**US bank.**

**GATEWAY AGREEMENT FOR GOVERNMENT ENTITIES**

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**THIS GATEWAY AGREEMENT FOR GOVERNMENT ENTITIES** ("**Agreement**") is entered into by **U.S. BANK NATIONAL ASSOCIATION** ("**U.S. Bank**") and the entity executing this Agreement as "**Licensee.**" This Agreement is effective upon signing by U.S. Bank ("**Effective Date**").

<div align="center"><b><u>BACKGROUND</u></b></div>

U.S. Bank has built and maintains multiple, highly confidential and proprietary web-based XML interfaces and related documentation (collectively, "**Gateways**") used for the authorization and settlement of payment card transactions (the "**Transactions**"). Licensee is a merchant participant or a group of merchant participants (with the group being responsible for aggregating those merchant participants' data) in the ___Epic_____ Card Program ("**Program**"). In conjunction with the Program, Licensee wishes to use the software programs set forth on Exhibit A to this Agreement (collectively, the "**Software**") to provide an interface to the Gateways. The respective developers for each Software program (the "**Developer(s)**") are also set forth on Exhibit A.

By clicking on the "I AGREE" button or a similar affirmation, or by acknowledging acceptance of the Agreement by any other method allowed by U.S. Bank (including, without limitation, a physical or electronic signature), Licensee agrees that it has reviewed and agrees to be legally bound by the terms and conditions of the Agreement.

<div align="center"><b><u>TERMS AND CONDITIONS</u></b></div>

1.  **TERM AND TERMINATION.**
    1.1 **Term.** This Agreement will commence on the Effective Date and will remain in effect unless terminated as provided herein (the "**Term**").
    1.2 **Termination.** Either party may terminate this Agreement for cause upon 30 days' written notice, if the other party has breached its duties set forth in this Agreement and has not cured such breach within the 30-day notice period. Upon termination of this Agreement, all licenses granted hereunder immediately terminate, and Licensee shall immediately discontinue use of the Software and Gateways. Additionally, U.S. Bank may terminate this Agreement upon the termination or expiration of any underlying processing agreement that it has in place with Licensee.

2.  **LICENSE GRANT.**
    2.1 **License**. Subject to the terms and conditions of this Agreement, U.S. Bank hereby grants, and Licensee hereby accepts, a non-exclusive, non-transferable, revocable, limited license (without right to sublicense) to use the Gateways with the Software, solely for Licensee's use with its merchants/sub-merchants during the Term and for submitting Transactions to U.S. Bank.
    2.2 **Use Restrictions**. Licensee shall not, and shall not permit any third party to:
    A.  Use the Software or Gateways in any way inconsistent with the terms of this Agreement;
    B.  Use the Software or Gateways, either directly or indirectly, to develop any product or service that competes with the Software and Gateways provided pursuant to this Agreement;
    C.  Dissemble, decompile, decrypt, extract, reverse engineer, or modify the Software or Gateways, or otherwise apply any procedure or process to the Software or Gateways to ascertain, derive or appropriate for any reason or purpose, the source code or source listings for the Software or Gateways, or any algorithm, process, procedure, or other information contained in the Software or Gateways;
    D.  Provide the Software or Gateways to any third party, other than to Licensee's (or its sub-merchants') authorized employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions set forth herein;
    E.  Make any copies of the Software or Gateways, except as incidental to the purposes of this Agreement, or for archival purposes as required by applicable law (and any copies hereunder must contain all required proprietary notices);
    F.  Rent, lease, assign, sublicense, transfer, distribute, allow access to, or time share the Software or Gateways;
    G.  Circumvent or attempt to circumvent any applicable security measures of the Software or the Gateways; or
    H.  Use the Software or Gateways for any illegal purpose.

