEMENT COVERS:** This Agreement governs the business credit cards issued in connection with a Firstmark Credit Union VISA® Business Platinum credit card account (“Account”).

**TERMS USED IN THIS AGREEMENT:** In this Agreement, “Company” means the person, company, partnership, association, or other entity for which an Account is established. “Authorized Officer” means the person authorized by Company to request that the Account be established for Company and that Card(s) be issued, and includes any successor to that person that Company designates. “Cardholder” means any employee, partner, owner, member, or officer of Company for whom Company has requested and to whom we have issued a Card, and “Cardholders” means all such persons. The words “we,” “our,” “us,” and “Credit Union” mean Firstmark Credit Union, the issuer of the Card. “The Card” means any credit card issued to Company or to anyone designated by Company under the terms of this Agreement. “Use of the Card” means any procedure used by Company, or by someone authorized by Company, to make a purchase or obtain a cash advance whether or not the purchase or advance is evidenced by a signed written document. “Unauthorized use of the Card” means the use of the Card by someone who does not have actual, implied, or apparent authority from Company for such use, and from which Company receives no benefit. In this Agreement, any plural terms shall be deemed singular and any singular terms shall be deemed plural when context and construction so require.

**EXTENSION OF CREDIT:** If Company’s application is approved, we may, at our discretion, establish the Account in Company’s name and cause one or more Cards to be issued to Cardholders designated by Company. In such event, Company authorizes us to pay all items for the Account reflecting credit purchases and cash advances (including balance transfers) obtained by Cardholders through use of the Card. Only Cardholders and persons authorized by Cardholders may use the Card or the Account for any purpose not prohibited by this Agreement. Credit obtained pursuant to this Agreement is for the benefit of Company and constitutes a financial accommodation for Cardholders. If Company wants to end a Cardholder’s privileges, Company must notify us in writing and, if we request, return the Cardholder’s Card.

**OTHERS USING COMPANY’S ACCOUNT:** In the event that Company allows anyone other than a Cardholder to use the Account, Company and the Authorized Officer will be jointly and severally liable for all credit extended to such persons. Company and the Authorized Officer promise to pay for all purchases and cash advances made by anyone Company authorizes to use the Account, whether or not Company notifies us of such use. If we determine that anyone other than a Cardholder or other authorized person is using the Account, we may suspend all further use of the Account and terminate this Agreement.

**BUSINESS PURPOSE; PURCHASES AND CASH ADVANCES:** All transactions on the Account must be for Company’s business purposes only and within the scope of the Cardholders’ employment or Company responsibilities. In no event may the Account be used for any other purposes, including but not limited to, Cardholders’ personal, family, or household purposes. Company agrees to notify Cardholders of this business purpose restriction and to adopt and enforce policies and controls to ensure that the Card and the Account are used strictly for Company’s business purposes. We may permit Cardholders to obtain cash advances by presenting the Card at participating VISA member offices or by use of an Automated Teller Machine (“ATM”). We may disable the cash advance feature at any time without notice. We are not liable for the refusal of any merchant to accept or honor the Card for any reason, including inability to obtain authorization for any purchase or for any failure to complete a transaction at an ATM for any reason, including any failure due to our having disabled the cash advances feature.

**COMPANY CREDIT LIMIT:** Company promises that payments made for the Account resulting from use of the Card will at no time cause the outstanding balance in the Account to exceed Company’s credit limit as established and adjusted by us from time to time in our sole discretion. The Company credit limit will appear on the periodic statement sent to Company. If the Company exceeds the Company credit limit, we are not under any circumstances obligated to extend additional credit on the Account, but if we do, Company agrees to pay us immediately the amount in excess of the Company credit limit, plus finance charges and other applicable fees and charges.

**PROMISE TO PAY:** Company and the Authorized Officer are jointly and severally liable for all amounts owing on the Account and promise to pay us for all purchases, cash advances, finance charges and all other fees and charges charged to or accrued on Company’s Account under the terms of this Agreement. At the end of each monthly billing cycle, Company will be furnished with a periodic statement showing (i) the “Previous Balance” (the outstanding balance in the Account at the beginning of the billing cycle), (ii) an itemization of all cash advances, purchases, finance charges, and other charges posted to Company’s Account during the billing cycle, (iii) the amount of all payments and credits posted to Company’s Account during the billing cycle, and (iv) the “New Balance” which is the sum of (i) and (ii) less (iii).

