

CapitalOS User Agreement

Last Updated: 17 February 2023

This Agreement is made between User and CapitalOS and governs User's use of the Services (defined below). As used in this Agreement, "you" and "your" refers to User, and "we", "our" and "us" refers to CapitalOS.

This Agreement requires you to arbitrate any disputes arising out of or relating to this Agreement in an individual arbitration and not a class arbitration. You acknowledge and understand that by accepting this Agreement you waive any right to trial by jury or to otherwise bring any claims in court arising out of this Agreement or to participate in any type of class action or class proceeding relating to this Agreement. Section 16 describes these rights, limitations and waivers in greater detail.

You may only use the Services if you accept this Agreement. References to the Agreement means this document and any agreements, policies and other documents referenced in this document, including CapitalOS terms that supplement this Agreement. Capitalized terms used in this Agreement are defined in Section 18.

1. The CapitalOS Services.

The CapitalOS Platform and the Services allow you to: (a) obtain and manage Cards for use by you and your Authorized Users; (b) use Cards to access credit made available by CapitalOS to you and your Authorized Users; (c) fulfill periodic payments due to us for Card spend; (d) access, use, and connect to Third-Party Services; and, (e) subject to any supplemental terms we specify, access other optional services. We may change existing Services or provide new Services at any time without notice; provided that we will make commercially reasonable efforts to notify you in advance of any material change to Services on which you rely. Some Services may be delivered or supported by our affiliates, Third-Party Service Providers and Issuers and may require your agreement to supplemental terms. You acknowledge and understand that in order to use such Services, you will be required to agree to the applicable supplemental terms.

2. Your CapitalOS Account.

2.1 *Opening a CapitalOS Account.*

- (a) You must provide User Data and connect at least one Linked Account when submitting an application for a CapitalOS Account. You may also need to provide documentary information used to verify such User Data (such as corporate registration certificate, proof of address, or personal identification). During the term of this Agreement we may request that you provide additional User Data. Your failure to promptly provide requested information may result in the immediate suspension or termination of your CapitalOS Account and Cards.
- (b) We provide User Data to Issuers and Third-Party Service Providers in connection with determining your eligibility for Services and Cards. We, Issuers and Third-Party Service Providers may approve or deny access or grant you provisional access to the Services, Third-Party Services or your CapitalOS Account while your application is pending additional review. CapitalOS, Issuers and Third-Party Service Providers rely on the accuracy of User Data when opening and maintaining your CapitalOS Account. You must obtain consent from your Administrators and Authorized Users to enable CapitalOS and Issuers to collect, use, retain, and disclose User Data as described in this Agreement and in the CapitalOS Privacy Policy. You authorize us to make any background, identity verification, or other inquiry of you that we deem reasonably necessary in relation to your use of the Services and Cards. You agree to obtain authorizations from your owners, officers, Administrators, or Authorized Users so that we may perform any background or other check or report as we deem necessary. Failure of your Administrators or Authorized Users to provide consent and requested information may result in suspension of the Services.
- (c) We may suspend or close your CapitalOS Account if we become aware, or reasonably believe, that User Data is incomplete, inaccurate or out of date. You represent and warrant that you will keep all such User Data current, complete and accurate in your CapitalOS Account.

2.2 *Connecting a Linked Account.*

- (a) You must connect a Linked Account to your CapitalOS Account to use the Services, including to make required payments, as set forth in this Agreement.

- (b) You represent and warrant that the Linked Account belongs to you, you have the right to authorize us to debit your Linked Account, and that you will keep your Linked Account information accurate and up to date. You indemnify and hold us harmless from any claims made against us by any other owner of the Linked Account where we have acted in reliance of this representation and warranty. We do not take any responsibility for payments made into or out of the wrong Linked Account based on information that you provide. You may change Linked Accounts by contacting support through your CapitalOS Dashboard.
- (c) You must ensure that the balance in your Linked Account is sufficient to fund your payment obligations under this Agreement when they become due. We are not responsible for any overdraft or insufficient fund situation or charge (including finance charges, late fees or similar charges) caused by your failure to maintain a sufficient balance in your Linked Account.

2.3 *Administrators and Authorized Users.*

- (a) You must appoint at least one Administrator. Administrators may add, remove, or manage additional Administrators and Authorized Users; request and manage Cards; set or change per-Authorized User spending limits; view transactions; run reports and download statements; provide, view and update User Data; connect Linked Accounts, Third-Party Services, and other accounts to your CapitalOS Account; and perform other tasks on your behalf. You represent and warrant that each Administrator has requisite organizational power and authority to conduct business on your behalf and manage your CapitalOS Account in all respects, including managing Authorized User access and authority.
- (b) Authorized Users may use the Services (including Cards) and access certain functionality of your CapitalOS Account on your behalf; provided, however, CapitalOS may prevent an Authorized User from using a Card until CapitalOS verifies the Authorized User's identity. Authorized Users must protect and keep CapitalOS Account and Card information confidential and secure to prevent unauthorized use, misuse, or fraud. You must ensure that each Authorized User is bound by obligations that are no less restrictive than those obligations that are placed on you under this Agreement with respect to the Services, including with respect to Card usage requirements. If an Authorized User permits another person to have access to a Card, we will treat this as if you authorized that person to use the Card, and you will be liable for all Charges, Fines and other liabilities incurred by that person. You are solely responsible for notifying Authorized Users of and administering your corporate expense and spend management policies and resolving any disputes relating to your maintenance or administration of such policies.
- (c) We will assume that all actions taken by your Administrators and Authorized Users that relate to this Agreement, the Services, any Card or any Third Party Services are authorized by you and conducted on your behalf. We will also assume that any actions taken using CapitalOS Account credentials issued to an Administrator or Authorized User are taken by the Administrator or Authorized User to which the credentials were issued. You are responsible for ensuring that these assumptions are correct at all times, and you must immediately notify us if they are incorrect in any way. In any event, and despite any other provision of this Agreement, you are responsible and liable to us for any action or failure to act on the part of your Administrators and Authorized Users, and for any actions taken using CapitalOS Account credentials issued to your Administrators and Authorized Users.
- (d) We may request that you provide us with evidence that you implement processes that enable your compliance with the Administrator and Authorized User requirements set out in this [Section 2.3](#). If we determine that you are non-compliant, you must promptly take remedial steps to remedy the non-compliance.