3.  **INTELLECTUAL PROPERTY AND OWNERSHIP.**
    3.1 **Intellectual Property**. U.S. Bank and its licensors retain all right, title and interest in and to the Software and Gateways, and any Intellectual Property embodied therein. Licensee has no rights other than those rights expressly set forth herein. As used in this Agreement, "**Intellectual Property**" means all patents, copyrights, trademarks, trade secrets, service marks, and any other intellectual property rights, and any applications for any of the foregoing, in all countries of the world.
    3.2 **Modifications and Derivative Works**. As between U.S. Bank and Licensee, U.S. Bank or its licensors own all right, title and interest in any modifications, derivatives, improvements, enhancements or extensions of or to the Gateways and the Software ("**Derivative Works**"), including, without limitation, any Intellectual Property, regardless of which party creates such Derivative Work. Licensee transfers, conveys and assigns to U.S. Bank in perpetuity all right title and interest to such Derivative Works. Licensee further agrees to execute any such documents, render such assistance and take such other action as U.S. Bank and its licensors reasonably request to apply for, register, perfect and protect U.S. Bank's Intellectual Property in the Derivative Works.

**3.3 Updates to Software and Gateways**.  U.S. Bank and its licensors may, in their discretion, release Updates to the Software or Gateways.  In this Agreement, "**Updates**" mean enhancements or improvements to the Software or Gateways.  Licensee agrees that: i) it is entirely responsible for maintaining compatibility with the Software and Gateways; and ii) its failure to install such Updates in a timely manner may affect the functionality of the Software and Gateways.

**3.4 Third Party Licenses**.  Certain licenses granted hereunder may be subject to other licenses held by U.S. Bank.  If any license held by U.S. Bank is terminated or otherwise expires, U.S. Bank may terminate, in its sole discretion, the corresponding license granted to Licensee.

## 4. COMPLIANCE AND SECURITY.

**4.1** Licensee shall notify U.S. Bank immediately if a Developer or any other third party has solicited or attempted to solicit Licensee, its employees or agents to: i) discontinue its use of the Gateways and commence processing with another processing service provider; or ii) split settlements or misappropriate or re-direct Transactions.  Licensee agrees that engaging in such activity or accepting such solicitations may jeopardize Licensee's eligibility to accept U.S. Bank's card(s) and remain in the Program.

**4.2** U.S. Bank shall use commercially reasonable efforts to maintain the security of the Gateways.  Licensee shall use commercially reasonable efforts to maintain the security of Software and any associated passwords.

**4.3** Licensee is solely responsible for the security of data residing on servers owned or operated by Licensee, or a third party designated by Licensee (such as a web hosting company).  Licensee shall comply with all applicable laws, policies and regulations governing the security, privacy, collection, retention and use of customer data belonging to Licensee or its merchants or sub-merchants, including, without limitation, financial information, card account numbers, and all other personally identifiable customer information.  Licensee shall further comply with all then-current rules, regulations, and security measures issued by payment networks and the Federal Trade Commission, associated with the collection, security, dissemination and destruction of data from and related to its customers and their respective Transactions (collectively, **"Transaction Data"**).

**4.4** Licensee shall take precautions to ensure that Licensee's (and its merchants/sub-merchants') server and electronic systems are secure from breach or intrusion by unauthorized third parties.  If the systems of Licensee or its merchants/sub-merchants (or systems under their respective control) are breached and an unauthorized third party has access to or has accessed Transaction Data, Licensee shall notify U.S. Bank promptly of such breach and will implement all such precautions to prevent such breaches from occurring in the future.

**4.5** Licensee shall comply, and cause its merchants and sub-merchants to comply, with all U.S. Bank security protocols and procedures in effect during the Term of this Agreement.  Licensee is solely responsible for verifying the accuracy and completeness of all Transactions submitted and processed by U.S. Bank.  U.S. Bank is not liable for any improperly processed or unauthorized Transactions or illegal or fraudulent access to Licensee's account or to Transaction Data.

## 5. CONFIDENTIALITY AND TRADE SECRETS

**5.1** As between U.S. Bank and Licensee, the Gateways and related Intellectual Property, as well as documentation supplied by U.S. Bank or its licensors ("**Documentation**") pursuant to this Agreement are U.S. Bank's trade secrets (the "**Trade Secrets**").  Licensee shall:

**A.** Maintain the confidentiality of such information, limit access to such information solely to those employees that have a need to know, and use such information only in accordance with this Agreement; and

**B.** In no way discuss or otherwise make available such information to any third parties, to the extent permitted by law.