Company agrees to pay, in U.S. dollars drawn on a U.S. financial institution, on or before the “Payment Due Date” shown on the periodic statement either the entire New Balance or a minimum payment equal to 4% of the New Balance that does not exceed Company’s credit limit or \$20, whichever is greater. If the New Balance is \$20 or less, Company agrees to pay in full. Company’s minimum payment will be rounded to the next highest dollar amount.

In addition to the minimum payment shown on Company’s periodic statement, Company agrees to pay on or before the “Payment Due Date” (i) any amounts in excess of the Company credit limit established by us, (ii) any past due minimum payments, and (iii) collection costs and costs incurred in recovery of Cards, including attorney’s fees. Company may make extra payments in advance of the due date without penalty, and Company may repay any funds advanced, credit extended, or amount outstanding at any time without penalty for early payment. Regardless of the amount of any extra payments made during a given month, a monthly payment will be required the following month if a balance remains in Company’s Account.

**COST OF CREDIT:** Company will pay a finance charge for all advances made against the Account. Cash advances and balance transfers incur a finance charge from the date of the advance or the first day of the billing cycle in which the advance is posted to the Account, whichever is later. New purchases will not incur a finance charge on the date they are posted to the Account if Company has paid the Account in full by the Payment Due Date shown on Company's previous monthly statement or if there was no Previous Balance. The Payment Due Date will be not less than 25 days from the billing cycle closing date shown on Company's statement.

The periodic rate used to compute the finance charge for purchases is based on an index ("Index"), which is the highest bank Prime Rate as quoted in the Money Rates section of *The Wall Street Journal* as of the first Tuesday of February, May, August, and November of each year, and is subject to change quarterly. Any change in the periodic rate will be effective on the first day of the calendar quarter following the change. An increase in the Index will result in an increase in the periodic rate, which in turn, may result in higher payments. The Annual Percentage Rate for any given billing cycle will be the Index plus a margin of 5.99%. The periodic rate and corresponding Annual Percentage Rate (APR) for cash advances (including balance transfers) at all times is 1.5% per month, 18% APR. As of January 1, 2020, the monthly periodic rate for purchases is 0.895%, which corresponds to an Annual Percentage Rate of **10.74%**. The foregoing rate is collectively referred to herein as the "Standard Rate." The Annual Percentage Rate for purchases will never be lower than 8%, which corresponds to a monthly periodic rate of 0.6667%. If at any time Company's Account is two cycles or more delinquent (which need not be consecutive) in a six-month period, the monthly periodic rate for purchases on Company's Account will increase to 1.5%, which corresponds to an Annual Percentage Rate of 18% (the "Delinquency Rate"). The Account may be adjusted to Company's Standard Rate after payments have been made as required for six consecutive months and all past due amounts and fees have been paid as required.

A portion of the finance charge is figured by applying the applicable monthly periodic rate to the Average Daily Balance of Company's Account for each feature category, including certain current transactions. Feature categories include purchases, balance transfers, and cash advances. The methods used to determine the balance on which finance charges are computed are as follows:

Cash Advances (including balance transfers) - Method A - The periodic Finance Charge for a billing cycle is computed by applying the monthly Periodic Rate to the average daily balance during the billing cycle, which is determined by dividing the sum of the daily balances during the billing cycle by the number of days in the cycle. Each daily balance is determined by taking the beginning Cash Advances balance of your account, adding any new Cash Advances received, and subtracting any allocated payments, credits, non-accruing fees, and unpaid Finance Charges.

Purchases - Method G - The periodic Finance Charge for a billing cycle is computed by applying the monthly Periodic Rate to the average daily balance of Credit Purchases, which is determined by dividing the sum of the daily balances during the billing cycle by the number of days in the cycle. Each daily balance is determined by taking the beginning Credit Purchases balance of your account and, unless you have paid your account in full by the Payment Due Date shown on your previous monthly statement or there is no previous balance, adding in new Credit Purchases, and subtracting any allocated payments, credits, non-accruing fees, and unpaid finance charges.

The total finance charge for each statement period is the sum of the periodic finance charges for each feature category plus any non-periodic finance charges. For cash advances, there is a Cash Advance Fee 2% of the transaction amount.

#### **OTHER CHARGES:**

**ATM Fee:** If Company obtains a cash advance by using an Automated Teller Machine or otherwise, Company may be charged a fee imposed by the owner or operator of the machine or by another financial institution. Any charge made under this paragraph will be added to the balance of Company's Account and treated as a purchase.

**Late Charge:** If the minimum payment is not received within 10 days after the Closing Date subsequent to the Payment Due Date, Company will be charged a Late Charge of \$25.