2.4 *Platform Provider.*

- (a) If you are referred to the Services by a Platform Provider, we will work with the Platform Provider to facilitate your access to the Services. We and the Platform Provider may share User Data, and the Platform Provider's branding may appear on your Cards.
 - (b) During the term of this Agreement you authorize us to retrieve, as your agent, your Platform Account transaction history and balance information from your Platform Provider. We may also require you to provide us with access to your Platform Account in order to exercise our rights under this Agreement, in which case you will provide reasonable assistance to facilitate such access. We may debit your Platform Account for amounts you owe, as described in [Section 4](#).

- (c) For clarity, despite the presence of a Platform Provider, the Services are always provided to you, by us, in accordance with this Agreement. Similarly, any services offered by the Platform Provider are provided to you by the Platform Provider, under the terms of your agreement with the Platform Provider.

3. Cards.

3.1 *Cards.* Through the Services, we may permit you to apply for, and obtain, one or more commercial Cards. Cards are issued by the Issuer identified on the back of physical Cards and in relevant program materials provided to you. Each Card remains the property of the relevant Issuer and must be returned upon request. This Agreement and the terms specified by the relevant Issuer and Card Network governs use of Cards by you and your Authorized Users. We may cancel, revoke, repossess or restrict the use of Cards at any time. We may, or Issuer may, decline to authorize or reverse Charges or suspend Cards for any reason including violation of this Agreement or suspected fraud. We also may decline to authorize Charges at merchants characterized by a Card Network or us as prohibited merchants. We are not responsible for losses or damages resulting from declined or reversed Charges, or if a merchant refuses to honor a Card or accept a transaction. You agree that CapitalOS is the lender of record and, as between you and CapitalOS, CapitalOS is solely responsible for any disputes, complaints, or claims you may have concerning the Cards or this Agreement.

3.2 Spending Limits.

- (a) CapitalOS may decline to authorize a transaction that would cause you to exceed or violate any of the limits set forth in this [Section 3.2](#). You may view these limits through the CapitalOS Dashboard.
- (b) When you open a CapitalOS Account, we will establish a Total Spending Limit for Cards available under your CapitalOS Account. We may increase or decrease the Total Spending Limit at any time without notice based on risk and credit considerations. If you reach the Total Spending Limit prior to the end of a Billing Cycle, you will not be permitted to make any further Charges that would cause you to exceed or violate any of the spending limits on the Card during that Billing Cycle.
- (c) Subject to the Total Spending Limit and without notice, we may set Card Spending Limits which we may increase or decrease at any time.
- (d) Subject to the Card Spending Limits and without notice, we may set Single Transaction Limits which we may increase or decrease at any time.
- (e) The aggregate amount available for Charges on Cards associated with your CapitalOS Account during a Billing Cycle will be the lesser of: (1) the amount displayed in the CapitalOS Dashboard; and (ii) the Total Spending Limit. The amount available for Charges on a particular Card will be subject to the Card Spending Limit for such Card.

3.3 *Merchant Holds on Available Funds.* When an Authorized User uses a Card to initiate a transaction at or through certain merchant locations, websites, or mobile applications where the final purchase amount is unknown at the time of authorization—such as hotels, restaurants, gas stations, and rental car companies—a hold may be placed on your aggregate amount available for Charges in an amount equal to or in excess of the final transaction amount. The funds subject to the hold will not be available to an Authorized User for any other purpose until the merchant sends the final transaction amount. Once the final transaction amount is received, it may take up to seven days for the hold to be removed. During that period, the Authorized User will not have access to the funds subject to the hold.

3.4 *Declined Transactions.* Notwithstanding anything to the contrary in this Agreement, CapitalOS may decline to authorize a transaction involving any Card associated with your CapitalOS Account for security or any other reason. This includes, for example, if CapitalOS suspects the transaction is fraudulent, is subject to U.S. economic sanctions, or does not otherwise comply with this Agreement, or where CapitalOS reasonably believes that you may be unable to fulfill your obligations with respect to the resulting Charge under this Agreement.

4. Payments to CapitalOS.

4.1 Periodic Statements and Amounts Owed to CapitalOS.

- (a) You must pay in full all Charges, Fines and other amounts owed by you at the end of each Billing Cycle. We will provide you with a Periodic Statement for each Billing Cycle identifying the amount owed for the Billing Cycle. Each Periodic Statement will show the closing date for that Billing Cycle and the due date for payment of the amount owed.

- (b) On the payment due date identified in a Periodic Statement, we will attempt to collect payment by debiting the amount owed from (1) your Platform Account; or (2) the Linked Account. If the debit is successful, your CapitalOS Account will show the credit. If the debit is not successful, you will be responsible for incurred fees, and we may demand that you pay the amount due within 5 business days. If you fail to make payment in full within this period then we may impose a late payment charge of 5% of the unpaid amount. We may also suspend your access to the Services and ability to make further Charges on Cards. The imposition of the late payment charge or suspension of access is in addition to any other rights and remedies we may have under this Agreement, and we may continue to retry a debit, or attempt a debit for a smaller amount than the amount due, until the amount owed is paid in full.
- (c) As detailed in [Section 2.2](#), you must maintain at least one Linked Account at all times. Your Linked Account may be debited for the full amount owed as identified in the Periodic Statement at the end of each Billing Cycle. We may also directly debit any Linked Account for other amounts owed under this Agreement.

4.2 *Set Off and Collections.*

- (a) Charges listed on Periodic Statements and any other amounts owed under this Agreement that are not paid on time may be collected from any Linked Account that is currently linked; from any Platform Account; or set off, debited, or collected from amounts in a CapitalOS Account that you hold jointly with a third party or open in the future even if your original CapitalOS Account has been closed. This right may be exercised against you, your affiliates, and any assignees for the benefit of your creditors or receivers. This right will exist even if we do not exercise it prior to the making, filing, or issuance of an arbitration demand, court order, or other action.
- (b) Any failure to pay the full amount owed to us when required is a breach of this Agreement. You are responsible for all costs or expenses that we and our Issuers incur collecting amounts owed but not timely paid, including legal or collections fees and any interest at the maximum rate permitted under law.