**5.2** Nothing in this Agreement should be construed to limit or prevent Licensee from disclosing information to the extent required under the open records laws or regulations applicable to Licensee.

## 6. WARRANTIES.

**6.1** Licensee hereby represents and warrants that:

**A.** All representations and statements made by Licensee in this Agreement are accurate, and complete in all respects, and Licensee hereby authorizes U.S. Bank to verify and confirm all information provided herein;

**B.** Licensee is engaged in a lawful business and is duly licensed to conduct such business under the laws of any state, county, city and country in which Licensee operates;

**C.** Licensee will not submit any Transactions that violate any laws of any related state, county, city, or country or any bank card and payment network rules, and will otherwise comply with all applicable laws, regulations, and rules in connection with Licensee's obligations under this Agreement; and

**D.** There are no outstanding or contemplated assignments, obligations or agreements, whether written, oral or implied, that are inconsistent with the rights and obligations of this Agreement.

**The Gateways and Software are provided on an "as-is" basis, "as available," basis.  U.S. Bank does not represent or warrant that the Gateways and Software will be available, accessible, uninterrupted, timely, secure, accurate, complete, or entirely error-free. U.S. Bank specifically disclaims all representations, warranties and conditions whether express or implied, arising by statute, operation of law usage of trade, course of dealing or otherwise, including but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, non-infringement, or title with respect to the Gateways and Software.  Licensee understands and agrees that U.S. Bank**

bears no risk with respect to Licensee's sale of products or services, including, without limitation, any risk associated with card fraud or chargebacks.

7. **INDEMNIFICATION.**

**7.1** To the extent permitted by the laws of the jurisdiction in which Licensee is located, Licensee shall indemnify, defend and hold harmless U.S. Bank and its affiliates, parents and subsidiaries, and any of their officers, directors, agents and employees, from and against any claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by U.S. Bank, arising out of or related to:
   A. Any breach or alleged breach by Licensee of any representation, warranty or obligation set forth in this Agreement;
   B. Any damage or loss arising from the negligence, fraud, dishonesty, or willful misconduct of Licensee or any of Licensee's merchants/sub-merchants, employees, agents or customers;
   C. The reliability, accuracy, or legitimacy of Transaction Data as submitted to U.S. Bank;
   D. Transactions submitted by Licensee to U.S. Bank and rejected by U.S. Bank or an issuing bank;
   E. Any alleged infringement of a patent, copyright, trademark, or other intellectual property right resulting from the acts or omissions of Licensee or its merchants/sub-merchants; or
   F. Claims by customers of Licensee or its merchants/sub-merchants.

**7.2** In all cases and notwithstanding the obligations set forth in Section 7.1, each party to this Agreement will be responsible for any liability, claim, loss, damage or expenses, including without limitation, reasonable attorney fees, arising from its negligent acts or omissions in connection with its performance of this Agreement, or its failure to comply with the terms of this Agreement, as determined by a court of competent jurisdiction.

8. **LIMITATION OF LIABILITY**
   **8.1 Under no circumstances will either party or any of its parents, affiliates (or any officers, directors, employees or agents of those parties) be liable for any indirect, incidental, consequential, punitive, special, or exemplary damage or loss suffered or incurred by the other party, regardless of the form of action, or any loss of revenue, profits or business, anticipated savings, loss of goodwill or reputation, costs of delay, lost or damaged data, or the incurring of liability for loss or damage of any nature whatsoever suffered by third parties, all whether in contract, strict liability or tort (including negligence), regardless of whether it has been advised of the possibility of such damages. This exclusion will not preclude U.S. Bank from seeking indemnification, pursuant to Section 7 of this Agreement.**
   **8.2 Except with respect to indemnification obligations, in no event will a party's liability under this Agreement for all claims arising hereunder exceed, in the aggregate, $1,000.00.**
   **8.3 Licensee expressly agrees that U.S Bank will not be liable for any loss arising from or related to:**
   A. **fraudulent transactions processed through Licensee's payment Gateway accounts; or**
   B. **actions or inactions by any third party.**