**Overlimit Charge:** If Company's Account balance exceeds Company's pre-established credit limit by 10% or more, Company will be charged an Overlimit Charge of \$15. This fee will be charged only once per month, regardless of the number of times the Account balance exceeds Company's credit limit in any given billing cycle.

**Return Check/ACH Fee:** If any payment Company sends us is returned unpaid for any reason, Company agrees to pay a Returned Check Fee as set forth in our Fee Schedule.

**Annual Fee:** An Annual Fee of \$35 will be charged to the Account each year in the anniversary month of the Account. The Annual Fee will be charged as long as the Account is open, whether or not Company has active charging privileges.

We may also assess charges to the extent permitted by applicable law if you request a copy of a document, request a replacement card, or pay by phone via our Cardholder service center. No finance charge will be assessed on such additional charges.

**SECURITY: COMPANY AND THE AUTHORIZED OFFICER SPECIFICALLY GRANT US A CONSENSUAL SECURITY INTEREST IN ALL ACCOUNTS COMPANY AND THE AUTHORIZED OFFICER HAVE WITH US NOW AND IN THE FUTURE TO SECURE REPAYMENT OF CREDIT EXTENSIONS MADE UNDER THIS AGREEMENT. THE GRANTING OF THIS SECURITY INTEREST IS A CONDITION FOR THE ISSUANCE OF ANY CARD WHICH COMPANY MAY USE, DIRECTLY OR INDIRECTLY, TO OBTAIN EXTENSIONS OF CREDIT UNDER THIS AGREEMENT.**

**ADDITIONAL SECURITY: If Company or the Authorized Officer has other loans with us, now or in the future, collateral securing those loans may also secure Company's obligations under this Agreement.**

**CREDITING OF PAYMENTS:** We do not charge for payments made by standard mail service or other standard payment methods we have approved. If we charge a fee for any expedited payment service we offer, that fee will be disclosed at the time Company requests the service. Payments received at locations other than the address listed on the front of the statement after the phrase "Remit payment to" may be subject to a delay in crediting up to 5 days. If there is a credit balance due you, you may request in writing a full refund of this credit balance at the address indicated on the front of the statement after the phrase "Questions?" If Promotional Balance(s) exist, we may allocate the monthly payments to the promotional balance(s) before the non-promotional balance(s). Interest paid or agreed to be paid shall not exceed the maximum amount permissible under applicable law. If we receive anything of value deemed interest under applicable law which would exceed the maximum permissible amount of interest, the excessive interest shall be applied to the reduction of the unpaid principal amount or refunded to Company.

**DEFAULT:** Company will be in default: (1) if Company fails to make any payment on time; (2) if Company fails to keep any promises Company has made under this or any other agreement with us; (3) if Company or the Authorized Officer becomes insolvent or is the subject of an order for relief under Title 11 of the U.S. Code (Bankruptcy); (4) if anyone tries, by legal process, to take any of Company's money in the Credit Union; (5) if Company has given us false or inaccurate information in obtaining Company's Card; (6) if the Authorized Officer dies or if Company or a Cardholder gives us false or inaccurate information related to the Card or the Account; or (7) if anything happens which we reasonably believe endangers Company's ability to repay what Company owes.

**ACCELERATION:** If Company is in default, we may, without prior notice to Company, call any amounts Company still owes immediately due and payable plus finance charges which shall continue to accrue until the entire amount is paid. Company expressly waives any right to notice or demand, including but not limited to, demand upon default, notice of intention to accelerate, and notice of acceleration.

**LIABILITY FOR UNAUTHORIZED USE:** Company may be liable for the unauthorized use of Company's Card. Company will not be liable for any unauthorized use of Company's Card once Company notifies our processor at Cardholder Services, P.O. Box 31112, Tampa, FL 33631-3112, Fax Number (727) 571-4598, in writing or by calling (866) 820-3034, of the loss, theft, or unauthorized use of Company's Card and we have received and had a reasonable time to act on any such notification. The foregoing zero-liability limitation does not apply if Company, Cardholders, or any persons authorized to use the Card are grossly negligent or fraudulent in the handling of Company's Account or the Card, nor does it apply in the case of cash advances obtained at an ATM. In any event, if fewer than ten cards are issued to Company, then Company's maximum liability for unauthorized use will not exceed \$50. Otherwise, if the zero-liability limitation above does not apply and 10 or more cards are issued to Company, then Company will be jointly and severally liable for all unauthorized use of Company's Card. In no event, however, shall an employee Cardholder be individually liable to Company or the Credit Union for more than \$50 for unauthorized use of the Card.