4.3 ***ACH Authorization. This Section provides authorization to automatically debit your Linked Accounts for all amounts you owe under this Agreement. Please read through it thoroughly.***

- (a) You authorize us, our affiliates, their respective assigns, and their respective financial services providers to collect amounts owed under this Agreement by debiting funds from your Linked Accounts at depository institutions (including bank and credit unions) using the Automated Clearinghouse (**ACH**) network governed by the rules established by the National Automated Clearinghouse Association (**NACHA**). These debits are bound by NACHA rules for business-related ACH debits.
- (b) To withdraw the debit authorization for a Linked Account, you must provide us 30-day advance notice and pay all amounts owed under your CapitalOS Account immediately, including Charges and other amounts that may be included in future Periodic Statements. Such withdrawal of a debit authorization does not terminate this Agreement or affect your obligation to pay all amounts owed under this Agreement, and you remain responsible for all losses and collection costs that we incur due to your failure to pay amounts when due. If you withdraw debit authorization, we may reduce spending limits (including to zero), or terminate or otherwise limit your CapitalOS Account.

5. **Requesting and Using Cards.**

5.1 *Requesting Cards.* Administrators may request Cards for Authorized Users through your CapitalOS Account. Card requests may be denied or canceled due to changes in an Issuer's or our policies, as required by law, or for other reasons we determine are appropriate under the circumstances. Cards may be issued to Authorized Users. Administrators will be able to view transactions and manage Cards through the CapitalOS Dashboard.

5.2 *Using Cards.* Authorized Users may only use Cards for bona fide business-related Charges. You must establish and maintain sufficient controls to ensure that Cards are only used for your bona fide business purposes and in compliance with Card Network rules. We, an Issuer, a Card Network, or other intermediary Third-Party Service Providers (including merchant acquirers) may deny or reverse Charges for any reason. We are not responsible for any losses, damages, or other harm caused due to Charges that are denied or reversed.

5.3 *Split Transactions.* Authorized Users may use Cards for Split Transactions. Some merchants, however, do not permit Split Transactions. If an Authorized User seeks to conduct a Split Transaction, the Authorized User must tell the merchant the exact amount to charge on the Card. If the Authorized User fails to inform the merchant that the

Authorized User wishes to pay for a purchase with a Split Transaction and a Charge for the entire purchase amount would cause you to exceed or violate any of the limits set forth in [Section 3.2](#), the Card is likely to be declined.

5.4 Foreign Currency Transactions. If an Authorized User makes a transaction using a Card in a foreign currency (including, for example, online purchases from a merchant located outside of the U.S.), the Card Network will convert any transaction in foreign currency into U.S. dollars using an exchange rate for the applicable central processing date that is (1) selected by the Card Network from the range of rates available in wholesale currency markets, which rate may vary from the rate the Card Network receives, or (2) the government mandated rate. The conversion rate may differ from the rate on the transaction date or the posting date, and from the rate that the Card Network receives. A merchant or other third party may convert a transaction into U.S. dollars or another currency, using a rate they select, before sending it to the Card Network.

5.5 Automatic Billing Updates. Authorized Users may set up automatic billing or store Card information with Permitted Party. If that is done, Authorized Users authorize Issuer to share Card or Account information, which may include any rewards account balance, with the Permitted Party. If Card information changes, the Authorized User authorizes Issuer to provide this updated information to a Permitted Party in its sole discretion. Authorized Users must contact the Permitted Party directly or remove Card information from the Permitted Party's records (for example, a website) in order to stop automatic billing or CapitalOS Account updates.

5.6 Refunds; Returns. An Authorized User will not receive cash refunds for Card transactions. If a merchant gives an Authorized User a credit for merchandise returns or adjustments, the merchant may do so by processing a credit adjustment for the Charge, which will be credited to the amount available for Charges under your CapitalOS Account.

5.7 Disputed Charges. If you have a dispute with a merchant regarding the product or service that is the subject of a Charge, you should contact the merchant or seller to resolve the dispute. If a dispute is not appropriately addressed with the merchant, then you may submit a Chargeback of the relevant Charge via the CapitalOS Dashboard. You acknowledge that Chargebacks are subject to the Card Network rules and you may not be able to successfully charge back the Charge. If you believe a Charge was unauthorized, or if you believe the Periodic Statement contains any errors, you should contact us immediately through the CapitalOS Dashboard. You must report any disputed Charge or error no more than 60 days (or a longer period if mandated by law) after the disputed Charge is posted to your CapitalOS Account, with details about the disputed Charge, and an explanation of your belief that the disputed Charge was made in error or was unauthorized. We will review the information submitted in a commercially reasonable manner. To avoid late fees and reduction to your spending limits, you should pay the disputed Charge while we determine the validity of the dispute, except where a provisional credit has been issued. If the dispute is deemed valid, we will credit the disputed Charge amount back to your CapitalOS Account. You hereby assign and transfer to us any rights and claims, excluding tort claims, that you may have against any merchant or seller for any disputed Charge that is fully or partially credited to your Cards.

5.8 Renewal or Replacement Cards. CapitalOS may approve renewal Cards or replacement Cards before current Cards expire. You must, or you must ensure Authorized Users, destroy any expired physical Cards. Administrators may submit a request in the CapitalOS Dashboard that an Issuer issue replacement Cards. Replacement Cards may have new account numbers that will require you to update the Card for scheduled or recurring payments. If you do not update a Card for scheduled or recurring payments, these transactions may not be completed. Except as stated otherwise in this Agreement, you are solely responsible for updating Cards stored with merchants where account numbers have changed. This Agreement, including as amended, continues to apply to any renewal or replacement Cards issued.