9. **MISCELLANEOUS.**
   **9.1 Amendment to this Agreement; Waiver**. No modification or waiver of any of the terms and conditions of this Agreement will be binding upon U.S. Bank, whether written, oral, or in any other medium, unless made in writing and approved and signed by U.S. Bank. To the extent required by changes in technology, applicable laws or regulations (or to the extent reasonably necessary to comply with changes in U.S. Bank policy stemming from such changes in applicable laws or regulations), U.S. Bank may amend the terms and conditions set forth herein by providing Licensee notice thereof. Such amendments will take effect on the date specified in such notice. All rights and duties within this Agreement are material. No waiver of any rights hereunder will be deemed effective unless in writing executed by the waiving party. No waiver by either party of a breach or any provision of this Agreement will constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement. No failure to exercise, and no delay in exercising, any right(s) hereunder on the part of either party will operate as a waiver of any such right. All of U.S. Bank's rights are cumulative; and no single or partial exercise of any right hereunder will preclude further exercise of such right or any other right.
   **9.2 Relationship of the Parties**. Each party is an independent contractor and not an agent or representative of the other party. This Agreement does not create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon any party.
   **9.3 Assignment**. Licensee shall not assign any of its rights or delegate the performance of any of its obligations under this Agreement without the prior written consent of U.S. Bank, including in the case of merger.
   **9.4 Governing Law**. This Agreement is governed by and construed in accordance with the laws of the state in which the Licensee is located (or in the case of a federal entity, in accordance with federal law), without regard to the conflict of laws principles. The parties agree that any suit, action, or proceeding arising out of or relating to this Agreement, or the interpretation, performance or breach of this Agreement, must be instituted in any court of the State in which the defendant or respondent to such suit or action is located, or if the contracting party is a federal government entity, the necessary or applicable board of contract appeal or the Court of Federal Claims. Each party irrevocably submits to the jurisdiction of those courts and waives all objections to jurisdiction and venue.
   **9.5 Severability**. If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity will not affect the validity of the remaining provisions of the Agreement. The parties may substitute for the invalid provision which most closely approximates the intent and economic effect of the invalid provision.

**9.6** **Notices**. All notices to Licensee must be given electronically, sent to the electronic mail address provided by Licensee.

**9.7** **Survival**. The provisions of this Agreement relating to any fees or other amounts owed, confidentiality, intellectual property ownership, compliance, security, warranties, limitation of liability, indemnification, governing law, severability, and this paragraph will survive termination or expiration of this Agreement. Additionally, all obligations and duties hereunder by their nature extend beyond the expiration or termination of this Agreement survive and remain in effect beyond any expiration or termination hereof.

**9.8** **Entire Agreement**. This Agreement, together with any documents referenced herein, set forth the entire understanding and agreement of the parties, and supersede all prior or contemporaneous oral or written agreements or understandings between the parties, as to the subject matter of this Agreement. Licensee acknowledges that this Agreement reflects an informed, voluntary allocation between U.S. Bank and Licensee of all risks (both known and unknown) associated with the subject matter of this Agreement.

Date:_____     Date: _____

**By Government Licensee:**                        **By U.S. Bank:**

                                                   U.S. Bank National Association
_____              _____
Printed Name of Licensee

_____              _____
(Signature of Authorized Signer)                   (Signature of Authorized Signer)

                                                   Brad W. Hoffelt
_____              _____
(Printed Name of Authorized Signer)                (Printed Name of Authorized Signer)

                                                   Senior Vice President
_____              _____
(Printed Title of Authorized Signer)               (Printed Title of Authorized Signer)

**EXHIBIT A: SOFTWARE AND DEVELOPERS**

**SOFTWARE:**                                    **DEVELOPER:**

| QT Terminal | QTpod |
|---|---|
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