**LIABILITY IN THE EVENT OF CARDHOLDER TERMINATION OF EMPLOYMENT :** In the event that a Cardholder's employment or other association with Company terminates (whether voluntarily or involuntarily) or Cardholder gives to Company or receives from Company notification of immediate or pending termination of employment or other association with Company (a "Cardholder Termination Event"), Company must immediately (a) notify us of such Cardholder Termination Event, and (b) use all reasonable efforts to collect and destroy the Card and provide written verification to us of such destruction or of Company's inability to collect and destroy the Card. Notwithstanding any other provision of this Agreement, Company and Cardholder shall be jointly and severally liable for the amount of any Cardholder transactions on the Account after the occurrence of any Cardholder Termination Event together with any applicable finance charges and other applicable fees and charges until Company complies with all of the requirements of this paragraph and we have a reasonable opportunity to revoke Cardholder's ability to use the Card and the Account.

Upon the termination of the Authorized Officer or if for any reason Company desires to change the Authorized Officer on the Account, Company shall promptly notify us and shall submit a new application for the Account or other documentation as may be required by us.

**CREDIT INVESTIGATION:** In conjunction with Company's application for credit and, if approved, maintenance of the Account, Company agrees that we have the right to investigate Company's credit history, to verify Company's credit references, to request and use credit reports, and to report the way Company pays the Account to credit bureaus and other interested parties. Company agrees to provide any information we may reasonably request in connection with the Account.

The Authorized Officer consents to our (i) investigation of the Authorized Officer's credit history, (ii) obtaining updated credit bureau reports from time to time on the Authorized Officer for the purpose of considering the Authorized Officer's request for the Account and subsequently in connection with any updates or renewals of the Account or reviewing or collecting the Account, and (iii) releasing information to, or responding to inquires from, third parties regarding the existence, status and history of the Account. The Authorized Officer agrees to provide any information we may reasonably request in connection with the Account.

If we request, within 90 days after the end of its fiscal year Company agrees to provide us with financial statements as of such fiscal year ended, including balance sheet, income statement, and cash flow statement, prepared in accordance with generally accepted accounting principles, consistently applied and audited or otherwise acceptable to us. Company also agrees to provide us with comparable quarterly financial statements and Company's tax returns upon request.

**TERMINATION OR CHANGES:** We may terminate this Agreement at any time, subject to such notice as may be required by law. By written notice, Company may terminate this Agreement or terminate the authority of a Cardholder to use the Account as to future advances at any time. Termination by either party shall not affect Company's obligation to repay any payments made for the Account resulting from use of the Card as well as finance charges and other related charges.

Upon written notice, we may add to, change, or delete any of the terms of this Agreement, including the periodic rate, at any time without limitation. If Company or Cardholder uses Company's Card to make a purchase or obtain a cash advance after

having been given notice of a change in terms, Company agrees that the existing balance in Company's Account at the time of that use will be subject to the new terms, as shall subsequent uses.

**BILLING DISPUTES:** All written communications to us concerning disputed amounts, including any check or other payment instrument (i) tendered in an amount less than the full amount due marked "Paid in Full," (ii) tendered with other conditions or limitations, or (iii) otherwise tendered as full satisfaction of a disputed amount must be sent to us at the address for inquiries shown on the periodic statement.

Company shall notify us in writing of any questions, problems, discrepancies or disputes concerning amounts reflected on a periodic statement within 60 days of the mailing of the statement in which such amounts first appear. We will promptly investigate any properly disputed amount and determine whether or not the periodic statement is correct. Until we complete our investigation and determine whether or not the periodic statement correctly reflected any properly disputed amount, we will not include such disputed amount in the average daily balance of the Account for purposes of calculating the minimum payment due. However, such disputed amount will be deemed part of the outstanding balance of the Account for purposes of applying Company's credit limit. If the result of the investigation is our determination that the periodic statement did not properly reflect the disputed amount, we will make an appropriate adjustment to the Account. If the result of the investigation is our determination that the periodic statement properly reflected the disputed amount, we will include the disputed amount in the outstanding balance of the Account for all purposes as of the date of such determination. Notwithstanding any provision to the contrary contained in this Agreement or appearing on your monthly periodic statement, (i) resolution of all claims and disputes of any kind regarding goods or services purchased using the Card or the Account shall be between Cardholder or Company and the merchant that provided the goods or services, and (ii) except prior to our determination with respect to any amount properly disputed pursuant to the foregoing provisions of this paragraph, Company may not raise a claim or dispute with a merchant as a defense to an obligation to pay us for any amounts owing on the Account.