5.9 Lost or Stolen Cards; Unauthorized Access to CapitalOS Account. You must take adequate measures to prevent unauthorized Card transactions, including when a Card is lost or stolen, and you must keep your CapitalOS Account secure and only provide access to individuals that you have authorized. When stored or processed digitally, you must use appropriate organizational and technical measures to secure Cards, including through the use of industry-standard encryption. You must immediately disable access to your Cards if you know or believe access to your CapitalOS Account or Cards has or may have been compromised. You must promptly lock compromised Cards via the Services and notify us of any known or reasonably suspected unauthorized access or use. In the event that a Card or related numbers or information is lost, stolen, or compromised, the Authorized User must immediately contact CapitalOS and fully cooperate with CapitalOS's efforts to investigate the lost, stolen, or compromised Card and remediate or mitigate the effects of any fraud or other harm caused by such event, including without limitation by facilitating communications with Authorized Users and promptly providing documentation and information relevant to such efforts. As between you and us, you are responsible for financial loss caused by Administrators, Authorized Users, or other persons that use your credentials to access the Services or your CapitalOS Account. Issuer shall have no responsibility or liability to you for any financial or other loss you may incur in connection with your use of the

Cards or the Services. We may suspend access to your CapitalOS Account or Cards if we believe your CapitalOS Account or Cards have been compromised or that not doing so may pose a risk to you, CapitalOS, Issuers, or any third parties.

6. Requirements and Prohibited Activities.

6.1 CapitalOS Account Eligibility. Only sole proprietors and companies organized and registered in the United States (such as C-corps, S-corps, LLCs, or LLPs) may apply for a CapitalOS Account. Consumers, and companies registered outside the United States, are not permitted to use, or attempt to open or use, a CapitalOS Account. Foreign offices or affiliates of United States entities, and Authorized Users based at such foreign offices, may use the Services and be issued Cards subject to any requirements imposed by us and the applicable Issuer. You represent and warrant that you are and will continuously throughout the term of this Agreement be duly organized and in good standing under the laws of its jurisdiction of incorporation.

6.2 Minimum Age. You must ensure that your Administrators and Authorized Users are all over the age of 18. If you are a sole proprietor, you must be at least 18 years old.

6.3 Permitted Uses. Your CapitalOS Account, Services, and Cards may only be used for your bona fide business expenses. Your CapitalOS Account, Services, and Cards may not be (1) used for any purpose that is unlawful or prohibited by this Agreement; (2) used for any personal, family, or household use; (3) provided to or used for the benefit of an individual, organization, or country that is blocked or sanctioned by the United States, including those identified by the United States Office of Foreign Asset Control (**OFAC**); (4) used by unaffiliated third parties; or (5) used for any other activities not for your benefit.

6.4 Prohibited Activities. We will not approve and may suspend or terminate CapitalOS Accounts and Cards that we know or believe are engaged in any of the prohibited activities identified in the Prohibited Activities List, or any other restricted category as determined by us or an Issuer in our or their sole discretion. Where you are engaged in certain restricted activities, we may require that you provide additional information to open or maintain your CapitalOS Account. We may update the list of prohibited or restricted activities at any time and from time to time. You must review the list regularly and contact us with any questions you have about how this list may apply to your business.

6.5 Suspension and Termination. Without limiting [Section 13.3](#), we may immediately suspend or terminate access to your CapitalOS Account, the Services or Cards if we believe in our sole discretion that you have violated this [Section 6](#), if required by an Issuer, or to comply with applicable laws or regulations. Without limiting any of your indemnification or other obligations to us, you will pay all fines and penalties imposed on us or any of our affiliates, officers, employees, agents or representatives by Issuers, regulators, or government agencies as a result of your breach of this [Section 6](#).

7. Fees.

We will not charge you any fees (other than the late payment charge referred to in [Section 4.1\(b\)](#)) to use the Services. However, you remain responsible for (a) all amounts payable by you under this Agreement, including Charges and Fines associated with your use of Cards; and (b) all fees charged by your Platform Provider, which may include fees that are payable when you access the Services via the Platform Provider.

8. Ownership and License.

As between you and us, we and our licensors own the CapitalOS Platform, Services and related technology, including applications that provide Administrators and Authorized Users with access to the Services; and copyrights, patents, trade secrets, trade or service marks, brands, logos, and other intellectual property rights in or to any of the foregoing ("**CapitalOS Property**"). You, Administrators, and Authorized Users may use CapitalOS Property only as and for the purposes provided in this Agreement. You may not modify, reverse engineer, create derivative works from, or disassemble CapitalOS Property; or register, attempt to register, or claim ownership in CapitalOS Property or portions of CapitalOS Property. We grant you a nonexclusive and nontransferable license to use CapitalOS Property as permitted by this Agreement to the extent that we provide it to you via the Services. This license terminates upon termination of this Agreement unless terminated earlier by us.

9. Privacy and Data.

9.1 Privacy Policy. The CapitalOS Privacy Policy describes how we collect, use and share Personal Information. The provisions of this Agreement dealing with User Data supplement the CapitalOS Privacy Policy, to the extent that the User Data includes Personal Information.

9.2 Data Use and Disclosure. We, Issuers and Card Networks collect and process User Data through your use of Cards, the Services (including received through Linked Accounts), and Third-Party Services. We, Issuers and Card Networks may use and disclose User Data: (a) to provide Services to you, Administrators and Authorized Users; (b) as required by law or Card Network rules; (c) for underwriting, identity verification, and fraud prevention; (d) to verify account balances and account information, identify spending patterns, and determine spending limits; (e) to analyze and report transactions; (f) to mitigate or avoid harm to us, Issuers or any third party; (g) for internal analytics and reporting; (h) as needed in dispute resolution; or (i) as otherwise permitted by law or the CapitalOS Privacy Policy. Except as prohibited by law, we may use and disclose anonymized, aggregated data for our own purposes, including to improve and develop CapitalOS products, services, and marketing efforts (such as developing data products and providing aggregate insights to other customers). We may also include anonymized, aggregated data in both public and private reports.

9.3 Marketing and Promotions. We will not share any User Data with third parties for marketing their unaffiliated products without your consent but may use User Data to identify Services, Third-Party Services, and programs that we believe may be of interest to you for the purpose of promoting them to you, including as part of a rewards, benefits or joint marketing program.

9.4 Feedback. You acknowledge and agree that any Feedback you submit is not confidential. We have no obligation to compensate or credit you for Feedback you provide, regardless of whether or how we may use or otherwise commercialize or exploit it. You grant us a royalty-free, fully-paid, irrevocable, perpetual, nonexclusive, worldwide, assignable and otherwise transferrable license, with the unrestricted and unlimited right to grant sublicenses, (a) to create derivative works based upon any Feedback, and (b) to use, copy, display, publish, distribute or otherwise commercialize or exploit in any manner any Feedback or derivative works based on the Feedback.

9.5 Identification as Customer. We may publicly reference you as a CapitalOS customer on our website or in communications during the term of this Agreement. You grant us a limited license to use your name for this purpose. Please notify us if you prefer that we not identify you as a CapitalOS customer and we will use best efforts to remove references to you on our website or in communications.

10. Disclaimer of Warranties by CapitalOS.

10.1 General Disclaimer. The CapitalOS Platform, Services and CapitalOS Property are provided to you as is and as available. We disclaim all express, implied, or statutory warranties, with respect to the CapitalOS Platform, Services and CapitalOS Property, and you acknowledge that no CapitalOS personnel are authorized to provide any such warranty (except in a written document identified as an amendment to this Agreement and executed by authorized representatives of each party).

10.2 Third-Party Services Disclaimer. We do not provide, control, recommend or endorse Third-Party Services. We do not provide support for and disclaim all liability arising from failures or losses caused by or relating to Third-Party Services.

10.3 Services Disclaimer. The Services (including any data) provided under this Agreement: (a) may not be accurate and error-free; (b) may contain defects, and not meet your specific needs or requirements; (c) may not be uninterrupted, secure, or free from hacking, viruses, or malicious code; and (d) may not be usable by you, Administrators, or Authorized Users at any particular time or location (e.g. a merchant may refuse to accept a Card). You access the Services with the understanding that these risks may occur, and we are not liable for any losses or damages that you, Administrators or Authorized Users may suffer if these risks occur.

11. Limitation of Liability.

Neither CapitalOS, Issuer, their respective affiliates, or any of their or their respective affiliates' employees, officers, directors, or Third-Party Service Providers is liable to you for consequential, indirect, special, exemplary, or punitive damages, lost profits, damage attributable to reputational harm, physical injury or property damage, or lost revenue arising from or related to this Agreement or to the Services or Cards, including your use of or inability to use Services or Cards, whether or not we were advised of their possibility by you or third parties. To the maximum extent permitted by applicable law, our aggregate liability to you under this Agreement for all claims under or related to this Agreement is limited to the greater of: (1) the total card interchange attributable to your Charges that is received by CapitalOS during the 3 months preceding the event that is the basis of your claim; and (2) \$1,000. These limitations apply regardless of the legal theory on which your claim is based.

12. Indemnification.

You will indemnify us, the Issuers, their respective affiliates, and each of their respective affiliates' employees, officers, directors, and Third-Party Service Providers, (each an "**Indemnitee**") and hold them harmless from and against any losses, liabilities, damages, claims, costs or expenses (including reasonable attorneys' fees) arising out of or relating to claims, proceedings, suits, or actions brought by or initiated against us or any of the other Indemnitees specified above by any third party (a) due to your breach of this Agreement or an act (or failure to act) by any Administrator or Authorized User that, if done by you, would constitute a breach of this Agreement, (b) your breach of any terms applicable to any Third-Party Services or any other agreements you have entered into with us or an Issuer; (c) for amounts owed by you to third parties; (d) for acts or omissions of Administrators, Authorized Users, or your other employees or agents; (e) in relation to your use of Third-Party Services; (f) in relation to a dispute between you and any merchant; (g) your actual or alleged infringement, violation, or misappropriation of a third party's intellectual property or proprietary rights; (h) alleging gross negligence, fraud or intentional misconduct by you, your Administrators or Authorized Users; or (i) alleging violation of law or the Card Network or NACHA rules by you, your Administrators or Authorized Users. We may defend any claim that is subject to indemnification, using counsel of our choice, and you will pay or promptly reimburse us for the reasonable fees of such counsel and all related costs and reasonable expenses.

13. Term and Termination.

13.1 Term. This Agreement will continue until terminated by either you or us.

13.2 User Termination. You may terminate this Agreement by paying all amounts owed and providing notice to us. You remain responsible for Charges, Fines, and other amounts owed as at the date of termination. Your payment and our acceptance of any amounts owed does not extinguish or waive any rights we may possess under this Agreement.

13.3 CapitalOS Termination or Suspension. We may terminate this Agreement at any time for any or no reason by providing you with at least 28 days advance notice. We may also terminate this Agreement, or suspend your CapitalOS Account or access to the Services (including Cards), immediately if: (a) you breach this Agreement, Card Network rules or NACHA rules, or violate law; (b) you fail to pay when due any amounts you owe in connection with the Services; (c) you file for dissolution or bankruptcy; (d) you use inaccurate or false information when you apply for your CapitalOS Account or otherwise provide inaccurate or false information to us; or (e) you pose unacceptable regulatory, reputational, or financial risk to us or an Issuer, as determined by us in our sole discretion.

13.4 Consequences of Termination. Upon termination of your CapitalOS Account, you will no longer have access to the Services and any related Cards will immediately expire. If you reapply or reopen your CapitalOS Account or use or attempt to use the Services or Cards you are consenting to the Agreement in effect at that time.

14. Notices and Communications.

14.1 CapitalOS Notices. Our notices to you will be effective when provided electronically to you or an Administrator through the Services, via email, or (except as provided below) via SMS to the contact information provided to us. Notices to you and to Authorized Users will be deemed to be received 24 hours after they are sent, provided that notices captioned or otherwise designated as "URGENT" or "READ IMMEDIATELY" will be deemed to be received when sent.