**ILLEGAL TRANSACTIONS:** Company or Cardholder may not use the Card for any illegal transaction. Company agrees that we may decline to process any transaction that we believe in good faith to be for an illegal purpose. Company agrees that we will not be liable for declining to process any such transaction. If we do process any transaction that ultimately is determined to have been for an illegal purpose, Company agrees that Company will remain liable to us under this Agreement for any such transaction notwithstanding its illegal nature. Company agrees that any illegal use of the Card will be deemed an act of default under this Agreement. Company further agrees to waive any right to take legal action against us for Company's or Cardholder's illegal use of the Card and to indemnify and hold us and VISA International, Incorporated, harmless from and against any lawsuits, other legal action, or liability that results directly or indirectly from such illegal use.

**INTERNATIONAL TRANSACTIONS:** If a Cardholder effects an international transaction with the Card, the rate of exchange between the transaction currency and the billing currency used for processing the international transaction will be (a) 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 (b) the government-mandated rate in effect for the applicable central processing date; and in each instance, plus a 1% Foreign Transaction Fee. This fee will apply to all international purchase, cash advance, and account credit transactions, whether or not the transactions are charged in U.S. dollars.

**RENEWAL AND REPLACEMENT CARDS:** The Card is issued with an expiration date. We may issue one or more renewal Cards from time to time, unless otherwise instructed by Company. We are, however, under no obligation to issue a renewal Card and may elect, in our sole discretion, not to reissue the Card. Company and Cardholder agree to notify us immediately upon learning of the loss, theft, or possible unauthorized use of the Card or the Account. Once we are notified, we may issue a replacement Card to Cardholder, Authorized Officer, or Company.

**VISA EMERGENCY SERVICES:** If a Cardholder requests and we agree to arrange for VISA Emergency Services, Cardholder acknowledges that we may provide personal data concerning Cardholder to VISA U.S.A., its Members, or their respective contractors for the purpose of providing VISA Emergency Cash and Emergency Card Replacement Services, and Cardholder consents to the release of Cardholder's information for these purposes.

**ADDITIONAL PROVISIONS:** Each provision of this Agreement must be considered as part of the total Agreement and cannot, in any way, be severed from it. However, Company also agrees that should any part of the Agreement be found invalid, it will in no way affect the remainder of the Agreement. Company understands the validity, construction and enforcement of this Agreement shall be governed by the laws of Texas to the extent not preempted by federal law and venue shall be proper in Bexar County, Texas.

This Agreement is the final expression of the understanding between Company, the Authorized Officer and Cardholders, and us concerning the Card and the Account and may not be contradicted by any alleged oral agreement. Any representation, promise, modification, or amendment to this Agreement shall not be binding upon us unless in writing and signed by us.

Neither Company, the Authorized Officer, nor any Cardholder may assign the Account, the Card, or the privilege of using the Account or the Card to any person. We may assign the Account, this Agreement and/or any of our interests or rights hereunder to any person without prior notice.

We do not warrant any merchandise or services purchased by Company or Cardholder with the Card. All purchases and cash advances are extended at the option of the merchant or cash advancing financial institution and we are not responsible for refusal of any merchant or financial institution to honor Company's Card.

Company agrees that the Account shall be subject to all applicable rules and regulations of VISA U.S.A. Inc., as applicable, as well as applicable law. If there is any conflict between the provisions of this Agreement and the rules and regulations of VISA U.S.A. Inc., the rules and regulations of VISA U.S.A. Inc. shall control.

The Card remains our property at all times and Company agrees immediately to surrender the Card at our demand. Company agrees to pay all reasonable costs of collection and enforcing this Agreement, including court costs and attorney's fees, and any costs incurred in the recovery of the Card. We can accept late payment(s) or partial payment(s) or check(s) or money order(s) marked "payment in full" without losing any of our rights under this Agreement. We can also delay enforcing any of our rights under this Agreement without losing them. Company and Authorized Officer agree to notify us in writing within ten days following any change in Company's or Authorized Officer's name or mailing address. Company and Cardholders agree that we or our agents and service companies may monitor and/or record any telephone communications with Cardholders.

**AGREEMENT AND ACKNOWLEDGMENT:** By signing the application for a Card, or by using the Card, Company, the Authorized Officer, and all Cardholders agree to all the terms and conditions and promise to perform all the obligations, requirements, and duties set forth in this Agreement. The Company and the Authorized Officer applying for a Card and signing the application acknowledge receipt of a copy of this Agreement.