14.2 User Notices. Your notices to us must be in writing, and sent to legal@capitalos.com.

14.3 Electronic Communications. You consent to us providing electronic notices to you and to Administrators and Authorized Users, including in each case those required by law. Consent to receive notices electronically may be withdrawn only by closing your CapitalOS Account. You will ensure that all Administrators and Authorized Users consent to receiving notices electronically. You must notify us immediately if you are or believe you are having problems receiving our communications. You are solely responsible for ensuring that no notices are blocked or delayed by any spam filter or like mechanism.

14.4 SMS Messages. We will request your additional consent prior to sending Administrators and Authorized Users SMS messages. If you provide consent, you will procure consent from your Administrators and Authorized Users to receive SMS messages from us. Administrators or Authorized Users may cancel SMS messaging at any time by texting "STOP" to the short code. After an Administrator or Authorized User sends the SMS message "STOP" to us, we will use a further message to confirm the unsubscribe request. After this, the Administrator or Authorized

User will no longer receive SMS messages from us, unless further authorization is provided. As always, message and data rates may apply to SMS Messages. You can alter your communication preferences by submitting a support request via the CapitalOS Dashboard.

15. Governing Law.

This Agreement will be construed and enforced in accordance with the laws of the State of New York, except that the Federal Arbitration Act (9 USC 1-16) will govern arbitration conducted under this Agreement.

16. Binding Arbitration.

Please read this “Binding Arbitration” provision very carefully. It limits your rights if there is an Agreement Dispute between you and us.

16.1 Cooperation to Resolve Disputes. The parties will cooperate and attempt in good faith to resolve any Agreement Dispute promptly by negotiating between persons who have authority to settle the Agreement Dispute.

16.2 Arbitration. All Agreement Disputes will be finally resolved by one arbitrator in accordance with the most current version of the Comprehensive Arbitration Rules and Procedures published by Judicial Alternatives and Mediation Services (**JAMS**), and judgment upon the award rendered by the arbitral tribunal may be entered in any court with jurisdiction. The arbitrator will be mutually agreed upon by the parties, or in the absence of such agreement within 30 days from the first referral of the Agreement Dispute to JAMS, designated by JAMS. The place of arbitration will be New York, New York unless you and we agree to another location. The arbitral award will be final and binding. The parties waive any right to appeal the arbitral award, to the extent a right to appeal may be lawfully waived. Each party retains the right to seek judicial assistance: (1) to compel arbitration, (2) to obtain interim measures of protection prior to or pending arbitration, (3) to seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect the unauthorized disclosure of its proprietary or confidential information, and (4) to enforce any decision of the arbitrator, including the final award.

16.3 Class Waiver. To the fullest extent permitted by law, each of the parties agrees that any dispute arising out of or in connection with this Agreement, whether in arbitration or in court, will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim or dispute proceeds in court rather than through arbitration, each party knowingly and irrevocably waives any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated between the parties.

16.4 Arbitrator Decision. Subject to the limitations of liability identified in this Agreement, the appointed arbitrator may award monetary damages and any other remedies allowed by the laws of the State of New York. In making a determination, the arbitrator will not have the authority to modify any term or provision of this Agreement. The arbitrator will deliver a reasoned written decision with respect to the dispute to each party, who will promptly act in accordance with the decision. The decision of the arbitrator will be final and binding on the parties, and will not be subject to appeal or review.

16.5 Confidentiality of Proceedings. The arbitration proceedings contemplated by this subsection will be confidential to the extent permitted by applicable law. To that end, the parties will not disclose the existence, content or results of any proceedings conducted in accordance with this [Section 16](#), and materials submitted in connection with such proceedings will not be admissible in any other proceeding, provided, however, that this confidentiality provision will not prevent (1) disclosure to professional advisors bound by duties of confidentiality; (2) disclosure necessary to commence or enforce an arbitral award, (2) disclosures required by any laws or regulations, or (3) our disclosure during confidential settlement negotiations.

17. General.

17.1 Legal Process. We may respond to and comply with any legal order we receive related to your use of the Services, including subpoenas, warrants or liens. We are not responsible to you for any losses you incur due to our response to such legal order. We may take any actions we believe are required of us under legal orders including holding funds or providing information as required by the issuer of the legal order. Where permitted, we will provide you reasonable notice that we have received such an order.

17.2 Assignment. We may assign, pledge, delegate or otherwise transfer this Agreement or our rights, powers, remedies, obligations, and duties of performance under this Agreement at any time. Any such assignee will have all rights as if originally named in this Agreement instead of CapitalOS. You may not assign this Agreement or any rights

under this Agreement, or delegate any of your obligations or duties of performance, without our express written consent.

17.3 Headings and Interpretation. Except where specified, all references to *sections* or *provisions* refer to this Agreement. The phrases *including*, *for example*, or *such as* do not limit the generality of the preceding words; the word *or* will be read to mean *either... or... or any combination of the preceding items*; and provisions listing items and using *and* require all listed items.

17.5 Modifications to this Agreement. We may modify this Agreement, including any incorporated terms, by posting an amended version and including the date of the revision. The amended version will be effective at the time we post it, unless otherwise noted. If such modifications constitute a material change to the Agreement, we will provide you with reasonable prior notice before the modifications become effective as to you. The modified Agreement may take effect immediately in exigent circumstances, including where required to comply with applicable law, regulation or Card Network rules or to avoid or mitigate any material risk, loss or damage. If you do not accept any such modification, you must close your CapitalOS Account. If you continue to use the Services or Cards after a modification takes effect, you will be deemed to have consented to the modification.

17.6 Waiver. Any waiver, modification, or indulgence that we provide to you, of any kind or at any time, applies only to the specific instance involved and will not act as a general waiver or a waiver, modification, or indulgence under this Agreement for any other or future acts, events, or conditions. Further, any delay in enforcing our rights under this Agreement does not constitute forfeiture of such rights.

17.7 Severability. If any provision of this Agreement is determined by any court or governmental authority to be invalid, illegal, or unenforceable, this Agreement will be enforced as if the unenforceable provision were not present and any partially valid and enforceable provision will be enforced to the extent that it is enforceable.

17.8 Survival. 4 (Payments to CapitalOS), 9 (Privacy and Data), 10 (Disclaimer of Warranties by CapitalOS), 11 (Limitation of Liability), 12 (Indemnification), 13 (Term and Termination), 15 (Governing Law), 16 (Binding Arbitration), 17.1 (Legal Process), 17.2 (Assignment); and any other provisions of this Agreement giving rise to continued obligations of the parties will survive termination of this Agreement.

17.9 Entire Agreement. This Agreement constitutes the entire understanding between you and us regarding the subject matter of this Agreement, and supersedes any and all prior oral or written understandings or agreements between us and you in relation to the access to and use of the CapitalOS Platform and the Services. .

18. Definitions.

The following terms have the meaning as set forth below:

“**ACH**” means the Automated Clearinghouse network, which is governed by NACHA.

“**Administrator**” means an employee that you authorize to manage your CapitalOS Account.

“**Agreement Dispute**” means any dispute, controversy, or claim arising out of or relating to this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity of this Agreement.

“**Authorized Users**” means the employees, contractors, agents, or other individuals you designate via the Services as users of the Services (including the Cards).

“**Billing Cycle**” means the billing period identified in the CapitalOS Dashboard.

“**CapitalOS**” means CapitalOS, Inc. and its affiliates.

“**CapitalOS Account**” means an account with CapitalOS that enables you to access the Services.

“**CapitalOS Dashboard**” means the user interface via which you and your Administrators may administer your CapitalOS Account, which may be hosted within a user interface maintained by your Platform Provider.

“**CapitalOS Platform**” means the applications, software, Application Programming Interfaces (APIs), user interfaces (including the CapitalOS Dashboard) and other technology that CapitalOS uses to provide services to its users.

“**Card**” means a physical or virtual commercial payment card issued by an Issuer.

“Card Network” means a payment card network, such as Visa and Mastercard.

“Card Program Manager” means the manager of the Card program, which as at the last updated date of this Agreement is Increase Technologies, Inc. If we add or remove a Card Program Manager we will reflect that change in an update to this Agreement.

“Card Spending Limit” means the maximum aggregate amount available for outstanding charges on a particular Card during a Billing Cycle.

“Charge” means a charge that you or an Authorized User incur on a Card.

“Chargeback” means a request that you initiated by a payment card user to invalidate a completed payment card charge, also defined as a “Dispute” by certain Card Networks.

“Feedback” means feedback, suggestions, ideas, or requests you submit or otherwise communicate to us by any means.

“Fines” means all fines, fees, penalties, or other charges imposed by us, an Issuer or regulatory authority arising from your breach of this Agreement, any other agreements you have with us or an Issuer, any law, any regulation or any Card Network or NACHA rules.

“Issuer” means an issuer of Cards, which as at the last updated date of this Agreement is First Internet Bank of Indiana, an Indiana-chartered bank. Cards are made available to you under this Agreement through CapitalOS as your lender of record, and references to “Issuer” in this Agreement also refer to the Card Program Manager in its capacity as program manager for the Card program. If we add or remove an Issuer we will reflect that change in an update to this Agreement.

“Linked Account” means a linked funding account with a U.S. depository institution.

“NACHA” means the National Automated Clearinghouse Association.

“Periodic Statement” means a periodic statement identifying, for a given Billing Cycle, the Charges, Fines, reimbursements and other amounts charged to your CapitalOS Account in connection with the use of Cards, as well as any refunds, Chargebacks, payments or other amounts credited to your CapitalOS Account in connection with the use of Cards.

“Permitted Party” means, collectively, a merchant or other third party permitted by an Authorized User to receive updated Card or CapitalOS Account information through the automatic billing updater.

“Personal Information” means information that identifies or could reasonably be used to identify a natural person.

“Platform Account” means an account in your name held by a Platform Provider.

“Platform Provider” means a platform that facilitates your access to the Services.

“Services” means services provided through the CapitalOS Platform (excluding any Third-Party Services).

“Single Transaction Limit” means the maximum aggregate amount available to be charged to a particular Card for a single transaction.

“Split Transaction” means a transaction in which an Authorized User instructs the merchant to initiate a Charge for part of the total amount owed for the purchase and the Authorized User pays the remaining amount of the purchase with cash or another card.

“Third-Party Services” means services and data provided by third parties connected to or provided through Services.

“Third-Party Service Provider” means any provider of any Third-Party Service or other third party that assists us in providing the Services to you, that supports our internal operations, or that provides other services related or connected to, or provided through, the Services or your CapitalOS Account.

“Total Spending Limit” means the maximum aggregate amount available for charges across all Cards associated with your CapitalOS Account during a Billing Cycle.

“User” means an entity or sole proprietor applying to create a CapitalOS Account.

“User Data” means information or documentation provided to us by you or on your behalf under this Agreement, including (a) business information (such as registered business name and state of incorporation, business address, ownership details, actual or anticipated revenue, the nature of the business, taxpayer identification number and other business information we may request from time to time), (b) names, contact information, taxpayer identification numbers and dates of birth of your Administrators, Authorized Users and beneficial owners, and (c) Linked Account information, including bank balance, transaction, and other account information. User Data may include Personal Information.

Prohibited Activities List

Prohibited Businesses and Persons. The following may not open or attempt to open an account with, or utilize services provided by CapitalOS:

- Entities and persons listed on the specially designated nationals (SDN) list published by the [United States Treasury Office of Foreign Asset Control](#); and
- Entities and persons identified for comprehensive financial sanctions by the United States Department of State.

Prohibited Business Activities. Users that are primarily engaged in the following activities as a business will be prohibited from using Services:

- (a) For any illegal purposes;
- (b) Sale of Schedule I controlled substances with or without a pharmaceutical license, or sale of Schedules II-V controlled substances without a pharmaceutical license, where such schedules are defined by the United States Department of Justice, Drug Enforcement Agency (DEA);
- (c) Production, sale, or distribution of marijuana;
- (d) Production, sale, or distribution of guns, accessories, ammunition, and other weapons;
- (e) Gambling, betting, lotteries, sweepstakes, or games of chance;
- (f) Sale of cigars and tobacco;
- (g) Purchase, sale, or mining of cryptocurrency;
- (h) Financial services providers including banks or bank affiliates, securities brokers, money transmitters, stored value providers, debt repayment providers, ATMs, or wire transfer agents;
- (i) Crowdfunding or fundraising campaigns;
- (j) Sale of pornography or other explicit video or image content;
- (k) Prostitution, escort, or dating services;
- (l) Telemarketing or timeshare dealers;
- (m) Sale of counterfeit or "gray market" goods or services;
- (n) Get-rich-quick schemes, multi-level marketing, high-frequency and automated purchasing for third parties, or activities that may be considered unfair, deceptive, or abusive acts or practices (UDAAP);
- (o) Facilitation of bail bonds, bail payments, court fees, fines, child support payments, and alimony payments;
- (p) Businesses not selling bona fide goods or services;
- (q) Accounts designed to hide ownership identity;
- (r) Use of CapitalOS services for personal, family household use, or any non-commercial use;
- (s) Activities that that CapitalOS, in its sole discretion, identifies as high-risk; or
- (t) Use of the Services that is inconsistent with or prohibited by the Agreement.

Prohibited Transaction Activities. Users will be prohibited from making Transactions involving the following activities:

- (a) Purchase of any illegal goods or services;
- (b) Purchase of Schedule I controlled substances with or without a pharmaceutical license, or purchase of Schedules II-V controlled substances without a pharmaceutical license, where such schedules are defined by the United States Department of Justice, Drug Enforcement Agency (DEA);
- (c) Purchases from entities or persons on the specially designated nationals (SDN) list published by the [United States Treasury Office of Foreign Asset Control](#) or from entities and persons identified for comprehensive financial sanctions by the United States Department of State.
- (d) Purchase of marijuana;
- (e) ATM withdrawals or cash advances;
- (f) Purchases associated with gambling, betting, lotteries, sweepstakes, or games of chance;
- (g) Purchase of cryptocurrency;
- (h) Purchase of securities or other financial instruments;
- (i) Use of the card for loan repayment or debt servicing;
- (j) Use of CapitalOS services for personal, family household use, or any non-commercial use;
- (k) Activities that that CapitalOS, in its sole discretion, identifies as high-risk; or
- (l) Use of the Services that is inconsistent with or prohibited by the Agreement.

Please contact us at support@capitalos.com if you are unsure whether your business or activities are permitted by CapitalOS.

E-SIGN Consent

This Electronic Communication Disclosure (“**E-SIGN Consent**”) applies to all communications and/or disclosures that we are legally required to provide to you in writing in connection with your Account and any related products and services (“**Communications**”). This E-SIGN Consent supplements the CapitalOS User Agreement.

1. Consent for Electronic Signatures, Records and Disclosures

Your consent to the electronic delivery of disclosures will be required before you can begin using your CapitalOS Account. If you are unable or unwilling to provide such consent, please do not enroll for a CapitalOS Account. Once you have activated your CapitalOS Account, you may withdraw your consent for E-SIGN and request paper communications and/or disclosures as noted below. You may wish to print a copy of this document for your reference.

2. Scope of Communications to Be Provided in Electronic Form

When you use a product or service to which this E-SIGN Consent applies, you agree that we may provide you with any Communications in electronic format, and that we may discontinue sending paper Communications to you, unless and until you withdraw your consent as described below. Your consent to receive electronic communications and transactions includes, but is not limited to:

- All legal and regulatory disclosures and communications associated with your CapitalOS Account and any related products and services
- Your CapitalOS User Agreement and any notices about a change to the agreement
- Privacy policies and notices
- Error resolution policies and notices
- Responses to claims filed in connection with your CapitalOS Account
- Notices regarding insufficient funds or negative balances

3. Method of Providing Communications to You in Electronic Form

All Communications that we provide to you in electronic form will be provided by access to our website or by email.

4. How to Update Your Records

It is your responsibility to provide us with a true, accurate and complete email address, your contact information, and other information related to this E-SIGN Consent and your CapitalOS Account, and to maintain and update promptly any changes in this information. You may update your information by logging into your Account CapitalOS and updating your profile.

5. Hardware and Software Requirements

To access, view, and retain electronic Communications that we make available to you, you must have the following software and hardware: A PC or Mac compatible computer or other device capable of accessing the Internet and an Internet Browser software program that supports at least 128 bit encryption. To read some documents, you may need a PDF file reader. If these requirements change while you have an active CapitalOS Account, and the change creates a material risk that you may not be able to receive Communications electronically, we will notify you of these changes.

6. Requesting Paper Copies

We will not send you a paper copy of any Communication unless you request it or we otherwise deem it appropriate to do so. You can obtain a paper copy of an electronic Communication by printing it yourself or by requesting that we mail you a paper copy, provided that such request is made within a reasonable time after we first provided the electronic Communication to you. To request a paper copy, contact us by emailing your request to legal@capitalos.com.

7. Communications in Writing

All Communications in either electronic or paper format from us to you will be considered "in writing."

8. Federal Law

You acknowledge and agree that your consent to electronic Communications is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, and that you and we both intend that the Act apply to the fullest extent possible to validate our ability to conduct business with you by electronic means.

9. Termination/Changes

We reserve the right, in our sole discretion, to discontinue the provision of your electronic Communications, or to terminate or change the terms and conditions on which we provide electronic Communications. We will provide you with notice of any such termination or change as required by law.

10. How to Withdraw Consent

You may withdraw your consent to receive Communications in electronic form at any time by sending us a written request. If you withdraw your consent, your CapitalOS Account and all associated cards will be closed in accordance with the Agreement and we will send subsequent required communications and disclosures to you in writing to the most current address we have on file.

We will not impose any fee to process the withdrawal of your consent to receive electronic Communications. Any withdrawal of your consent to receive electronic Communications will be effective only after we have a reasonable period of time to process your withdrawal. In the meantime, you will continue to receive Communications in electronic form. If you withdraw your consent, the legal validity and enforceability of prior Communications delivered in electronic form will not be affected.